
(2009) 01 RAJ CK 0106
In the Rajasthan High Court

Santu Singh

APPELLANT

Vs

The Judge, Labour Court and Others

RESPONDENT

Date of Decision : 27-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F

Citation : (2009) 2 WLN 88

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.R. Panwar, J.—By the instant writ petition under Article 226 of the Constitution of India, the award Annex.P-5 dt. 17.05.2001 passed by respondent No. 1, the Judge, Labour Court, Jodhpur (for short "the Labour Court" hereinafter) has been challenged qua the petitioner.

2. I have heard learned Counsel for the parties.

3. On a reference being made by the respondent State by notification dt. 09.04.1997 to the respondent Labour Court for adjudication, the reference came to be registered by the Labour Court and on notice to the parties, the petitioner filed the statement of claim and reply thereto was filed by the respondent-employer. By the award impugned Annex.P-5, the Labour Court held that the workman failed to establish that he has worked for 240 days in a calendar year and therefore, there was no necessity for issuing a notice or the salary in lieu of notice before terminating his services. Hence, this writ petition.

4. It is contended by learned Counsel for the petitioner that though a joint reference was made in respect of as many as 8 workmen, but so far as the present petitioner workman is concerned, the petitioner has completed 247 days in a calendar year and therefore, the termination of his services was in violation of Section 25F of the Industrial Disputes Act, 1947 (for short "the ID Act")

hereinafter). Learned Counsel for the petitioner submits that it was the respondent employer who has submitted the muster-rolls in respect of the petitioner before the Labour Court which have been annexed with the instant writ petition as Annex.P-4 and from the muster-rolls submitted by the respondent employer it works out 247 days in a calendar year for which the petitioner has worked.

5. I have carefully gone through the muster-rolls.

6. Learned Deputy Government Counsel appearing for the respondents does not dispute the muster-rolls since the muster-rolls have been filed by the respondent State before the Labour Court as it appears from the award impugned.

7. On perusal of the muster-rolls, it appears that the petitioner workman worked w.e.f. 01.08.1986 to 31.08.1986 for 27 days, 01.09.1986 to 30.09.1986 for 26 days, 01.10.1986 to 31.10.1986 for 27 days, 01.11.1986 to 30.11.1986 for 25 days, 01.12.1986 to 31.12.1986 for 27 days, 01.01.1987 to 31.01.1987 for 26 days, 01.02.1987 to 28.02.1987 for 24 days, 01.03.1987 to 31.03.1987 for 26 days, 01.04.1987 to 30.04.1987 for 26 days and from 01.05.1987 for 13 days.

8. From the period noticed above, it is clear that the petitioner has worked for more than 240 days in a calendar year and admittedly his services came to be terminated without complying with the provisions of Section 25F of the ID Act. In view of the material available on record, in my view, the Labour Court fell in error in holding that present petitioner-workman Santu Singh has not completed 240 days in a calendar year. Since the other workmen who were petitioners before the Labour Court are not before this Court and therefore, their cases are not required to be gone into.

9. Learned Counsel for the petitioner has relied on a decision of Hon"ble Supreme Court in *Sriram Industrial Enterprises Ltd. v. Mahak Singh and Ors.* 2007 AIR SCW 1712 wherein Hon"ble Supreme Court held that if the High Court comes to the conclusion that the workman has worked for 240 days in a calendar year and his services came to be terminated in violation of the provisions of the ID Act, then instead of remitting the matter, the Court itself can decide the dispute.

10. In *Trambak Rubber Industries Ltd. v. Nashik Workers Union and Ors.* 2003 AIR SCW 4727, Hon"ble Supreme Court held as under:

