
(2017) 02 RAJ CK 0093
In the Rajasthan High Court
Case No : 1876 of 2003

Sri Gaganagar Urban Co-Operative Bank Ltd.

APPELLANT

Vs

Gurjeet Singh

RESPONDENT

Date of Decision : 21-02-2017

Acts Referred:

[Constitution of India](#), [Article 226](#), [Article 226](#), [Article 226](#), [Article 227](#), [Article 227](#), [Article 227](#) - Power

Citation : (2017) 02 RAJ CK 0093

Hon'ble Judges : P.K. Lohra

Bench : SINGLE BENCH

Advocate : Girish Sankhla

Judgement

1. Petitioner-employer has preferred this writ petition under Article 226 and 227 of the Constitution of India to assail impugned award dated 30th of April, 2002 (Ex.5) passed by learned Labour Court-cum-Industrial Tribunal, Sriganganagar while adjudicating Labour Reference Case No.43/2001.

2. Succinctly stated, the facts of the case are that first respondent-workman was employed by petitioner as Clerk w.e.f. 20th of May, 1994 and he continued to work upto 27th of January 1999 without any break. Later on, services of respondentworkman were dispensed with by issuing order dated 27th of January 1999. Feeling aggrieved by the aforesaid order, respondent raised an industrial dispute, wherein he questioned his termination from services on the anvil of being violative of Chapter V-A of the Industrial Disputes Act, 1947 (for short, "Act of 1947"). Respondent workman specifically pleaded that retrenchment order is passed in gross violation of mandatory provisions contained in Sections 25-F, 25-G, and 25-H of the Act of 1947. After failure of conciliation proceedings, the matter was sent to appropriate Government and thereupon the appropriate Government by its notification dated 15th of March, 2001 made following reference for adjudication :-

"VERNACULR MATTER OMITTED"

3. Upon receiving the reference notification, case is registered by the learned Labour Court and the respondent-workman submitted his statement of claim. Statement of claim is replied by the petitioner-employer. In the return, petitioner-employer questioned the validity of appointment of the respondentworkman inasmuch as on its behalf it is submitted that the same was de-hors the law. It is further pleaded in the reply that, in fact, respondent was employed through contractor and as such he is not a workman within the four corners of Section 2(s) of the Act of 1947.

4. The parties led their evidence before learned Labour Court and finally, by the award impugned, learned Labour Court adjudicated the reference in favour of respondent-workman.

5. While answering the reference, the learned Labour Court has found that retrenchment of respondent-workman is de-hors the mandatory provisions of Chapter V-A of the Act of 1947 and consequently ordered his reinstatement in services of the petitioner-employer with 30% back wages.

6. It is submitted by learned counsel for the petitioner, Mr. Sankhla, that the learned Labour Court has seriously erred in not appreciating the very vital aspect that respondent was engaged in gross violation of the directives issued by RBI. He, therefore, submits that employment of the respondent itself was bad right from inception and as such he is not entitled to question his termination/retrenchment. Learned counsel has further contended that as the respondent was employed through contractor, therefore, there was no relationship of employee and employer between him and the petitioner so as to treat him as a workman within the meaning of Section 2(s) of the Act of 1947.

7. It is argued by learned counsel for the petitioner that this question has not been examined by the learned Labour Court appropriately, therefore, the award impugned suffers from the vice of an error apparent on the face of record.

8. I have heard learned counsel for the petitioner, perused the impugned award and other materials available on record.

9. At the outset, it may be observed that there is no quarrel in the factual position that respondent-workman has worked with the petitioner-employer for a considerable period, i.e., for four years and eight months, and for the aforesaid period he was also paid his salary/wages by the petitioner. The contention sought to be raised by the petitioner that appointment of respondent itself was illegal, in my considered opinion, is wholly untenable. It is really perplexing that after utilizing his services for more than four years and eight months, how does it not lie in mouth of the employer to say that appointment of the respondent was illegal. As regads, the other argument of learned counsel that the respondent was employed through contractor and therefore, is not a workman, suffice it to observe that in Rajasthan Amendment Act No.34 of 1958, the word "workman" is

elaborately defined and it is abundantly clear that any workman employed through contractor is also a workman within the meaning of Section 2(s) of the Act of 1947. While amending the definition of "workman", as contained in clause (s) of Section 2 of the Act of 1947 by way of Rajasthan Act No.34 of 1958, after the words "employed in any industry", the words "by an employer or by a contractor in relation to the execution of his contract with such employer" has been inserted.

10. In this view of the matter, both the arguments advanced by leaned counsel for the petitioner per se appear to be alluring but not of substance. Consequently, both these arguments are, hereby, repelled and out rightly rejected.

11. In totality, upon examining the impugned award, which is based on sound appreciation of evidence, in my opinion, learned Labour Court has not committed any manifest error of law, which requires interference in exercise of supervisory jurisdiction of this Court.

Resultantly, petition fails and same is, hereby, dismissed.