

(2020) 01 RAJ CK 0092
In the Rajasthan High Court
Case No : Spl. Appl. Writ No. 409 Of 2019

State Of Rajasthan And Ors

APPELLANT

Vs

Lala Ram Nama And Ors

RESPONDENT

Date of Decision : 21-01-2020

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 25(G)
Rajasthan Industrial Disputes Rules, 1958 — Rule 77, 78

Citation : (2020) 01 RAJ CK 0092

Hon'ble Judges : Sandeep Mehta, J; Abhay Chaturvedi, J

Bench : Division Bench

Advocate : Sandeep Shah, Abhimanyu Singh, M.M. Dhera

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties. Perused the material available on record.
2. The instant special appeal (writ) has been preferred by the Department of Forest, State of Rajasthan for assailing the order dated 10.08.2017 passed by the learned Single Bench whereby, the award dated 20.11.2000 passed by the learned Judge, Labour Court, Jodhpur while adjudicating the dispute referred by the State Government and holding the termination of the respondent workman Shri Lala Ram Nama by the employer to be illegal, and directing him to be reinstated with continuity of service and 50% of back wages from 30.12.1995, was affirmed and the writ petition was rejected.
3. Shri Sandeep Shah, learned AAG assisted by Shri Abhimanyu Singh, vehemently and fervently urges that the impugned judgment is liable to be set aside because the learned Single Judge, failed to consider the important aspect of the case that the Forest Department of the State Government is not covered within the definition of an 'Industry'. He further submits that the respondent workman was employed on purely contractual basis in the Jawahar Rojgar Yojana and by virtue of the notification dated 29.08.1991 issued by the State

Government, the provisions of Industrial Disputes Act, 1947 have been excluded for the workmen employed in the said Scheme. He further submits that the respondent workman failed to make out a case that any person junior to him was reinstated in service or that his services were regularised. Shri Shah further submits that the learned Labour Court proceeded beyond the scope of the reference notification while adjudicating the dispute. He thus urges that the impugned order passed by the learned Single Bench of this Court is liable to be struck down.

4. Per contra, Shri M.M. Dhera, learned counsel representing the respondent workman, vehemently and fervently opposes the submissions advanced by Shri Shah. He urges that the learned Labour Court, conducted a thorough inquiry and proceeded to hold that the respondent was employed as a workman with the petitioner Forest Department within the meaning of the Workmen Compensation Act. It was an admitted position that before the learned Labour Court that before terminating services of the respondent workman, no seniority list was prepared and the principle of 'Last Come First Go' was not followed. Shri Bheema Ram person junior to the respondent workman was retained and was even regularised in service and thus, retrenchment of the respondent workman was rightly held to be in violation of Section 25(G) of the Industrial Disputes Act and Rules 77 and 78 thereof. He thus implored the Court to dismiss the writ petition and affirm the order passed by the learned Single Judge.

5. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the material available on record.

6. The first and foremost contention of Shri Shah for assailing the impugned Judgment was that the aspect of Forest Department not being covered under the scope and definition of 'Industry' was not considered by the learned Single Bench. In this regard upon a careful perusal of the impugned Judgment dated 10.08.2017 rendered by the learned Single Judge, we find that no such contention was at all advanced before the learned Single Bench on behalf of the State of Rajasthan. On a deeper probe into the pleadings of the parties before the Labour Court, it is clear that a vague aspersion was made on behalf of the appellant that the Forest Department was not covered within the definition of an 'Industry' but no evidence was led in support of this assertion.

Later on, this stance was changed and it was pleaded that as the respondent workman was employed under the Jawahar Rojgar Yojana, the provisions of Industrial Disputes Act were explicitly excluded in view of the notification dated 29.08.1991 issued by the State Government.

On this aspect, it may be noted here that after the workman had been retrenched in the year 1992, he refused to accept the cheque of compensation on the premise that the person junior to him had been retained in service. Only thereafter, the workman was employed on temporary basis in the Jawahar Rojgar Yojana. Thus, from the year 1984 till May, 1992, the workman was not employed

in the Jawahar Rojgar Yojana and was rather employed by the Forest Department and he definitely worked for a continuous period in excess of 240 days preceding his retrenchment, without following the due process prescribed by law. The contention of Shri Shah that the Labour Court proceeded beyond the terms of reference is also unacceptable for the simple reason that the subsequent employment of the respondent workman in the Jawahar Rojgar Yojana was effected by the petitioner-State because he refused to accept the retrenchment compensation offered to him. The fact regarding Bheema Ram, being a person admittedly junior to the respondent workman, having been retained in service while retrenching the respondent workman from service, is an admitted fact and rather, it is evinced from the material on record that Bheema Ram has even been regularised in service. In this regard, the reference may be made to the order dated 05.12.2006 issued from the office of the Dy. Conservator of Forest, Barmer whereby, the said workman Bheema Ram has been regularised in service as a Cattle Guard with effect from 01.04.2003. Shri Shah's contention is that Shri Bheema Ram was continued in service because of a stay order passed by this Court. However, no such order has ever been brought on record.

In addition to the above, it may be stated here that the respondent workman has claimed that the petitioners have failed to comply with the mandatory requirement of Section 17B of the Industrial Disputes Act as compliance of the award has not been made till date. In this view of the matter also, the appellants-petitioners are not entitled to any relief whatsoever in this appeal.

7. In wake of the discussion made herein above, we are of the firm opinion that the impugned Judgment dated 10.08.2017 passed by the learned Single Bench of this Court affirming the award dated 20.11.2000 passed by the Judge, Labour Court, Jodhpur does not suffer from any infirmity or illegality whatsoever warranting interference therein.

8. Thus, the instant special appeal (writ) as well as stay application fail and are hereby dismissed. No order as to cost.