
(1995) 08 RAJ CK 0015
In the Rajasthan High Court
Case No : C.W.P. No. 3266 of 1995

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

Date of Decision : 24-08-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1995) 70 FLR 463 : (1998) 3 LLJ 542 : (1996) 3 WLC 496

Hon'ble Judges : N.L. Tibrewal, J

Bench : Single Bench

Advocate : Alok Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

N.L. Tibrewal, J.—The petitioners are challenging the award dated April 23, 1994 passed by the Labour Court, Kota, on a reference made to it by the State Government u/s 10(1) of the Industrial Disputes Act. The Labour Court held that termination/retrenchment of the respondent-workman was illegal being in violation of the provisions contained in Sections 25F, 25G and 25H of the Industrial Disputes Act. The Labour Court therefore, directed for reinstatement of the workman with back wages and continuity of service.

2. It cannot be disputed that the retrenchment/ termination of a workman for non-compliance of Section 25F is rendered invalid and inoperative. The effect of the same is that a retrenchment brought about without compliance of the mandatory provisions of Section 25F is no retrenchment/termination in the eye of law and the workman is entitled to reinstatement with continuity of service and back wages. This proposition of law is no more in dispute after a catena of judgments of the Apex Court of the country as well as of this Court.

3. It was contended by Mr. Sharma, appearing for the petitioners, that the workman was on daily rate basis and he had abandoned the work, as such, it was not a case of retrenchment to attract the mandatory provisions of Section

25F of the I.D. Act. In my view this argument has no substance. The Labour Court has recorded a finding that the workman during the period of 12 calendar months preceding the date of his retrenchment, has actually worked under the employer for not less than 240 days, as such, he can be said to be in continuous service for not less than one year required u/s 25F. This is primarily a finding of fact and the learned counsel is unable to point out any mistake apparent on the face of the record, to vitiate the said finding. Admittedly, the service of the workman has not been terminated by the employer by way of disciplinary action. The trial Court has also recorded a finding that the workman did not voluntarily cease to come on duty, but, in fact, he was removed by the Assistant Engineer. Hence, the argument raised by Mr. Sharma has no leg to stand.

4. It was then contented that the order granting back wages is not justified, as the workman will have to be paid huge amount without doing any work and it will also have an adverse impact on the State Exchequer. It is true that every such order of reinstatement with backwages to the workman falls heavily on the State Treasury. But, the question is who are responsible for the same? The law of retrenchment/termination of a workman and the effect in case of wrongful retrenchment/ termination is now well settled by a catena of judgments of the Apex Court of the country and of this Court. Any retrenchment/termination of a workman brought about without compliance of the mandatory provisions of Section 25F is no retrenchment in the eye of law and the normal rule is that a workman is entitled to reinstatement with continuity of service and back wages. This law was laid down by the Apex Court of the country about more than three decades ago in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, and *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, The unfortunate part is that the State functionaries and the concerned officers of the department act in a most casual manner in terminating the services of a workman being unmindful of the relevant law as well as the decisions rendered by this Court as well as the Apex Court of the country. This is because they feel no accountability and no action is taken against the erring officers for their wrongful action. Not only this the matters are also contested before the Courts in most casual manner and no efforts are made to either lead proper evidence or to make proper cross-examination of the witnesses produced by the opposite party. The concerned department is always in possession of the relevant record pertaining to the case wherever any such dispute of wrongful retrenchment is made and they can examine the matter as to whether it is worthwhile to contest the same. If their documents do make out a case in favour of the workman, then there is hardly any point to contest the same for years together and then to get unfavourable award with back wages which may involve more than Rs. 1 lac in some cases. If the case is found worth contesting on the basis of the record, then it is their duty to contest it in a proper manner and to produce all relevant records and documents before the concerned Court. But, the fact is that it is never done by most of the officers as well as the Head of the Departments, with the result that the State Exchequer is put to a great loss on

account of their inaction or rather indifference and negligence. The present case is also not an exception of the series of such cases.

5. As an Executive Chairman of the State Legal Aid Board, I had called several meetings of the Heads/Representatives of the various Government departments to impress upon them to consider all such matters before they are contested in the Court of law and I also advised them to take positive steps for settlement of the cases whenever a Lok Adalat is organised by the Court, but inspite of the assurances given by them, no positive step has been taken by any department in this direction. Timely action on their part can save unnecessary litigation as well as huge loss to the State Exchequer. Time is now ripe that all Heads of the State Departments/ Corporations and other Statutory Bodies should be made personally accountable if loss to the State Treasury takes place on account of their timely inaction, indifference or negligence in contesting the cases properly before a Court of law. Unless it is done, such state of affairs shall continue unabated causing huge loss of public money. It is for the State Government to take immediate steps in this direction. This Court can only express its serious concern and anguish towards the manner in which the cases of the State Government and its departments are being contested before the various Courts.

While rejecting this petition, I direct the Registry to send a copy of this order to the Chief Secretary, Government of Rajasthan, Jaipur for doing needful.