
(2007) 01 RAJ CK 0088
In the Rajasthan High Court

State of Rajasthan and Another	Vs	APPELLANT
Judge, Labour Court and Another		RESPONDENT

Date of Decision : 15-01-2007

Acts Referred:

Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 114
Industrial Disputes Act, 1947 — Section 10, 25F

Citation : (2007) 2 LLJ 618

Hon'ble Judges : Shiv Kumar Sharma, J;R.S. Chauhan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—Following reference was made by the Government to Labour Court u/s 10(1)(c) of Industrial Disputes Act, 1947:

Whether the action of the Assistant Engineer, Pachana Irrigation Sub Division-II, Sri Mahaveerji District Sawai Madhopur in terminating the services of the workmen (as per list enclosed) (who are being represented by Joint Secretary Sawai Madhopur, District irrigation Employees Union, INTAC Sri Mahaveerji) w.e.f. September 1, 1998 is justified and legal. If not, what relief and amount the workmen are entitled to?

2. The respondent workmen filed statement of claim before the Labour Court on February 27, 1992 inter alia stating therein that eleven workmen were appointed under the appellants management from May 1, 1986 on the post of Beldar. They worked with devotion and honesty from the date of their engagement and there was no complaint whatsoever against them. The appellant management however by verbal order dated September 1, 1998 terminated the services of all workmen. It was stated that each of the workman had completed more than 240 days service continuously and regularly in the employment of the management. Prior to termination of the services of the workmen neither notice of one month nor notice pay nor retrenchment compensation was paid to them. Thus

compliance of Section 25-F of the Act was not made. No seniority list of the workmen was published prior to their termination and as such junior persons to the workmen remained in job. It was further stated that there was no shortage of work with the management and after termination of services of the workmen new workmen were engaged. The provisions of Rule 23 & 26 of the Work Charge Rules had not been complied with. Prior to termination of services neither any notice to show cause nor any preliminary enquiry was conducted against the workmen. It was stated that after termination of their services w.e.f September 1, 1988 all the workmen are unemployed. It was, therefore prayed that the workmen be ordered to be reinstated with all back wages and continuity of service.

3. The aforesaid statement of claim was contested by the appellant management by filing written reply. While denying the averments made on behalf of the workmen, it was submitted that the statement of claim was filed on wrong and unfounded facts. In fact, the respondent workmen never worked with the appellant management. The respondent workmen in statement of claim did not mention anything about their place, time and other details of working. On the contrary, a vague statement was made that all respondent workmen completed 240 days.

4. Learned Labour Court vide its award dated January 14, 2002 answered the reference in favour of respondent workmen directing for their reinstatement with 25% back wages and continuity in service and also Rs. 250/- as costs. Assailing the said award of Labour Court the appellant preferred SB Civil Writ Petition No. 3015/2002. Learned single Judge dismissed the writ petition vide judgment dated May 13, 2002. Against this judgment of the learned single Judge that the present action of filing special appeal has been resorted to by the appellants.

5. It is contended by learned Additional Advocate General that findings arrived at by learned Labour Court that all workmen had completed more than 240 days in one calendar year is against the weight of evidence. Learned single Judge committed an error of law in not appreciating that even if the management failed to adduce any evidence in support of its plea that workmen did not at all work with them, it did not absolve the workmen of their liability to adduce evidence to prove that their working was actually 240 days. In the face of specific denial of appellants, the respondent workmen were under an obligation to have proved by leading evidence the factum regarding their working of 240 days in the calendar year immediately preceding the date of their alleged retrenchment. Reliance is placed on *The Range Forest Officer Vs. S.T. Hadimani*, wherein it was indicated as under at p. 1054 of LLJ:

2...In our opinion, the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked, but this claim was denied by the appellant. It was then for the claimant to lead evidence

to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only in his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that workman had, in fact, worked for 240 days in a year. No proof or receipt of the salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside...

6. In Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan and Another, it was held that the workman claimed he had worked for more than 240 days in the year preceding of his termination, it was for the workman to establish this fact by sufficient evidence. Only the statement of workman could not be regarded as sufficient evidence. In the instant case, the respondent workman in order to corroborate their ocular evidence intended to produce Attendance Registers, Muster-Rolls, Hand-Receipts, Pay Vouchers and other documents which were not in their power and possession. Since these documents were in the possession of the appellants, the respondent I workmen sought direction from the Labour Court in the name of the appellants to produce these documents. The appellants however did not comply with the direction of the Labour Court and withheld the documents. In such a situation, Labour Court drew adverse inference against the appellants u/s 114(iii)(g) of the Evidence Act.

7. In Municipal Corporation, Faridabad Vs. Siri Niwas, it was held that the burden of proof was on the workmen to show that he had worked for 240 days in the preceding twelve months prior to his alleged retrenchment. The Hon''ble Supreme Court observed as under at p. 763 of LLJ:

14. A Court of law even in a case where provisions of the Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a Court the evidence is withheld. Presumption as to adverse inference for non production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis...

8. We see no Infirmary in the order of learned single Judge, which appears to have been passed in exercise of revisional powers provided under Article 227 of the Constitution of India, therefore, in vide of the Full Bench decision of this Court in Ramesh Chand Tiwari Vs. Board of Revenue and Others, instant intra Court appeal is not competent.

9. For these reasons, the appeal being devoid of merit, stands dismissed without any order as to costs.