
(1998) 03 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3276 of 1995

Resident Engineer, Rajasthan State Bridge and Construction Corporation Ltd.

APPELLANT

Vs

Om Prakash and Another

RESPONDENT

Date of Decision : 25-03-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 25F, 25T

Citation : (1999) 1 WLC 393 : (1998) 1 WLN 386

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—The instant writ petition has been filed by the petitioner against the Labour Court Award dated 15.2.1995, notified on 24.6.1995, under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as "the Act"), by which the claim of the respondent-workman had been allowed holding that he had completed 240 days in a calendar year and his services had been terminated without complying with the requirements of Section 25F and the case of the employee was not covered u/s 2(00)(bb) of the Act.

2. The facts and circumstances giving rise to this case are that the respondent-workman was appointed on daily wages basis in February, 1986. However, after sometime, as the Project taken by the petitioner company was likely not to last for a very long period, the workman was given fixed-time appointment as Chowkidar from 1.3.1987 to 31.3.1987. He was further appointed on 1.4.1987 for a period of one month and another appointment letter was issued on 1.5.1987 extending the term of appointment upto 31.7.1987 and the last appointment order was passed on 1.8.1987, by which he was appointed for a period of three months and according to the petitioner, his services came to an end automatically on 31.10.1987 by efflux of time in terms of the contract of service. However, the respondent-workman contended that making such

appointments amounts to unfair labour practice under the provisions of Section 25T of the Act and his services had been terminated just to deprive him from the benefits of the statutory provisions.

3. The appropriate Government made a reference u/s 10 of the Act and the Labour Court recorded the finding as under:

(1) The workman had worked for 240 days in a calendar year, if counted backward from the date of retrenchment;

(2) retrenchment/termination was not in consonance with the statutory provisions, i.e., Section 25F of the Act;

(3) appointing the petitioner for so many times amounts to unfair labour practice;

(4) the said appointment letters, as mentioned above, could not be taken into account for the reason that the Management/ employer did not prove the same; and

(5) the case of the employee did not fall within the provisions of Section 2(00) (bb) of the Act.

4. And in view of the above, the order of reinstatement with all consequential benefits was made by the Labour Court, hence this petition.

5. Heard Mr. P.C. Sharma, learned Counsel for the petitioner and Mr. S.N. Trivedi, learned Counsel for the respondent-workman.

6. Mr. Sharma has submitted that as the petitioner company was not sure about the exact time of finishing the Project, therefore, it had become necessary for the company to give such tenure appointments to the respondent-workman and his services had been terminated just after completion of the project. The case falls within the provisions of Section 2(00)(bb) of the Act and hence the Award is liable to be set-aside. On the contrary, Mr. Trivedi has supported the findings recorded by the Labour Court.

7. I have considered the rival submissions made by the learned Counsel for the parties.

8. The respondent-workman has admitted before the Labour Court in his cross-examination that he was not aware whether the Project had been closed or not after termination of his services and the Labour Court, in such a situation, has to disbelieve the averments made by the present petitioner. Labour Court has not recorded the finding whether the Project was closed or not, nor it had been a specific case of the workman that even after termination, the work continued. The Award is based on no evidence and secondly the Labour Court has erred in making observations that offering appointment several times for such a small period amounts to unfair labour practice, placing reliance upon the appointment letters filed by the Management, particularly in view of the fact that the Labour Court has recorded a finding that no reliance can be placed on such appointment

letters as the same had not been proved by the Management. It was not permissible for the Labour Court to place reliance on the said appointment letters for drawing an inference of adopting unfair labour practice by the management and for determining whether his termination fell within the ambit of the provisions of Section 2(00)(bb) of the Act as the contract could not be renewed on its expiry for the reason of closure of the project and the said appointment letters could not be taken into account for want of proof. The double standard adopted by the Labour Court regarding the admissibility of the documents is a patent illegality which stares at the face of the record.

9. The workman has admitted before the Labour Court that the said appointment letters were bearing his signatures. Thus, I fail to understand what was the requirement of law which was necessary to prove the documents. The Labour Court has fallen in error while assuming that the documents required proof as per the provisions of the Indian Evidence Act, though it is settled proposition of law that the documentary evidence need not be proved in accordance with the basic principle of the Evidence Act. (Vide *Samnuggur Jute Factory Company Ltd. v. Workman* 1982 L & IC 1354 ; and *Central Bank of India Ltd. Vs. Prakash Chand Jain*,

10. In *State of Haryana and Another Vs. Rattan Singh*, the Apex Court has observed as under:

It is well settled that in a domestic enquiry, the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply.... Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act.... The essence of social object is objectivity exclusion of extraneous material and consideration and observance of rule of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiates the conclusion reached, such findings, even though of a domestic Tribunal, cannot be held good.

11. Similarly, in *Food Corporation of India Workers Union Vs. Food Corporation of India and another*, , the Supreme Court has observed as under:

The Tribunal was patently of the view that there should be "evidence" to prove the facts as per the provisions of the Evidence Act; it is not so. The Tribunal is not a Court. There should be only "material" and not evidence as required by the Evidence Act.... The only question was whether on weighing the probabilities, the material placed by the petitioner was acceptable or rendered probable.

12. Thus, in view of the above, the Labour Court has erred in holding that the appointment letters cannot be relied upon for want of proof.

13. So far as the application of the provisions of Section 2(oo)(bb) of the Act is concerned, the law is well settled that if the work is not of a parineal nature and the Project is likely to be finished after sometime then it cannot be held that

giving tenure postings amounts to unfair labour practice and does not fall within the admit of the statutory provisions, i.e., Section 2(oo)(bb) of the Act. (Vide M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another, ; Morinda Co-op. Sugar Mills Ltd. Vs. Ram Krishan and others etc., ; Hindustan Steel Works Construction Ltd., etc. etc. Vs. Hindustan Steel Works Construction Ltd. Employees' Union, Hyderabad and another etc. etc., ; and State of Rajasthan and others Vs. Rameshwar Lal Gahlot,

14. Similarly, in Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others, , it has been held that the provisions of retrenchment are not applicable in the cases of casual employees.

15. As the present petitioner has placed sufficient material before the Labour Court to prove that the appointment letters had been given for a fixed tenure looking to the work on the project and it came to an end and the respondent-workman did not even deny the factum of closure in cross-examination, the finding recorded by the Labour Court that issuing such appointment letters amounts to unfair labour practice or it had been given just to deprive the respondent-workman benefit provided under the provisions of the statute, cannot be permitted to be sustained in the eye of law. It was a case of non-renewal of contract after expiry of the tenure fixed by the earlier appointment letter.

16. Thus, the writ petition succeeds and is accordingly allowed. The impugned Award dated 15.2.1995 passed by the Labour Court is set-aside. However, as Mr. Trivedi suggested that the present petitioner has large number of projects through-out the State of Rajasthan and the respondent-workman may be offered job somewhere else as per the convenience of the petitioner, Mr. Sharma has made the concession that if the respondent-workman applies to the management, it will be considered sympathetically, however, it will not carry any liability of any kind for the past service. In the facts and circumstances of the case, the parties are left to bear their own costs.