

(1995) 10 RAJ CK 0007

In the Rajasthan High Court

Case No : .C.S.A. No"s. 539 and 540 of 1995

Rajasthan Financial Corporation

APPELLANT

Vs

Vinod Kumar

RESPONDENT

Date of Decision : 12-10-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1996) 3 LLJ 150 : (1996) 1 RLW 610

Hon'ble Judges : V.S. Kokje, J;P.C. Jain, J

Bench : Division Bench

Advocate : N.P. Gupta, for the Appellant; J.P. Joshi, for the Respondent

Final Decision : Partly Allowed

Judgement

Kokje, J.—The Rajasthan Financial Corporation has come up in appeals against the decision of the learned Single Judge reinstating the employees who were engaged on daily wages, back in service with back wages.

2. Respondents in both these cases were employees on daily wages. Respondent Vinod Kumar in D.B. Civil Special Appeal No. 539/95 was employed with effect from January 1, 1982 on daily wages for typing work. His services were discontinued from February 2, 1994. Respondent Naveen Kumar in D.B. Civil Special Appeal No. 540/ 95 was employed on daily wages for typing work on April 20, 1980. His services were also terminated from February 2, 1994 Both these respondents had filed civil suits challenging the termination of their services as illegal retrenchment. The trial Court dismissed the suits for declaration and injunction. On an appeal, the Appellate Court dismissed the appeal on the ground that the Civil Courts had no jurisdiction in view of the special remedy provided by the Industrial Disputes Act, 1947. The petitioners filed these petitions in the year 1988 taking a stand that they had a good case in the Civil Courts also but filing a second appeal u/s 100 or the CPC would be a cumbersome remedy and therefore, they would not opt for that. It was also contended that the District Court while dismissing their appeal had held that the

termination of the services was illegal retrenchment for violation of Section 25F of the Industrial Disputes Act, 1947 and. therefore, respondents contended that they had a good case before the Labour Court also but since 4 years have elapsed, it would not be proper for this Court to ask them to go to the Labour Court. The petitions of the respondents were entertained by this Court and were admitted. Both the petitions were decided by the learned Single Judge by holding that the petitioners before him had worked for 240 days in the year preceding the termination of the services and, therefore, they could not have been retrenched without notice or without payment of compensation. The learned Judge, therefore, reinstated the respondents with back wages. However, he did not allow back wages till the filing of the petitions on the ground that for the time lost in the Civil Courts, the appellant Corporation was not responsible. The appellant Corporation has challenged these orders In these appeals.

3. The learned Counsel for the appellants before us submitted that the case should not have been entertained by this Court because the respondents had come to the Court four years after the discontinuation of their services and after having availed of an alternative remedy. We feel that the learned Single Judge had no option but to decide the cases on merits because the petitions were already admitted for hearing and the petitions contained clear averments as to why alternative remedy was not being pursued further. We do not agree that the learned Single Judge was wrong in deciding the cases on merits. It appears that this objection was not raised before the learned Single Judge at the time of arguments because the impugned order in the cases do not take note of any such averment.

4. The learned Counsel for the appellants then submitted that the learned Single Judge had not taken into account the fact that the respondents had taken part in the regular selection process and appeared at a typing test and failed in the same, they had no right to continue after they were found unfit for regular selection. It was also contended that the respondents had worked only for a couple of years and that also long back and they have now been reinstated with almost 7 year's back wages. According to learned Counsel the learned Single Judge has mechanically passed the order of reinstatement as if the Court has no discretion in the matter. According to the learned Counsel the latest trend of the Supreme Court decisions is to award compensation in lieu of reinstatement or a lumpsum amount in lieu of back wages. Learned counsel cited decisions of the Supreme Court in (1) Rolston John Vs. Central Government Industrial Tribunal-cum-Labour Court and others, (2) S.K. Giri Vs. Home Secretary, Ministry of Home Affairs and others, (1) Minakshi Bala Vs. Sudhir Kumar and Others, and (4) Dhari Gram Panchayat Vs. Saurashtra Mazdoor Mahajan Sangh and Another, The decision of the Supreme Court in J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., was cited for the proposition that when there is no power in the rules to appoint adhoc employees, such employees have to compete with others for regular selection and if they fail, they have to make way for the selected candidates. Besides relying on the observations in the

aforesaid decisions in their favour also, the respondents relied on the decision of the Supreme Court in *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, for the proposition that in absence of evidence on record to show that the discharged employee was gainfully employed during the period of his absence from service, full back wages and all consequential benefits have to be awarded to him.

5. The criticism that the learned Single Judge had mechanically passed the order of reinstatement after having held that the termination of services of the respondents were illegal retrenchments cannot be said to be without foundation. Whether to order reinstatement in the circumstances of not is in the discretion of the Court. This discretion has to be exercised in the facts and circumstances of each case looking to various factors as to the nature of employment which was terminated, the time which had elapsed after the termination of service, the degree of diligence with which the matter was pursued by the employee and other relevant circumstances. In the circumstances of the case before us, we are unable to agree with the learned Single Judge that the respondents were entitled to reinstatement and back wages from the date of the filing of the petitions. The respondents were employed without any formal order of appointment. At least no such appointment orders have been produced in the cases. The appellant is a Corporation established by law. No one would accept an employment from such a Corporation without obtaining an order of appointment. Then the respondents were clearly told that they will have to reappear at a typing test and will have to clear it. The respondents appeared at such tests and failed. This intimation according to the Corporation was given to the respondents prior to the termination of their services. The termination of employment was therefore because of the failure of the respondents to clear the typing test. Even if such termination falls in the category of illegal retrenchment, in our opinion, it would not be proper to impose such employees on a public corporation by reinstating them with back wages from the date of filing of petitions in the High Court. Moreover, the respondents first took the Financial Corporation to Civil Courts, having lost there, they thought of filing the writ petitions in such circumstances, the relief of reinstatement with back wages from the date of filing of the petitions was totally unjustified relief so far as the employer was concerned. The spirit of the law of retrenchment is also not in favour of the respondents. The termination of their services would have been outside the definition of retrenchment in view of the amendment of the definition of retrenchment by addition of Clause (bb) to Section 2 (oo). The amended provision came into effect from August 18, 1984 and by that time the respondents' services had already been terminated. The new definition cannot be applied to these cases otherwise it could have been a case of non-renewal of the contract of employment or termination of contract of employment on a contingency provided by the contract itself namely, failure to clear the typing test.

6. For the aforesaid reasons, we allow these appeals partly, set aside the direction as to reinstatement with back wages from the date of filing of the

petitions and substitute it by direction for payment of Rs. 5.000/- each to the respondents in these cases by way of compensation in lieu of reinstatement.