
(1988) 10 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1987 of 1987

Satyendra Singh Rathore

APPELLANT

Vs

Rajasthan Rajya Pathya Pustak Mandal and Others

RESPONDENT

Date of Decision : 05-10-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 12, 2, 25F

Citation : (1988) 2 WLN 690

Hon'ble Judges : S.S. Byas, J;S.N. Bhargava, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.S. Byas, J.—The petitioner prays for quashing the order Annx. 3 dated August 12, 1987 by which the respondents terminated his service.

2. As per averments disclosed in the amended writ petition, respondent No. 1 viz. The Rajasthan State Text Book Board, Jaipur is an autonomous body registered under the Rajasthan Societies Registration Act, 1968 and came into existence vide Government order issued on 31-12-1973. The objects of the Board are multifarious as mentioned in the Memorandum of Association. Some of the objects are to prepare, edit, publish, print, stock, sell, the textbooks and to carry on the business as publishers, printers, sellers and distributors of textbooks. It is thus an industry as defined in the Industrial Disputes Act, 1947 (for short "the Act"). The Office of the Board is situate in Jaipur. It has its own PABX inside the office building. The petitioner was initially appointed as Telephone Operator on PABX on daily wages w.e.f. 17-1-1984. His services came to an end on 27-6-1984. Thereafter he was again appointed on the same post by order Annxure-2 dated 19-4-1986 on the consolidated pay of Rs. 500/- per month. The petitioner joined the post and continued to work on it. On 12-8-1987, his services were terminated by respondent No. 2 viz. the Secretary of the Board without assigning any reasons and by merely stating that his services were

required no more. It is alleged that this termination of the petitioner's services amounts to retrenchment as defined in the Act. The retrenchment was made without making the compliance of the provisions of Section 25F of the Act. The termination is, therefore, bad and inoperative. The respondents called some persons for interview for the regular appointment on the post of Telephone Operator. But the petitioner has not been called for interview. The petitioner approached the respondents for redressing his grievances but with no success. He has now approached this Court under Article 226 of the Constitution for setting aside Annexure-3, to treat him continuously on service and to issue directions to the respondents to call him for interview.

3. The petition was opposed by the respondents on the ground that the Board is not an Industry, the petitioner's services were terminated as regularly selected candidate was to be appointed as Telephone Operator. The petitioner at the time of his appointment on 19-4-1986, gave an undertaking not to claim regular appointment nor to raise any dispute. It was also stated that the petitioner is not a workman as defined in the Act. A preliminary objection was raised that the alternative remedy to get the dispute referred to the Industrial Tribunal/Labour Court under the Act is available to the petitioner. He should first exhaust this remedy. The petitioner should, therefore, be dismissed on the ground of alternative remedy being available to the petitioner.

4. The appointment of the petitioner on 19-4-1986 by order Annx. 2 and the termination of his service on 12-8-1987 by order Annexure-3 are not in dispute. It is also not in dispute that the petitioner worked on the post of Telephone Operator on PABX of the respondent Board continuously from 19-4-1986 to 12-8-1987. He has thus worked for more than 240 days during the period of 12 calendar months preceding the termination of his service on 12-8-1987.

5. The following questions arise for deliberation and decision in this petition:

[1] Whether, the respondent Board is an Industry as defined in the Act?

[2] Should the petitioner be taken to be a workman?

[3] Whether, the termination of the petitioner's service amounts to retrenchment and if so, whether the retrenchment is bad and inoperative? and

[4] Whether, the petition should be dismissed on account of the alternative remedy available to the petitioner?

6. We shall deal the these contentions at seriatim below. Taking the first contention of the petitioner, it was strenuously contended before us that the Board is an industry as defined in the Act. Our attention is drawn to the memorandum of association and the service Rules and Regulations in which objects have been mentioned in clause III. It reads;

The objects for which the Board is established are:

[1]....

