

(2008) 07 RAJ CK 0093
In the Rajasthan High Court

Ratanlal Sharma

APPELLANT

Vs

Rajasthan State Mines and Minerals Limited and Another

 Ramniwas Vs State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2008) 07 RAJ CK 0093

Hon'ble Judges : N.P. Gupta, J;Kishan Swaroop Chaudhari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kishan Swaroop Chaudhari, J.—These two appeals have been heard on two different dates but as the impugned order has been passed by same learned Single Judge and the controversy involved in these two appeals is one and the same, and incidentally the counsel for the two appellants is also the same, these appeals are being decided by this common judgment.

FACTS OF APPEAL NO. 420/08:

2. This appeal has been filed against the order of learned Single Judge dated 3rd November 2006, by which the award of the Labour Court dated 05.12.2000 was modified. Appellant Ratanlal submitted before Labour Court that he was appointed by respondent No. 1 on 13th April 1993 on their Lime Project as an unskilled labour, he suddenly fell ill on 7.06.1994 and therefore had to go to Jailsalmer for his treatment. He returned back on 08.06.1994 but by verbal order respondent refused to allow him to join his duties and removed from service and such removal was made in violation of Section 25F of the Industrial Disputes Act. After appellant's removal, Project Manager of respondent appointed one Sonu his relative in his place. It was prayed that action of the respondent be declared illegal and he be directed to reinstate him in service with full back wages. Respondent in its reply submitted that appellant was employed an unskilled casual labour on work basis as and when necessity arose and that the appellant

left the job on his own accord and did not turn up to work. It was denied that respondent had appointed anyone else after removal of the appellant and submitted that appellant himself absented from duty and did not come thereafter, hence claim of the appellant be rejected.

3. After recording evidence and hearing the parties, Labour Court vide its Award dated 05.12.2000 held that appellant had completed 240 days and therefore his removal was in breach of Section 25F of the Industrial Disputes Act and thus ordered for his reinstatement in service forthwith with 50% back wages.

4. Against this award, the respondent employer filed writ and the learned Single Judge by impugned order modified the award of Labour Court and instead of reinstatement and 50% back wages directed the respondent employer to pay Rs. 50,000 as compensation to the appellant within three months.

FACTS OF APPEAL NO. 453/08:

5. This appeal has been filed against the order of learned Single Judge dated 27th July 2006, by which the award of the Labour Court dated 16.04.2002 was modified. Appellant Ramniwas submitted before the Labour Court that he was appointed as a Labour on monthly wages of Rs. 270 by the Assistant Engineer Drilling & Hand pump, Sub Division I, PHED, Nagaur on 21.12.1982 and continued there upto 30th September, 1984 but his services were terminated on 01.10.1984 without showing any reason and without giving any chargesheet. He completed more than 240 days in the employment of respondent but without complying mandatory provisions of Section 25F of the Industrial Disputes Act, he was removed from service. After his removal, several other workmen, who were junior to him, were continued in service. He prayed that his removal be declared illegal and he should be reinstated with full back wages. Respondent employer replied to the statement of claim and submitted that appellant was engaged by a verbal order on 21.12.1982 at the rate of Rs. 8 per day for managing articles in store, he continued upto 30th September 1994 except on holidays and that on completion of work, appellant's appointment came to an end so there was no industrial dispute and prayed for rejection of the claim of appellant. After recording evidence and hearing arguments, learned Labour Court by order dated 16th April 2002 ordered to reinstate the appellant with 25% back wages.

6. Against this award, the respondent employer filed writ and the learned Single Judge by impugned order modified the award of Labour Court and instead of reinstatement and 25% back wages directed the respondent employer to pay Rs. 50,000 as compensation to the appellant within three months.

7. Arguments heard and perused record.

8. Learned Counsel for the appellants submitted that learned Single Judge has erred in modifying the awards as the awards passed by Labour Court were in accordance with law, hence, appeals may be admitted.

