

(2002) 03 RAJ CK 0065
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5132 of 2001

R.S.R.T.C.

APPELLANT

Vs

Sadasukh Gurjar and Another

RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2003) 2 LLJ 549 : (2002) 4 RLW 2500 : (2002) 5 WLC 166

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : Manish Bhandari, for the Appellant; H.O.P. Mathur, for the Respondent

Final Decision : Allowed

Judgement

Madam, J.—The undisputed facts are that non petitioner No. 1 filed a claim statement before Labour Court No. 2 Jaipur contending inter-alia that he was engaged by the appellant Corporation on 9.9.1987 and continued to work till 1/9/88. However, w.e.f. 1.9.88 his services were discontinued by the Corporation and as on the said date he completed 240 days of service. The concerned employee has also submitted his affidavit in support of his claim petition. The employer thereafter submitted its reply contending therein that since the employee had worked only for a fixed term on contract basis and as per the terms of last order by which his services were extended by the Corporation, it was directed that his services were required only till 1.9.88. Hence, by a logical corollary, the services of respondent workman being for a fixed term and the nature of term also contractual and this fact was within his full knowledge that he had rendered services to the Corporation on contract basis and having voluntarily accepted his term of engagement, the question of respondent workman taking the plea that the matter falls within the purview of Section 25F of the Industrial Disputes Act, 1947 does not arise. However, without considering this material aspect of the matter and even the term of contract as per which the engagement

of respondent workman was for a fixed duration only. Hence, it was not open to the workman to take the plea that since he had completed 240 days of continued service, he was entitled to continue in service as a regular employee.

2. Prima-facie, I am of the considered opinion that the workman is not entitled to succeed. From the perusal of the appointment order dt. 1.6.88 (Annexure-1), it is clear that no right accrues to the petitioner, on the basis of the above order since the same was again for a fixed term i.e. w.e.f. 9.9.87 to 1.9.88.

3. From the above discussion the termination of the petitioner under aforesaid circumstances cannot be treated as a case of retrenchment so as to attract the provisions of Section 2(oo) of the Act as per which "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include (a) voluntary retirement of the workman; or retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf.

4. It is very clear that termination of service of an employee by an employer for any reason whatsoever moreso, in the instant case, contractual appointment, is not open to challenge since, it cannot be construed as a punishment inflicted by way of a disciplinary action by the competent authority.

5. Once the conclusion logically so arrived at is that Section 2(oo) is not attracted to such cases, in my view, there is no question of application of Section 25-F of the Act on the basis of which the termination of the service of the appellant can be held to be invalid.

6. Even under the service jurisprudence, it is well settled by a catena of decisions that the service of a probationer can be terminated after making over all assessment of his performance during the period of probation and no notice is required to be given before terminating his service. As held in Harmohinder Singh v. Kharga Canteen (1), non-renewal of the contractual period could not be claimed as a matter of right as in the event of its non-renewal would stand excluded from the definition of "retrenchment" as per Section 2(oo) of the Act. Section 25-F of the Act deals with conditions precedent to retrenchment of workman. It would not apply to para 3A because of the definition of retrenchment in Section 2(oo)(b) of the Act, which expressly excludes "termination of the service of a workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contracts being terminated under a stipulation in that behalf contained therein. Contracts of service for a fixed term are, therefore, excluded. The Apex Court also held in Uptron Ltd. v. Shammi Bhans (2), that the principles of natural justice are not applicable to such cases where the termination takes place on the expiry of the contract.

7. The learned Tribunal has failed to consider this aspect of the matter that such

employees whose services are discontinued after expiry of fixed term, it is not open to such workman to raise dispute under the Act of 1947 by taking the plea of applicability of Section 25-F of the said Act. The learned labour Court obviously has erred by not taking the above aspect of the matter into consideration in passing the impugned award that Section 25-F of the Act is not at all attracted to such cases where the appointment is contractual and for a fixed term. In such cases, it is always open to the management to discontinue the services of an employee after the expiry of contractual period.

8. As a result of the above discussion, the writ petition is allowed. The impugned award dt. 31.1.2001 (Annexure-2) passed by Labour Court No. 2 is quashed and set-aside. There will be no order as to costs.