[2] to prepare, edit, publish, print, stock, sell, distribute or otherwise deal in textbooks, supplementary books, reference books, extra reading material, work-books and exercise books for pupils and teaching aids teacher's hand books and curriculum (here in after referred to as educational literature) useful for furtherance of teaching and learning in institutions meant for Lower and Higher Primary Education;

[3] to prepare, edit, print, publish, stock, sell and distribute or enter into any arrangement for preparing, editing, printing, publishing, stocking, distribution and sale of text books approved or assigned by the Government of Rajasthan or other appropriate authority appointed by the Board and any other educational institution literature which the Board may decide to publish, with a view to making the same available at a price, fixed at no profit no loss basis;

[4 to 7]....

[8] To carry on business as publishers, printers, sellers, and distributors of text books and other educational literature suited to the requirements of Rajasthan, without any commercial, profiteering or trading motive:

[9,10]....

[11] To regulate and fix prices of the publications of the Board consistent with its objects;

[12]....

[13] To own, establish, purchase, exchange, acquire by gift, take on lease, hire or otherwise how so ever any lands, buildings easement rights in common and any property movable or immovable including a printing press or any estate or interest for the furtherance of all or any objects of the Boards.

7. The bare reading of Sub-clauses 2,3, 8, 11 and 13 makes it amply clear that the objects of the Board include the publication, printing, selling etc. of the textbook and to carry on the business as publishers, printers, sellers and distributors of textbooks and to install a printing press for that purpose.

8. The definition of Industry given in the Act is wide and comprehensive. It would be useful to read this definition as it exists today;

"Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

9. The Apex Court had numerous occasions to deal with this definition, we need not cite all those decisions. It would suffice our purpose by only quoting-Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, , in which all the available authorities were considered. In para 161, it was observed:

"Industry", as defined in Section 2(j) and explained in D.N. Banerji Vs. P.R. Mukherjee and Others, has a wide import.

[a] Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and or distribution of goods and service calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material" things or services geared to celestial bliss i.e. making on a large scale prasad or food) prima facie there is an "industry" in that enterprise.

[b] Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

[c] The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

[d] If the organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

10. The objects of the Board as mentioned in the Memorandum of Association include those of preparing editing, publishing printing, stocking selling & distributing the text books, reference books and exercise books etc. The objects also include carrying on business as publishers, printers, sellers and distributors of text books etc. The Board can own and run a printing press to carry out the aforesaid objects. It can regulate and fix prices of its publications. All these elements show that the Board carries systematic activities for the production and distribution of the text books etc. These activities clearly make the Board an "Industry" as defined in the Act. Of course in Sub-clause (8) it has been mentioned that the business of publishers, etc. will be carried out without any commercial, profiteering or trading motive. But absence of profit motive or gainful objective is irrelevant and has no bearing in deciding the question whether the Board is an industry or not. The Board for all purposes falls within the ambit of the definition of Industry" as given in the Act. The first question is, therefore, decided in favour of the petitioner.

11. The second question is whether the petitioner should be taken to be a workman as defined in the Act. Admittedly the petitioner was working as Telephone Operator on PABX of the Board. The definition of "Workman" as given in the Act means any person employed in any industry to do any skilled or unskilled manual etc. work for hire or reward. The petitioner was employed on the consolidated pay of Rs. 500/-to carry on the work of Telephone Operator in the Board's PABX. We feel no hesitation in concluding that the petitioner is a workman as defined in the Act. None of the exceptions contained in the definition of "workman" applies to him. He is, therefore, a workman for all purposes.

12. Turning to the third question the clinching issue before us is whether the termination of the petitioner's service amounts to retrenchment as defined in the Act.

13. The petitioner had put continuous service right from 19-4-1986 to 12-8-1987 without any break or interruption. He had thus actually worked in the Board for

more than 240 days during the period of 12 calendar months preceding the day of August 12, 1987 - when his services were terminated by order Ann 3. Retrenchment as define in the Act includes all types of termination of service for any reason what so ever except those which are mentioned in Sub-clause (a) to (c). The termination of the petitioner's service is not included by any of the 4 exceptions contained in Clause (oo) of Section 2 of the Act.

14. The stand taken by the respondent is that the service of the petitioner was terminated on account of the availability of a regularly selected candidate. The availability of a duly selected candidate may be a good ground for the retrenchment but that does not absolve the respondents from making a compliance of the provisions of Section 25F of the Act.

