
(2002) 07 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3279 of 2001

State of Rajasthan and Another

APPELLANT

Vs

Judge Labour Court and Another

RESPONDENT

Date of Decision : 08-07-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2001) 88 FLR 232 : (2003) 2 RLW 724

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : G.P. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Sharma, J.—The petitioners seek to challenge the award dated March 15, 2001 of the learned Labour Court No.2 Jaipur whereby the order dated June 7, 1994 terminating the services of the respondent workman was declared illegal and the respondent workman was directed to be reinstated in the services with all back wages.

2. In the statement of claim filed before the court below the respondent workman averred that he was taken on job on the post of Chowkidar (watchman) vide order dated February 9, 1992 and since then he continued to carry on work but on June 7, 1994 he was removed from services. The petitioner approached the Reconciliation Officer and on failure of the reconciliation proceedings following point was referred to the Labour Court for adjudication-

"Whether Women and Child Development Department Neem Ka Thana is the "Industry"? If yes, whether the removal of workman Rameshwar Lal s/o Prabhati Lal Saini from services w.e.f. June 7, 1994 is legal and valid? If not, to what relief is workman entitled?"

The petitioner submitted reply to the statement of claim stating therein that the Women and Child Development Department is not an Industry and the workman

had no right to raise the issue. It was further pleaded that the workman was taken on job as part time Chowkidar merely for two months and he never performed duties as a regular worker even on part time basis.

3. The respondent workman in support of his claim filed his affidavit and placed on record as many as eight documents. In rebuttal the petitioner filed affidavits of Surendra Kumar Bhatra and Mangal Chand Phalwaria and submitted eleven documents. The deponents were cross examined. Learned Labour Court on hearing the final submissions held that Women and Child Development Department Neema Ka Thana is the "Industry". The Labour Court further held that the workman had worked for more than 240 days in one calendar year and he was removed from the services without payment of notice pay and retrenchment compensation therefore his removal was contrary to the provisions contained in Section 25-F of the Industrial Disputes Act 1947 and he was entitled to be reinstated in the services with back wages.

4. Mr. G.P. Sharma, learned counsel appearing for the petitioner canvassed that in view of ratio indicated in Anil Kumar Sharma v. District Women Development Agency Banswara, the women and Child Development Department Neema Ka Thana is an "Industry". Learned counsel further contended that the appointment of the workman was purely contractual and fell within the ambit of Section 2(oo) (bb) of the Industrial Disputes Act, 1947. The workman was not entitled to any relief and the impugned award deserves to be set aside. In support of this contention various authorities were cited.

5. It is well settled that even if the Government Department discharges sovereign function such as enactment of laws, administration of law etc, if there are units which are involved in the welfare activities or economic adventures taken by the Government, they can be considered to come within the definition of the "Industry" u/s 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court in Bangalore Water Supply case indicated thus-

"Sovereign function strictly understood alone quality for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies.

Even in departments discharging sovereign functions if there are units which are industries and they are substantially severable then they can be considered to come within Section 2(j).

Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby."

6. The Divisions Bench of this Court in Devi Singh v. State of Rajasthan, propounded that the activities of Women, Child and Nutrition Department relate to the development and Welfare of the child and women. These activities therefore bring the Department of Women, Child and Nutrition within the ambit of "Industry" as defined in Section 2(j) of the Act.

7. As the activities of Women and Child Development Department Neem Ka Thana relate to the development and welfare of the child and women, it was to my mind, rightly held as "Industry" by the learned Labour Court. In Anil Kumar Sharma v. District Women Development Agency (supra) the Division Bench of this Court observed that "District Women Development Agency Banswara being akin to the "District Rural Development Agency" that was not held "Industry" by the Supreme Court in State of U.P. v. Arun Kumar Singh, could not be treated as "Industry". The activities of the "District Development Agency" have not been spelled in Anil Kumar Sharma's case. Therefore after placing reliance on the ratio of Bangalore Water Supply case (supra) and Devi Singh v. State of Raj. (supra) which is squarely applicable on the point in controversy in the instant case, I hold that the Women and Child Development Department Neem Ka Thana is an Industry as defined in Section 2(j) of the Act.

8. That takes me to another argument of the learned counsel in regard to the nature of the employment of "workman". In para 11 of the impugned award the learned Labour Court discussed in detail the testimony of the workman as well as the statements of Surendra Kumar and Mangal Chand Phalwaria. The deposition of the workman that he had worked for more than 240 days in one calendar year was not controverted by the witnesses examined on behalf of the petitioners. Both the witnesses Surendra Kumar and Mangal Chand Phalwaria in their cross examination admitted that the workman had worked for 358 days. In the documents produced by the petitioners, there was no such condition that the workman was appointed on contract basis. Learned Labour Court under those circumstances held that the removal of the workman was violative of Section 25-F of the Act.

9. After having closely scrutinised the material on record I am of the view that the provisions of Section 2(oo)(bb) of the Act are not attracted in the instant case. Therefore it is not necessary for me to discuss all the authorities cited by the learned counsel in this regard. I do not see any infirmity in the impugned award.

10. The writ petition being devoid of merit stands dismissed summarily.