
(2012) 10 RAJ CK 0080
In the Rajasthan High Court
Case No : C.W.P. No. 510 of 2007

State of Rajasthan and Others

APPELLANT

Vs

Kalu Ram Gurjar and Another

RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 2(oo), 25B, 25F

Citation : (2013) 1 LLJ 595

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Advocate : Vimal Mathur, for the Appellant; Gopal Acharya, for the Respondent

Final Decision : Dismissed

Judgement

Govind Mathur, J.—This petition for writ is preferred to question validity, correctness and propriety of the award dated 25.5.2006 passed by the Labour Court, Bhilwara, in Labour Dispute No. 9 of 2001 Shri Kalu Ram Gurjar v. Executive Engineer and Another. The factual matrix necessary to be noticed is that the appropriate government under a notification dated 27.12.2000 referred an industrial dispute to the Labour Court, Bhilwara, for its adjudication in the terms that "Whether the termination of workman Shri Kalu Ram Gurjar S/o. Shri Pratap Gurjar represented by General Secretary, Jaldaay karmchari Sangh, Bhilwara from service by the employer Executive Engineer, Jaldaay Vibhag, Shahpura and Assistant Engineer, Jaldaay Vibhag, Jahajpur from the month July 1999 is just and proper? If not, then for what relief the workman is entitled?".

2. The respondent-workman submitted a statement of claim before the Labour Court stating therein that he was employed under different water supply schemes under the control of the respondents from 21.2.1996 to 30.6.1999. On 1.7.1999, he was not permitted to join the duties and was terminated from service and without adhering the procedure prescribed u/s 25-F of the Industrial Disputes Act, 1947 (for short, hereinafter referred to "as the Act of 1947"). As

per the workman, his termination from service was retrenchment as defined u/s 2(oo) of the Act of 1947 and that was effected without adhering the mandatory conditions precedent to do so.

3. A return to the claim was filed by the employer with assertion that the petitioner was working with them through a contractor and as such, no relationship of "Master and Servant" or "Employer and Workman" was existing and in the absence of such relationship, there was no need to adhere the provisions of Section 25-F of the Act of 1947. It was also slated in the return that the workman has also not completed continuous service as defined u/s 25-B of the Act of 1947.

4. The learned Labour Court after considering the entire material available on record arrived at the conclusion that the workman was in continuous service of the employer as defined u/s 25-B of the Act of 1947 and further that no evidence was adduced by the employer that he was not in employment through contractor, thus, he is deemed to be in employment of the Water Works Department only. Learned Labour Court declared retrenchment of the workman from service illegal and declared him entitled for reinstatement in service with 50% back-wages.

5. While questioning correctness of the award aforesaid, the submission of the learned counsel for the petitioner is that the Labour Court failed to appreciate that no appointment was given to respondent Mr. Kalu Ram Gurjar by the petitioners, therefore, he was not their employee. It is asserted that merely on the count that the petitioner failed to name the contractor, it cannot be presumed that the respondent-workman was in their employment.

6. I do not find any merit in the argument advanced. Even if it is assumed that the respondent-workman was employed with the petitioner through a contractor, then too he is a workman as defined u/s 2(s) (Rajasthan Amendment) of the Act of 1947. The provision aforesaid in specific terms provides that:

2(s) "workman" means any person (including an apprentice) employed in any industry by an employer or by a contractor in relation to the execution of his contract with such employer to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute

7. It is not in dispute that respondent-workman Mr. Kalu Ram Gurjar worked with the petitioners for execution of their project, as such, he is certainly a workman as per the provisions of the Act of 1947. The learned Labour Court, therefore, has not committed any wrong by arriving at the conclusion that a relationship of "Employer and Workman" was in existence. The termination of the petitioner is not stigmatic, therefore, that is certainly a retrenchment as defined u/s 2(oo) of

the Act of 1947. Admittedly the employer has not adhered the mandatory condition precedent to effect a retrenchment as prescribed under Part V of the Act of 1947. The retrenchment, therefore, is void ab initio. In such circumstances, I do not find any wrong with the award impugned that may warrant interference of this Court while exercising powers under Article 226 and 227 of the Constitution of India. The writ petition, therefore, is dismissed.