15. Admittedly in the instant case, the compliance of the provisions of Section 25F(b) of the Act has not been made because no compensation thereunder was paid to him. What was offered to him was one month's pay in lieu of one month notice period. If no compliance of the provisions mentioned in Sub-clause (b) of Section 25F has been made, the retrenchment is wholly bad and inoperative. The petitioner by putting more than 240 days service during the period of 12 calendar months had earned the eligibility to attract the provisions of Section 25F of the Act. Since the provisions of Section 25F were not complied with, the retrenchment of the petitioner's service cannot be upheld. It is bad and inoperative.

16. We will now address ourselves on the preliminary objection raised by Mr. Lodha, learned Counsel for the respondents. The main thrust of his contention is that when the Board is an "Industry", the petitioner is a workman and the retrenchment of his service is invalid, he should raise a dispute under the Act and should get it referred to the Labour Court/Industrial Tribunal u/s 10 where the dispute can be properly adjudicated. The petitioner has thus an alternative remedy available to him and he should exhaust it first before approaching this Court. It was argued that when alternative remedy is available to an aggrieved party, this Court should be slow in entertaining a writ petition under Article 226 of the Constitution for redressing his grievance.

17. Admittedly it was open to the petitioner to raise a dispute under the Act and make efforts to get it referred to the Labour Court/Industrial Tribunal for adjudication. The provisions for making the reference are there in the Act.

18. The pertinent question, however, is whether the petitioner has a right to get the dispute referred for adjudication to the Labour Court/Industrial Tribunal. For getting the dispute referred to under the Act for adjudication to the Labour Court/Industrial Tribunal, the workman has to over come many hurdles in his way. First of all his case must be sponsored or espoused by the workmen's Union. He should, therefore, first approach the union. The union may or may not sponsor his cause. If the union decides to espouse his cause, the matter will travel to the conciliation officer. The conciliation officer is to submit his failure report to the

appropriate. Government u/s 12 of the Act. The appropriate Government u/s 12(5) of the Act may make the reference. It is open to the appropriate Government to make or not to make the reference. The workman has thus to overcome all these hurdles. It is in the knowledge of everybody that to get any industrial dispute referred to the Industrial Tribunal/Labour Court for adjudication is a very hazardous task. The workman has no right to get the dispute referred to. It cannot be therefore, said that an effective alternative remedy is available to the petitioner under the Act.

19. In Nagaur Central Co-operative Bank Ltd. v. Kesa Ram 1979 RLW 480, it was observed by a Division Bench of this Court in para 11 of the judgment:

The making of reference u/s 10 of the Industrial Disputes Act is exclusively within the discretion of the Government and the respondents cannot claim this relief as a matter of right.

20. In Bhanwar Lal and Ors. v. Municipal Board, Nagaur and Ors. 1987(1) RLR 601, a learned Single Judge of this Court expressed the view that when the service of an employee is terminated in violation of Section 25F of the Act, the writ petition should not be dismissed for the petitioners not availing the alternative remedy of revision under the Municipalities Act, specially when writ petitions have been admitted after show cause notice.

21. More or less the same view was taken in Bhanwar Lal and Ors. v. RSRTC and Ors. 1984 RLR 619. In D.B. Civil Special Appeal No. 234/80 Tejbhan Singh v. State of Rajasthan decided on April 27, 1983 by a Division Bench of this Court the same view was reiterated. The learned Judges observed:

Thus there is a catena of decisions of this Court taking the view that alternative remedy u/s 10 of the Industrial Disputes Act is no bar to the maintainability of writ petition under Article 226 of the Constitution where the order of retrenchment is clearly in violation of Section 25F of the Act.

22. This Court has thus taken a consistent view that the workman cannot claim the relief of making the reference under the Act as a matter of right. It cannot be, therefore, said that the petitioner had an effective alternative remedy u/s 10 of the ID Act. We are, therefore, not inclined to allow the preliminary objection and dismiss the writ petition.

23. For the reasons aforesaid, the writ petition should be allowed. We, therefore, allow the writ petition and quash the order Annexure-3 dated 12th August, 1987 by which the petitioner's service was terminated. He will be reinstated with back wages from the day of the termination of his service to the day he is taken back on duty. It will be, how ever, open to the respondents to terminate his service in accordance with law. The writ petition shall stand accordingly disposed of. Costs will be on the parties.