

(1996) 07 RAJ CK 0051

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1052 of 1996

R.S.R.T.C. and Others

APPELLANT

Vs

Bhanwara Ram and Others

RESPONDENT

Date of Decision : 03-07-1996

Acts Referred:

Apprentices Act, 1961 — Section 22

Constitution of India, 1950 — Article 12, 14, 15, 16, 226

Citation : (1996) 2 RLW 453 : (1996) 3 WLC 459 : (1996) 1 WLN 485

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—Petitioners by filing the instant writ petition question the Award dated 4.9.95 passed by the Industrial Tribunal, Bikaner in Reference No. 53/89 between Bhanwar Ram and Ors. v. Managfrig Director, R.S.R.T.C. and Ors.

2. I have heard the learned counsel for the. petitioners Mr. Sangeet Lodha at length. Perused the order impugned.

3. A close scrutiny of the Award dated 4.3.95 leads towards an Irresistible conclusion that the learned Tribunal has recorded a positive finding to the effect that the petitioners are guilty of adopting unfair labour practice in denying employment to the respondent-employees on the post of Artisan. In support of its aforesaid finding the Tribunal has given cogent and convincing reasons with which I am at one.

4. Learned counsel for the petitioners invited my attention on some of the documents which have been appreciated by the learned Tribunal. In this regard suffice it to say that reappraisal of evidence is not possible under Article 226 of the Constitution of India, therefore, request made by the learned counsel for the petitioners to reappraise the evidence is hereby repelled.

5. As a matter of fact the present controversy is concluded by finding of fact

recorded by the Tribunal after appraisal of oral and documentary evidence on record in its para 11 which is eminently just and proper and does not require interference of this Court under Article 226 of the Constitution of India.

6. It is strenuously urged by Shri Lodha on behalf of the petitioners that since the respondent-employees voluntarily entered into a contract to be appointed on the post of Helper, therefore, the order passed by the Tribunal is not sustainable in the eye of law as contemplated u/s 22 of the Apprentices Act, 1961. According to Shri Lodha the respondent-employees having willingly accepted their appointment on the post of Helper cannot be allowed to make complaint against impugned action of the petitioners.

7. I am not impressed with the aforesaid argument of the learned counsel for the petitioners. The aforesaid argument is wholly misconceived as it is borrowed from archaic common law concept that the employment was a matter between the master and servant only. In the first place this rule in its original absolute form is not applicable to government servants or employees of a institution which fall within the definition of State under Article 12 of the Constitution of India. It is well to remember that every instrumentality of the State is subject to all the constitutional limitations as the State itself. Indisputably the present institution where respondent employees are working is an instrumentality of State and also falls within the definition of State under Article 12 of the Constitution of India.

8. The relationship of master and servant is not applicable in vastly changed and changing socio economic conditions after enforcement of the Constitution. Suffice it to say that if the Tribunal has recorded a categorical finding of fact about unfair labour practice being adopted by the petitioners then the order passed by the Tribunal cannot be set aside merely on the ground that in contract of apprenticeship there was no job guarantee to the respondent-employees. The aforesaid argument was raised before the Tribunal and it has been rightly rejected with which I am in full agreement.

9. In the days of scarcity of employment the employers are in dominating position to dominate the will of the employees and if respondent-employees in distress have accepted the inferior employment while they were entitled for posts of Artisans then the agreement entered into in duress can be examined by a court of law after lifting its veil.

10. In the present case the learned Tribunal has rightly lifted the veil after analytical discussion of oral and documentary evidence on record and correctly arrived at a conclusion that action of petitioners in appointing respondents on the posts of Helper instead on the post of Artisans amounts unfair labour practice.

11. The respondents are employees of instrumentality of the State, therefore, they are entitled for all the constitutional protection available under Articles 14, 15 and 16 of the Constitution of India.

12. The next contention of the learned counsel for the petitioners is that the

appointments of the respondent-employees on the post of Artisans are not possible because of paucity of the posts.

13. I am not impressed with the argument of the learned counsel for the petitioners for the reason that earlier after completion of training they have been removed and immediately thereafter have been appointed on the post of Helper. Suffice it to say that the Tribunal has addressed itself correctly on this point holding that the respondents are entitled to be appointed on the post of Artisans and denial to appoint them on the post of Artisans amount unfair labour practice being adopted by the petitioners. The aforesaid finding recorded by the Tribunal is based on appreciation of materials on record which deserves to be affirmed.

14. For the reasons stated above the instant writ petition lacks merit and it is hereby dismissed in limine.