9. Learned Single Judge while considering relevant facts and placing reliance on

2004 (5) WLC (Raj.) 465 (State of Rajasthan v. Rashid Mohd), a Division Bench judgment of This Court, in which various judgments of Hon'ble Supreme Court were discussed, came to the conclusion that as the appellants had worked only for a period of about 12/21 months and that too about 12/13h years ago, lumpsum compensation to the tune of Rs. 50,000 instead of reinstatement and back wages would be appropriate.

10. Learned Counsel for the appellants placed reliance on a Single Bench judgment of This Court reported in 2006(9) RDD 4577 (Rajendra Singh v. Labour Court), in which workman was removed after 13 years of service on account of minor misconduct, hence the Court directed to reinstate the workman with 50% back wages. On the contrary, in the instant cases, the appellants have worked only for a period of 12/21 months, hence the aforesaid case also does not help the appellants.

11. Reliance was further placed on 1991 (1) RLR 793 (Dhyan Singh v. University of Rajasthan, in which order of reinstatement in favour of workman was passed but this citation does not contain any facts revealing that for how much period the workman had worked and as such on that basis the appellants cannot get any benefit.

12. Another case cited by Learned Counsel was 2005 (4) RLW 2630 (Chief Medical & Health Officer, Dausa v. Judge, Labour Court, and 2006(8) RDD 4493 (Jodhpur Sahkari Upbhokata Wholesale Bhandar Ltd. v. State of Rajasthan and Ors., in which the award of Labour Court, directing reinstatement, was upheld by learned Single Bench. On the contrary, in the present cases, learned Single Judge has held that instead of reinstatement, orders of granting compensation is appropriate.

13. Learned Counsel also placed reliance on 2008 (1) 116 FLR 85 (MDS University, Ajmer v. Kailash Chand, in which the award passed by Labour Court directing the employer to reinstate worker in service with 10% back wages was upheld, in which case the University had neither filed its reply in Labour Court nor cross examined the workman and inspite of directions failed to produce requisite documents, hence the award was passed, which was upheld by Single Bench as well as the Division Bench. On the contrary, in the case in hand, employer hotly contested the case and learned Single Judge has modified the award on reasonable grounds.

14. He also placed reliance on order dated 12th May 2008 passed by This Court in Special Appeal (Writ) No. 1214/97- Birda Ram v. Pali Central Co-operative Bank Ltd. and Ors., in which the workman was ordered to be reinstated. The said judgment is not applicable to the facts of present cases because in the said case Learned Counsel for the employer submitted that the employer was prepared to reinstate the workman, hence the Bench ordered to reinstate the workman.

15. Learned Counsel for the appellants to support his contention regarding reinstatement referred to various Division Bench judgments of This Court

reported in 1975 RLW 131 (Udaipur Mineral Development Syndicate Private Limited v. M.P. Dave 2006 WLC (Raj.) UC 311 (RTDC v. Judge, Labour Court, D.B. Civil Appeal No. 265/4004 (Rajasthan Agriculture University, Bikaner v. Labour Court, Bikaner, decided on 03.09.2004) and 1997 WLR Raj. 104 (RFC and Anr. v. Gulshan Kumar and Anr.). In all these cases award of Labour Court was upheld by learned Single Judge, which was affirmed by Division Bench whereas in the present two appeals, the learned Single Judge, after considering various authorities held that instead of reinstatement, grant of lumpsum compensation is appropriate.

16. Learned Counsel for the appellants further relied on Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Others, in which, order of reinstatement passed by Labour Court was upheld. In that case, workman was recruited as a Labour in the Store in 1951 and his services were terminated by letter dated 19th January 1966, thus, the workman till then had worked for more than 15 years. On the contrary, in present cases, appellants worked for about 12/21 months only.

17. He has also placed reliance on Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, in which services of three employees working as Conductor, Driver and Assistant Traffic Incharge were terminated in 1985 and the same being challenged before High Court, the High Court struck down Regulation 9(b) and directed the employer to pay back wages and benefits to the workers. In the aforesaid case also, the services of workmen were terminated after 15 years" service, who were reinstated after striking down Regulation 9(b). On the contrary, in the cases in hand, the appellants have worked only for about 12/21 months.

