

(1994) 12 RAJ CK 0005
In the Rajasthan High Court
Case No : .C.S.A (Writ) No. 147 of 1987

Rajasthan State Electricity Board	Vs	APPELLANT
The Judge Labour Court and Another		RESPONDENT

Date of Decision : 15-12-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Industrial Disputes Act, 1947 — Section 25F

Citation : (1996) 1 LLJ 152 : (1995) 2 WLC 314

Hon'ble Judges : Arun Madan, J;Anshuman Singh, J

Bench : Division Bench

Advocate : R.R.L. Gupta, for the Appellant; Ajeet Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

Arun Madan, J.—This D.B. Special Appeal filed u/s 18 of the Rajasthan High Court Ordinance. 1949, arising out of S.B. Civil Writ Petition No. 959/79, is directed against the judgment of the learned Single Judge of this Court dated 28th October, 1986 by which the learned Single Judge had dismissed the writ petition filed by the appellant-petitioner against the respondents. By the impugned award of the Judge, Labour Court. Jaipur, which was the subject-matter of the writ petition before the learned Single Judge. The Labour Court had held that the termination of the services of Kamal Kishore, respondent No. 2 is illegal and void and that he was entitled to reinstatement in service with full back wages. The learned Single Judge had further made a direction that with regard to the back wages payable to respondent No. 2, the appellant-Board will pay interest at the rate of 12% per annum from the date of award to respondent No. 2.

2. The facts giving rise to the filing of this appeal, briefly stated, are that the respondent No. 2 was appointed as work-charged Helper on March 9, 1965 and was working in that capacity when he absented himself without leave from May 20, 1974. The respondent No. 2 was absent for a period of about 4-1/2 months and did not send any intimation or any information to the Appellant-Board or its

officers regarding his absence and the cause for his absence till October 3, 1974.

3. The appellant-Board, therefore, considered the respondent No. 2 to be absent from duty without sanctioned leave and according to the provisions of proviso to Order 9(j) of the Certified Standing Orders, the services of respondent No. 2 were treated to have come to an end for being absent from duty without any intimation for more than 8 days. The respondent No. 2 had submitted two medical Certificates on October 3, 1974 in the office of Assistant Engineer along with the joining report. Since the service of the respondent No. 2 stood terminated in accordance with Order 9(j) of the Certified Standing Orders of the Board, as referred to above, the respondent No. 2 was accordingly not taken back on duty. Consequently respondent No. 2 raised an industrial dispute which was referred to respondent No. 1 i.e. Judge Labour Court, Jaipur for adjudication. The Judge, Labour Court, Jaipur passed an award in favour of respondent No. 2 on September 4, 1979 which was challenged in the writ petition filed by the appellant-Board in Writ Petition No. 959/79. During the pendency of the writ petition, the learned Single Judge had passed an interim order whereby the operation of the award, so far as it related to payment of back wages, was stayed but the appellant- Board was directed to reinstate the respondent-workman with back wages to which he was entitled as if the order of termination was not passed. In accordance with the interim-order the petitioner-Board has reinstated the respondent-workman.

4. Being aggrieved by the impugned judgment of the learned single Judge, the appellant-Board has come up in appeal.

5. The contention advanced by the learned counsel for the appellant is that the learned Single Judge had failed to take into consideration that once the services of the employee stood validly terminated by operation of law, he is not entitled to reinstatement with full back-wages. In this connection reliance was placed by the learned counsel for the appellant on the provisions of Order 9(j) of the Certified Standing Orders of the Board Which provides as under-

"If a worker absents himself for more than 8 consecutive days without leave, he shall be deemed to have left the service of the Board without notice."

6. It has been further observed in the appeal that the appellant- Board did not pass any termination order but simply informed respondent No. 2 regarding his automatic termination in accordance with Certified Standing Order No. 9(j), as referred to above, hence this case was wrongly treated to be of retrenchment of the workman under the I.D. Act, 1947 (hereinafter to be referred to as "the Act") by both the Labour Court as well as by the learned Single Judge of this Court.

7. The above contentions as advanced by the learned counsel for the appellant-Board have been controverted by the learned counsel for respondent No. 2 on the ground that it was a case of retrenchment and since the provisions of Section

25F of the Act have not been complied with, the termination of the services of the respondent-workman was illegal and invalid.

8. During the course of hearing, learned counsel for respondents has placed reliance upon the judgment of the Apex Court in the matter of D. K. Yadav v. J. M. A. Industries Ltd. reported in (1993-II-LLJ-696). In the aforesaid case, the respondent- workman had absented him self from duty continuously for more than 8 days from December 3, 1980 without leave or prior information or intimation and without prior permission of the Management. The Management took the plea that the workman shall be deemed to have left the services of the company on his own accord and had consequently lost his lien to the appointment with effect from December 3, 1980 i.e. the date he absented himself. The workman was thereafter continuously prevented entry at the gate and he was not allowed to sign the attendance register: He pleaded that he was not allowed to join the duty without assigning, any reason. By a letter addressed to the Management, the workman explained the circumstances in which he was prevented to join the duty. The Tribunal found that the appellant had failed to prove his case and held the action of the respondents to be in accordance with the Standing Orders and further held that it was not a termination nor retrenchment under the Act and further that the appellant in terms of the Standing Orders of the Management had lost his lien of his appointment and so he was not entitled to reinstatement. The Management did not conduct any domestic inquiry nor gave the appellant any opportunity to put forward his case. Aggrieved by the decision of the Labour Court, the workman had preferred, SLP before the Apex Court which came to be finally decided by the Apex Court vide its judgment dated May 7, 1993, as referred to above.

9. In the aforesaid case, while allowing the appeal of the aggrieved workman it was held by the Apex Court that admittedly no opportunity was given to the appellant to explain his case and no inquiry was held by the Management. The Tribunal did not record any conclusive findings in this regard and it was concluded by the Tribunal that the Management had power under Clause 13 of the Certified Standing Orders to terminate the services of the appellant. It was further held by the Apex Court as under: -

"It is thus well settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also careers and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. In Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, the Constitution Bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without enquiry offended Article 14. The order terminating the service of the employees was set

aside."

10. Consequently the Apex Court while allowing the appeal of the workman set aside the award of the Labour court and also quashed the impugned letter of termination of the Management addressed to the workman and further directed the Management to reinstate the workman with full back wages within a period of 3 months from the date of receipt of the order of the Apex Court.

11. In our opinion, the facts of the present case are squarely covered by the decision of the Apex Court as referred to above in the matter of D.K. Yadav (supra) and the appreciation of law as laid down by Hon"ble Supreme Court is fully applicable to the present appeal. We are further of the opinion that since the appellant-Board had terminated the services of the workman- respondent No. 2 without providing any opportunity and hearing and without conducting any domestic inquiry is illegal and violative of the principles of natural justice and that the procedure prescribed for depriving a person of his livelihood must swear the requirement of Articles 14 and 21 of the Constitution of India and that any Standi ng Order which is adopted by the Management must conform to all the requirements of the principles of natural justice and consequently we are of the view that the learned Single Judge was perfectly justified in arriving at the conclusion that the termination of the workman by the appellant- Board was illegal and improper and that the workman was entitled to reinstatement with backwages to which he was entitled as if the impugned order of termination had not been passed. We are further of the opinion that the impugned order passed by the learned Single Judge docs not sutler from any infirmity, illegality or impropriety.

12. Consequently the appeal is dismissed with no order as to costs.