

(2000) 04 RAJ CK 0069
In the Rajasthan High Court
Case No : Civil Special Appeal No. 72 of 1990

State of Rajasthan and Others

APPELLANT

Vs

Premchand and Another

RESPONDENT

Date of Decision : 20-04-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 17, 17B, 2, 25

Citation : (2000) 2 WLN 183

Hon'ble Judges : Rajesh Bali, J; Mohd. Yamin, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—This matter comes up for orders on application u/s 17B of the Industrial Disputes Act, 1947. Having heard the learned Counsel for the parties we deem it just and proper to dispose of appeal itself, as it concerns the dispute about termination of service of respondent No. 1 w.e.f. 1.1.1983 while he was working as helper in the Directorate of Agriculture, Bikaner.

2. The appeal is against the order passed by learned single Judge on 31.8.1989 by which the petition filed by the appellants against the award of labour court reinstating the respondent No. 1 by finding that the termination of the service were invalid because of infraction of the provisions of Section 25F of the Industrial Disputes Act, 1947. The court has agreed with the finding of the Labour Court that respondent Premchand was entitled to protection u/s 25F of the Industrial Disputes Act and the concerned department having failed to comply with the conditions laid down u/s 25F of the Industrial Disputes Act his retrenchment was illegal. By way of operation of the award has been stayed by this court in appeal to the extent award directing the payment of back wages. There was no stay of the award of reinstatement of the workman.

3. In the aforesaid circumstances the application has been moved on behalf of the respondent No. 1 that since he is out of employment and is not serving

anywhere during the pendency of this special appeal, the appellant employer may be directed to make the payment of last drawn wages to the applicant in terms of Section 17B of the Industrial Disputes Act, 1947. A reply has been filed to that application stating that after the award dated 29th September 1989 respondent No. 1 was already taken as duty on 23.10.1989. After reinstating the applicant he was deputed to work in Chemistry laboratory to assist in the preparation of soil samples. He was then deputed to work in horticulture Laboratory vide letter dated 27.11.1989 but he did not report on duty, instead challenged the authority of employer to depute him in horticulture Laboratory vide letter dated 20.12.1989 and thus he has virtually refused to work since then. No reply to this affidavit is filed on behalf of the appellants in reply to application u/s 17 of the Industrial Disputes Act has been filed.

4. In these circumstances we accept the contention of the learned Counsel for the appellant that the respondents claimant was duly reinstated after the award was made which is subject matter of challenge in these proceedings and the order as to reinstatement has been complied with. If there is any subsequent disputes, that may become subject matter of fresh and new dispute which cannot be examined and adjudicated in these proceedings. If the appellants are of the opinion that the respondent No. 1 after being reinstated has again abandoned job or has not complied with the directions, it is open for them to take appropriate proceedings about the alleged misconduct of abandoning the job or insubordination in accordance with law, and the employee has his own remedies against such subsequent actions of the employer.

5. However as the order of the reinstatement has been complied with, respondent No. 1 cannot claim any relief u/s 17 of the Industrial Disputes Act for claiming payment of last drawn wages by withdrawing from the duties assigned to him on the ground that the appellant cannot post him from one department to another department or from one lab to another lab.

6. In this appeal the only ground is that the agricultural department under which respondent No. 1 is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act. The principle ground is that the Tribunal has not assigned reasons with regard to the tripple test laid in the Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, so as to hold the establishment at which the employee was working as an industry.

7. Suffice it to state that this contention is not well founded. If the State in any activity wants to take shelter to be outside the preview of the obligation towards its employees as arising under Industrial Disputes Act on the ground that particular activity falls outside the perview of "industry" and claims immunity on the ground of it being a sovereign activity of the State. It is for the State to point out that the incumbent was employed in connection with the sovereign function of the State and not in other welfare activity of the State. That is the ratio of the Bangalore Water Supply case.

8. It will be apt to notice the statement of law made by M.H. Beg. CJ while speaking for the court in Bangalore Water Supply case.

"Industry" as defined in Section 2(j) has a wide import.

Where there is (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. "making, on a large scale prasada or food), prima facie, there is an "industry" in that enterprise.

The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

Sovereign functions, strictly understood, (alone) qualify 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).

9. There being no material that the research work taken at the institute is anything less than the extended activity of the welfare State or State in stricto sensu. In fact all the three tests set out above by the apex court are established from the evidence produced by appellants themselves. Dr. Harikrishna Vyas appearing for the employer he admits that the respondent was employed for looking after the repairs of vehicles of the Project Directorate. The directorate had about 10 to 15 vehicles. Tractors were used for cultivating the land and related agricultural activities. The department is engaged in finding solution to the various problems relating to agricultural activities through research and experiments relating to soil, crops and diseases of which the crops suffer and it is engaged in lending assistance to agriculturists. The characteristic of satisfying human wants for better agriculture through providing services to agriculturists in various fields in an organised manner are present. Thus all the three ingredients viz. systematic activity (of carrying research) organised by co-operation of employer and employees (State as employer and all persons working at the department as employees): for distribution of service calculated to satisfy human wants as welfare activity by State, are well established. No element of sovereign functions as strictly understood is discernible from the above evidence to keep the activity in question out of the purview of "industry" so as to be excepted from the rigours of Industrial Disputes Act viz. as employees who fall within the definition of workmen.

10. We are of the opinion that the conclusion reached by the Tribunal as well as learned Single Judge is in consonance with law declared by the Supreme Court. There is no reason to interfere with the award of reinstatement with back wages.

The appeal is therefore falls and is dismissed.

11. No orders as to costs.