18. He has also placed reliance on Sriram Industrial Enterprises Ltd. Vs. Mahak Singh and Others, in which the workmen were retrenched after 7-8 years of service and the Tribunal rejected the claims of workers but the High Court quashed the awards passed by Tribunal and directed reinstatement with 50% back wages, which order was held to be proper by the Hon'ble Apex Court. On the contrary, in the present cases, learned Single Judge modified the award of Tribunal and found that grant of lumpsum compensation is appropriate.

19. Reliance was also placed on judgment dated 12.03.2004 passed by Apex Court in Civil Appeal No. 1592/2004 (Suresh Bharti v. State of Rajasthan), in which Labour Court granted relief of reinstatement with 25% back wages as there was delay of 9 years. Against the award of Labour Court, the State filed petition, which was dismissed by learned Single Judge but the Division Bench in appeal against the order of learned Single Judge modified relief by awarding lumpsum compensation of 25,000 only in place of reinstatement with 25% wages. This judgment also does not help to the appellants as in the present cases 12/13 years have elapsed since termination and the learned Single Judge has reasonably modified the awards by awarding lumpsum compensation.

20. Perusal of impugned order in D.B. Civil Special Appeal No. 420/08 reveals that Learned Counsel for the employer argued before the Single Bench that appointment of the appellant Ratanlal was not made by any acceptable mode of recruitment and he was merely engaged on daily wages as an unskilled labour. The appellant has admitted in his cross examination before the Labour Court that he was unskilled labour and no appointment order was given to him. This fact shows that his appointment was not made by any acceptable mode of recruitment. Further more, the appellant failed to prove that his services were terminated to accommodate any other person.

21. It was held in Mahboob Deepak Vs. Nagar Panchayat Gajraula and Another, that even if workman has completed 240 days in preceding 12 months, he has no right to be absorbed in service if his appointment is not in accordance with rules. In that case, Hon''ble Apex Court modified judgment of High Court and awarded lumpsum compensation of Rs. 50,000.

22. In Assistant Engineer, C.A.D., Kota Vs. Dhan Kunwar, Hon''ble Apex Court, allowing the appeal, set aside the relief granted by Labour Court which was upheld by Single & Division Bench of Rajasthan High Court as the workman was appointed as workcharged employee on temporary basis though subsequently she was declared quasi permanent in service and worked upto 30th May 1983 for more than five years. On the contrary, in the present cases, the appellants worked only for about 12/21 months and apparently their appointments were irregular and they were not appointed in accordance with the rules.

23. In Shiv Kumar and Others Vs. State of Haryana and Others, the Apex Court set aside the order of reinstatement and ordered to pay Rs. 10,000 to each of the workers apart from what was due to each workers as retrenchment compensation.

24. In U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, the workman was appointed for fixed tenure and his services were terminated on expiry of the said tenure but the Labour Court directed reinstatement with back wages. Apex Court after considering various authorities held that award of 25% back wages would be justified.

25. In AIR 1994 (1) SC 131 (Rustom John v. Central Govt. Industrial Tribunal), compensation of Rs. 50,000 was granted instead of reinstatement.

26. In D.B. Civil Special Appeal (Writ) No. 453/08, the appellant had worked with respondent employer for only about 21 months but after termination of his service, reference of the dispute to the Labour Court was made after about 13 years and award was passed by labour Court after about 18 years from the date of termination and near about 24 years have elapsed since termination. In such circumstances, in the light of above discussion, no interference is called for in the order passed by learned Single Judge.

27. Aforesaid discussion clearly reveals that reinstatement is not automatic and

in the interest of justice instead of reinstatement, lumpsum compensation can be granted to a workman. Orders passed by learned Single Judge are just and proper and no interference is called for. Consequently, the appeals filed by present appellants are hereby dismissed.