

(1995) 03 RAJ CK 0046
In the Rajasthan High Court
Case No : C.W.P. No. 3326 of 1990

Satish Kumar Bhambani

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 3 LLJ 442 : (1996) 2 RLW 115 : (1995) 3 WLC 751 : (1995) 1 WLN 605

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : Narendra Mishra, for the Appellant; V.S. Gurjar, for the Respondent

Judgement

Arun Madan, J.—Heard the learned counsel for the parties and examined the documents placed on the record.

2. This case pertains to a dispute of the workman, who was initially appointed on the post of Carpenter with effect from December 26, 1985 by Installation Officer, Programme Production Centre, Doordarshan Kendra, Jaipur (Respondent No. 3). The selection of the petitioner was against a vacancy which had arisen following the name of the petitioner being sponsored from the Employment Exchange, Jaipur. The contention of the petitioner is that notwithstanding that he was appointed as a daily-wager, he worked full-time at par with the regularly selected and permanent employees but his salary was not fixed in the regular pay-scale and instead the petitioner was paid Rs. 35/- per day only and there was violation of the principle of "equal pay for equal work". It has further been conducted that the services of the petitioner stood terminated with effect from November 1, 1986 by an oral order passed by non- petitioner No. 3. No retrenchment compensation was paid to the petitioner and no notice was served upon him nor any salary was paid in lieu of notice as required by Section 25F of the Industrial Disputes Act, 1947 (for short "the Act"). It has further been contended that the petitioner, on the relevant date, had completed 240 days of his service for being

treated as a permanent employee.

3. Against the oral order of termination dated November 1, 1986, the petitioner had raised an industrial dispute before the Conciliation Officer (ALC), Central, Jaipur. Thereafter the management agreed to retain the petitioner in continuous service and consequently the petitioner again resumed his duties at the Programme Production Centre (for short PPC) with effect from March 31, 1987.

4. Subsequently the applications were invited for the said post against the permanent vacancies, by the Chief Engineer, Northern Region, Akashwani & Doordarshan, New Delhi and in response thereof the petitioner applied on July 10, 1987 but the petitioner was not intimated regarding the fate of his candidature since no result was declared nor any selection list was prepared. The services of the petitioner were again terminated with effect from September 28, 1987 without any notice as stipulated by Section 25F of the Act nor any retrenchment compensation was paid to the petitioner in accordance with the said provision. It has further been alleged that some fresh appointments were made by the Management on the same post after the termination of the services of the petitioner without offering any employment to the petitioner on the said post, therefore, the petitioner again raised the industrial dispute before the Conciliation Officer viz., Assistant Labour Commissioner, Central, Jaipur but no conciliation could materialise and the Conciliation Officer, Jaipur sent the failure report dated February 5, 1988/August 21, 1988 to Respondent No. 1. The ground of refusal was that since proceedings arising out of SLP were pending before the Apex Court in an identical matter against the decision of the M.P. High Court in SLP No. 3126/86 and since the decision of the Apex Court was awaited, no action could be taken in the matter by the Respondents until the matter was finally decided by the Apex Court. The controversy involved before the Apex Court was as to whether the All India Radio is an industry or not?

5. During the course of hearing reliance has been placed by the learned counsel for the petitioner, on the judgment of this Court in the matter of Mohan Lal Kumhar v. U. O. I. reported in 1991 (2) RLR 658, wherein exactly similar question of law had arisen for consideration of this Court and the controversy was exactly the same as referred to above. It was held by this Court that the ground on which the Central Government had refused to take any action on the conciliation report is not at all germane to the dispute involved in this case and merely because the controversy regarding some other matter is pending before the Apex Court as to whether All India Radio is an industry or not, the reference in the case of the petitioner could not have been refused. Consequently the impugned order against which the writ petition was preferred to this Court was set aside and the learned Single Judge had directed the respondents to make reference to the Tribunal under the I.D. Act, the same being an appropriate forum under the Act where the parties can agitate the said question as to whether the establishment in which the petitioner was working is an industry or not and the said question can be decided by leading proper evidence before the

appropriate forum.

6. In the matter of Gopal Lal Teli v. State of Rajasthan and Ors., the Constitution Bench of this Court vide its judgment dated March 1, 1995 has taken the view, in view of the catena of decisions which were cited at the bar, that for violation of the provisions of Chapter V-A of the Act or for violation of the principles of natural justice, the normal course is to pursue the remedy provided under the Act and the exercise of the powers under Article 226 of the Constitution of India, in such a case should be sparingly exercised.

7. I have heard the learned counsel for the parties and also perused the impugned order dated February 27, 1989 (Annex-2) passed by Respondent No. 1 and am of the considered opinion that keeping in view the decision of the Constitution Bench of this Court as also the judgment of the learned Single Judge of this Court, as referred to above, the writ petition deserves to succeed to the extent that instead of deciding the dispute by this Court, as referred to above, it shall be appropriate if this matter be referred to the Industrial Tribunal where the parties can agitate the said question as to whether Doordarshan Kendra is an "industry" or not, the said question shall be referred by Respondent No. 1 to the Industrial Tribunal, Jaipur for deciding this question on the basis of the reference made to it by giving full opportunity to both the parties to lead their evidence before the said forum and the said question will be finally decided by the Tribunal, as expeditiously as possible, and in any case not later than 90 days from today. As and when the reference is made the Tribunal should give notice to both the parties regarding the date of their appearance. It is left open to the Tribunal to also decide this question as to whether the termination of the petitioner by the respondents was valid or not?

The writ petition is partly allowed as indicated above. No order as to costs.