We are of the view that the High Court has not transgressed the limitations inherent in the grant of the writ of certiorari. The High Court had rightly perceived the patent illegality in the impugned award warranting interference in exercise of its writ jurisdiction. The High Court is right in pointing out that the material evidence especially the admissions of the witness examined on behalf of the management were not considered at all. Moreover, the conclusions reached are wholly perverse and do not reasonably follow from the evidence on record. For instance, the fact that no appointment letters were issued or filed does not

possibly lead to the conclusion that the Management's version must be true. Similarly, if the workers unions had taken the stand that ante-dt. appointment letters were issued describing the employees as trainees after the dispute had arisen, it is difficult to comprehend how that would demolish the case of the Union that the concerned persons were really employed as workmen (helpers) but not as trainees. The Industrial Court makes a bald observation that there was no satisfactory evidence on record to suggest that these persons were employed by the respondents as "regular" employees at any point of time. This bald conclusion/ observation, as rightly pointed out by the High Court, ignores the material evidence on record. In fact, the evidence has not been adverted to at all while discussing the issues. There was total non-application of mind on the part of the Tribunal to the crucial evidence. The Management's witness categorically stated that the concerned workers were engaged in production of goods and that no other workmen were employed for production of goods. In fact, one of the allegations of the Management was that they adopted go-slow tactics and did not turn out sufficient work. According to the Industrial Court, the fact that the "trainees" were employed for performing the regular nature of work would not by itself make them workmen. The question then is, would it lead to an inference that they were trainees? The answer must be clearly in the negative. No evidence whatsoever was adduced on behalf of the Management to show that for more than one and half years those persons remained as "trainees" in the true sense of the term. It is pertinent to note the statement of the Management's witness that in June-July, 1989, the Company did not have any permanent workmen and all the persons employed were trainees. It would be impossible to believe that the entire production activity was being carried on with none other than the so-called trainees. If there were trainees, there should have been trainers too. The Management evidently came forward with a false plea dubbing the employees/ workmen as trainees so as to resort to summary termination and deny the legitimate benefits. On the facts and evidence brought on record, the conclusion was inescapable that the appellant-employer resorted to unfair labour practice. There would have been travesty of justice if the High Court declined to interfere with the findings arbitrarily and without reasonable basis reached by the Industrial Court.

11. The Hon'ble Supreme Court in *Sriram Industrial Enterprises Ltd. v. Mahak Singh and Ors.*, (supra) observed that in any event, the powers of judicial review of the High Court under Article 227 are very wide and it empowered the High Court to ensure that the Courts and Tribunals, inferior to the High Court, discharged their duties and obligations.

12. Keeping in view the decision of Hon'ble Supreme Court referred herein above and the undisputed facts available on record that the petitioner workman has worked 247 days in a calendar year as noticed above and his services came to be terminated without serving a notice or the payment of salary in lieu of notice and therefore, there is clear violation of Section 25-F of the ID Act and thus, the award impugned qua the petitioner cannot sustain and is liable to be set aside.

13. The question now requires to be examined is as to what relief the petitioner would be entitled for. The services of the petitioner came to be terminated in the year 1987 and reference was made by the respondent State by notification dt. 09.04.1997 after almost 10 years from the termination of services and now more than 20 years have since elapsed and therefore, in my view, the appropriate relief to which the petitioner is entitled is compensation in lieu of reinstatement. Reference may be made to the decisions of Hon''ble Supreme Court in Punjab Land Development and Reclamation Corporation Ltd. Chandigarh 1990 (4) SLR 154 , Rattan Singh v. Union of India, (1997) 11 SCC 396 Madhya Pradesh Administration v. Tribhuban. 2007 AIR SCW 2357 and Haryana Urban Development Authority Vs. Om Pal, as also Division Bench decisions of this Court in State of Rajasthan v. Rashid Mohammed. D.B.Civil Special Appeal No. 406/2000, in Ram Niwas v. The Mining Engineer and Ors. D.B.Civil Second Appeal No. 270/2003, Devi Prasad v. The Sub-Divisional Officer (Land Conversion) and Ors. RLR 2004(2) 71 and Babu Lal v. Labour Court., Jodhpur and Ors. RLR 2004(1) 627. In this view of the matter, the writ petition deserves to be allowed.

14. Consequently, the writ petition is allowed. The award impugned Annex.P-5 dt. 17.05.2001 so far as it relates to the petitioner is set aside and it is held that the services of the petitioner came to be terminated in violation of Section 25F of the Industrial Disputes Act, 1947 and therefore, the petitioner is entitled for compensation of Rs. 50,000/- in lieu of reinstatement. There shall be no order as to costs.