
(2005) 09 JH CK 0022
In the Jharkhand High Court
Case No : WP (L) No. 3053 of 2004

State of Jharkhand

APPELLANT

Vs

Jwala Raut

RESPONDENT

Date of Decision : 30-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 2

Citation : (2006) 1 JCR 58

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.

Bench : Single Bench

Advocate : Anil Kr. Sinha, AG, for the Appellant; Anoop Kr. Mehta and Rupesh Singh, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. This writ petition has been preferred by the petitioner State of Jharkhand against the Award dated 12th November, 2003, passed by the Presiding Officer, Labour Court, Deoghar, in Reference Case No. 4 of 2003, whereby and whereunder, while the reference has been answered in favour of the workman (respondent herein), the petitioner State has been directed to reinstate the workman-respondent, on the same post with the same service conditions and pay, but without back wages.

2. The main question to be determined in the present case is :

Whether the impugned Award dated 12th November, 2003 passed by the Presiding Officer, Labour Court, Deoghar in Reference Case No. 4 of 2003 is legal ?

3. A Reference u/s 10-1(C) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the I.D. Act") was made by the competent Government to the Labour Court, Deoghar for determination of the following question :

Whether the termination of the services of the workman Shri Jwala Raut of the Executive Engineer, Irrigation Division, Deoghar is justified ? If not, what relief, he is entitled to ?

4. The workman respondent appeared and filed written statement and claimed that he was a daily rated worker of Irrigation Division, Deoghar and worked between March, 1982 to May, 1985. He further pleaded that he served for more than three years and had completed 240 days. He requested to confirm his service, but was not considered. On the other hand, his sendees were terminated on 1st September, 1985, without assigning reasons.

The learned Presiding Officer, Labour Court, Deoghar, by the impugned Award dated 12th November, 2003 passed in Reference Case No. 4 of 2003, while held that the termination of services of the workman was unjustified and illegal, directed the State to reinstate him on the same post with same service conditions and pay, but without back wages.

5. Counsel for the workman respondent relied on the decisions of High Court and Supreme Court. He submitted that the Court should not sit in appeal over the finding of fact given by the Labour Court. It was submitted that in absence of any other irregularity or illegality, the Court should not interfere with the Award, in question.

6. Reliance was placed on a decision of Ranchi Bench of Patna High Court in the ease of Jamshedpur Notified Committee, Jamshedur v. Presiding Officer, Industrial Tribunal, Ranchi, reported in 1992 (1) PLJR 684, wherein, the High Court held that the question "whether the concerned workman has completed 240 days of continuous service or not", is a pure question of fact. If the workman has worked for a period of 240 days or more in one calendar year, despite break of service, he will be deemed to have been in continuous service within the meaning of Section 25-B of the I.D. Act.

A Supreme Court's decision in the case of State of Madras Vs. C.P. Sarathy and Another, , was relied upon to suggest that the Court should not be astute to discover formal defects and technical flaws to overthrow settlements.

The Supreme Court's decision in the case of D.N. Banerji Vs. P.R. Mukherjee and Others, , was also relied upon by the counsel for the petitioner, wherein, the Supreme Court has held that unless there is grave miscarriage of justice or flagrant violation of law, no interference should be made by the High Court against an Award under Articles 226 and 227 of the Constitution of India.

7. From the facts, pleaded by the parties and as appears from the Award, it will be evident that the workman respondent was not appointed on regular basis. He was not a regular employee against any post. No procedure was followed at the time of his engagement on daily wage in the Irrigation Division, Deoghar.

8. From the Award, it will be evident that there is no finding given by the Presiding Officer that the Division where the workman was engaged ie.. Irrigation

Division, Deoghar, is an "Industry", as defined u/s 2(k) of the I.D. Act, 1947.

9. From the Award, it will be further evident that the workman claimed to have worked between March, 1982 to May, 1985, as mentioned at Paragraphs 4 and 19 of the Award. On the other hand, from Paragraph 19 of the Award, it appears that the workman claimed to have been appointed on 1st January, 1981.

10. The Presiding Officer, Labour Court, Deoghar, failed to notice the number of days, the workman actually performed duty in a "calendar year". On the other hand, "calendar month" was presumed from March, 1982 to February, 1983 and then from March, 1983 to February, 1984, which is not in consonance with Section 25-B of the I.D. Act. Even it was not properly determined whether the workman completed 240 days of continuous service in one or other calendar year or not. There is no finding on the record that the workman completed 240 days of continuous service in the preceding calendar year i.e., 1984.

It is not in dispute that the workman was disengaged since 1st August, 1985, but no order of termination was issued. In absence of finding relating to exact period of service rendered by the workman, the Award cannot be held to be complete.

11. Similar case fell for consideration before a Bench of Jharkhand High Court in the case of Management of Regional Director, Animal husbandry Department Vs. Jamil Akhtar and Others, . On the basis of a policy decision of the State Government, daily wage workers engaged after 1st August, 1985 were disengaged. This Court having noticed that the workmen were engaged without any advertisement, without any interview and no letters of appointment/termination having been issued, held that, those daily wages workers had no right to the posts and the concept of retrenchment cannot be stretched to cover such workmen.

The present workman is similar situated and covered by the decision of this Court in the case of Management of Regional Director, Animal Husbandry Department, Ranchi (supra).

12. In the case of State of Bihar v. Himachan Kumar Vidyarthi, reported in 1997(2) PLJR 38 (SC), the Supreme Court having noticed similar facts, held as follows : "The admitted position is that Petitioner 1 came to be appointed as Assistant, Petitioner 2 as Driver and Petitioners 3 to 5 as Peons on different dates viz. on 1.8.1988, 10.11.1989, 31.5.1987 and 22.4.1992. They were appointed in the co-operative Training Institute, Deoghar by its Principal. They are admittedly daily wages employees. Their services came to be terminated by the Principal. Calling that termination in question, they filed a writ petition in the High Court. The main grievance of the petitioners before us is that termination of their services is in violation of Section 25-F of the Industrial Disputes Act, 1947. The question for consideration therefore is :

Whether the petitioners can be said to have been "retrenched" within the meaning of Section 25-F of the Industrial Disputes Act ? Every Department of the

Government cannot be treated to be "Industry". When the appointments are regulated by the statutory rules, the concept of "industry" to the extent stands excluded. Admittedly, they were not appointed to the posts in accordance with the rules but were engaged on the basis of need of the work. They are temporary employees working on daily wages. Under these circumstances their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of "retrenchment" therefore, cannot be stretched to such an extent as to cover these employees. The learned Counsel for the petitioners seeks to contend that in the High Court, the petitioners did not contend that it is a case of retrenchment but termination of their services is arbitrary. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary."

13. Admittedly, the workman was not appointed against any post. He was engaged on daily wage without any advertisement and without any interview. Therefore, the question of reinstatement of workman on the same post with the same service conditions and pay, as ordered by the Presiding Officer, Labour Court, Deoghar cannot be implemented, which will otherwise amounts to giving regular appointment against a vacant post taking recourse of Section 25-F of I.D. Act, 1947.

14. In the circumstances, the impugned Award cannot be upheld. The Award dated 12th November, 2003 passed by the Presiding Officer, Labour Court, Deoghar in Reference Case No. 4/2003 is, accordingly, set aside.

15. The writ petition is allowed. However, there shall be no order, as to costs.