

(2008) 10 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6436 of 1994

Rajasthan State Road Transport Corporation, Kota

APPELLANT

Vs

Surendra Kumar Bagri and another

RESPONDENT

Date of Decision : 14-10-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2009) 120 FLR 506

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Mukesh Verma, for the Appellant;

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—This writ petition has been filed challenging the award of the labour Court dated 3.12.1991. Labour Court has answered the reference made to it by the appropriate government in the terms that retrenchment of the respondent-workman by the petitioner was illegal and that he would be entitled to reinstatement with full back wages and continuity in service.

Learned Counsel for the petitioner has argued that respondent-workman was retrenched from service after making compliance of section 25-F of the Industrial Disputes Act, 1947 (for short, "Act of 1947") inasmuch as, he was paid notice pay of one month with requisite amount of compensation. Learned labour Court erred in law in applying section 25-N of the Act of 1947 to the present case holding that there was violation of the said provision in retrenching services of the respondent-workman. Learned Counsel argued that in the present case, retrenchment was made on 28.4.1983 whereas reference was made on 18.7.1986 and the award was passed by the labour Court on 3.12.1991 and yet the learned Judge Labour Court granted him full backwages and continuity of service while directing for his reinstatement. Learned Counsel submitted that the award was liable to be set-aside because for the purpose of compliance of section 25-N, the Depot of RSRTC Kota was required to be considered as a separate unit

and not the entire RSRTC as one unit.

2. A perusal of the award reveals that even if what is contended is accepted, then also it is found that no evidence was led to show that in Kota Depot alone less than 300 workmen were engaged so as to consider the Kota Depot as a separate unit for the purpose of compliance of section 25-N of the Act of 1947. The contention that is being raised for the first time, cannot therefore allowed to be raised. Even otherwise, retrenchment of the services of the respondent-workman was made pursuant to Clause 13 of the RSRTC Standing Orders, 1965 which was declared ultravires of the Act of 1947 vide judgment of this Court dated 12.3.1983 passed in SBCWP No. 1108/2002. On being asked, learned Counsel for the petitioner informed the Court that the aforesaid judgment has since been upheld by the Supreme Court. On both the counts, therefore, retrenchment of the services of the respondent-workman were rightly held to be illegal. On the aspect of full back wages, it appears that there was delay of 4-1/2 years in raising the dispute and the reference itself was answered vide award dated 3.12.1991. Therefore, it would not be justified to pay full back wages for the entire duration of the services of the respondent-workman.

3. In the result, the writ petition is partly allowed. In so far as the direction of reinstatement and continuity is concerned, the same is upheld. However, direction with regard to payment of back wages is modified in the terms that respondent-workman would be entitled for back wages only from the date of award minus the amount already received by him pursuant to the direction of this Court u/s 17-B of the Act of 1947.

Compliance of the judgment shall be made within a period of three months from the date, copy of the same is submitted to the respondents.