

(1994) 01 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil Writ Petition No. 418 of 1994

State of Rajasthan

APPELLANT

Vs

Chokha Ram

RESPONDENT

Date of Decision : 27-01-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 25C, 25F, 25G
Payment of Wages Act, 1936 — Section 15

Citation : (1994) 1 WLN 263

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.R. Arora, J.—The petitioner, by this writ petition, has prayed for quashing and setting-aside the Award dated 19-7-91 (Annexure.3) passed by the judge, Labour Court, Bikaner, in Labour Case No. 141 of 1990, and the order dated 17.6.92 (Annexure.6), passed by the Authority under the Payment of Wages Act, Sri Ganganagar, in Case No. 8 of 1993.

2. Respondent Chokha Ram was appointed as Chowkidar on 1.2.87, in the Office of the Deputy Conservator of Forest, Indira Gandhi Canal Project, Hanumangarh Junction, on daily wages basis. He continued on this post till 31.3.88, when his services were terminated. He made an application, through the Secretary, Bhartiya Mazdoor Sangh, Sri Ganganagar, before the Reconciliation Officer. The Reconciliation Officer submitted his "Failure Report" to the State Government, and the State Government vide its order dated 31.3.90, referred the following disputes for adjudication to the Labour Court, Bikaner:

D;k miou laj{kd] bafnjk xkW/kh ugj ifj;kstuk guqekux< taD"ku }kjk Jfed Jh pks[kkjke] iq= Jh lksukjke pkSdhnkj dh IsokeqfDr fd;k tks U;k; laxr gS\\ ;fn ugh rks Jfed fdl jkgr dk vf/kdkjh gsSA

After the receipt of the dispute by the Labour Court, it issued notices to both the

parties. On behalf of the petitioner, one Mr. Suresh Garg, Ranger, appeared before the Labour Court, Bikaner (Camp Suratgarh) on 8.4.91, but thereafter nobody appeared on behalf of the petitioner and, therefore, an ex-parte proceeding was taken against the petitioner on 20.5.91, by the Labour Court. The workman filed his statement of Claim. The contention of the workman-applicant before the Labour Court was that he served the department for more than 240 days in a calendar year and his services were terminated by a verbal order on 1.4.88, without assigning any reason and without following the mandatory provisions enshrined under Sections 25C and 25G of the Industrial Disputes Act, 1947. After the ex-parte order, the applicant filed an affidavit and appeared in the Witness-box as W.W.I. The learned Judge of the Labour Court, Bikaner after trial, came to the conclusion that the applicant has served the department continuously since 1.2.87 to 31.3.88 and his services were terminated with effect from 1.4.88, by a verbal order and as he had completed more than 240 days service, therefore, its services could have been terminated only in accordance with the provisions of Sections 25F and 25G of the Act, 1947, and as the provisions of Sections 25F and 25G are mandatory in nature, the non-compliance thereof was wholly improper and illegal and he, therefore, set-aside the order terminating the services of the applicant and ordered for his reinstatement in service with all the back wages and the benefit of continuity of service. After the award dated 19.7.91, passed by the learned Judge of the Labour Court, Bikaner, the applicant appeared before the Divisional Forest Officer, Forest Department, Hanumangarh, on 4.12.91, and moved an application alongwith the certified copy of the Award for his reinstatement in service and for the payment of the amount of back wages. The applicant was taken on duty but the arrears of back wages were not paid to him. The applicant, thereafter, moved an application u/s 15(2) the Payment of Wages Act before the Authority under the Payment of Wages Act, Sri Ganganagar. Notices of this application were issued to the petitioner but inspite of the service of the notice on the petitioner, nobody appeared on behalf of the petitioner on 27.3.92 the date which was fixed in the case and, therefore, ex-parte proceedings were taken against the petitioner. Applicant Chokha Ram filed his affidavit on 16.5.92, and closed his evidence. The learned Authority under the Payment of Wages Act, Sri Ganganagar, by his order dated 17.6.92, determined the amount payable by the petitioner to the applicant-workman and, also, awarded compensation equivalent to the wages and directed the petitioner to make payment of this amount to the applicant- workman within a period of thirty days from the date of the order. A copy of this order was, also, produced by the applicant before the petitioner but this amount was not paid to him. The petitioner has challenged the Award (Annexure.8) and the order (Annexure.5) on the ground that the same have been passed without giving any opportunity of hearing to the petitioner and without looking into the merits of the case.

3. The contention of the learned Counsel for the petitioner is that the applicant-workman, viz., Chokha Ram, never worked with the petitioner for more than 240

days in a calendar year, as is clear from the Chart produced alongwith the writ petition and, therefore, the learned Judge of the Labour Court was not justified in passing the Award in favour of the applicant. His further contention is that applicant Chokha Ram himself left the work on 1.4.88, and never appeared thereafter and as the absence of the applicant-workman has voluntary and without any justified reasons and as he was appointed on daily wages basis on musteralrool, therefore, his services automatically came to an end and he is not entitled for the aforesaid benefits. His further contention is that in the case before the Labour Court, the representative of the petitioner viz., Mr. Suresh Garg, Ranger, appeared at the Suratgarh Camp of the Court on 8.4.91 and the copy of the claim was supplied to him and the next date was fixed on 20.5.91, but on 20.5.91 the Labour Court did not hold its camp at Suratgarh and no date was fixed thereafter in the presence of the aforesaid representative of the petitioner nor was the petitioner informed thereof and, therefore, the Award Annexure 3 deserves to be quashed and set-aside. Regarding the order Annexure.6, passed by the learned Authority under the Payment of Wages Act, Sri Ganganagar the contention of the learned Counsel for the petitioner is that the notice of the application was not properly served upon the petitioner and, therefore, the proceedings deserves to be quashed and set-aside. It is, also, contended that the learned Authority under the Payment of Wages Act has not considered the facts and circumstances of the case and awarded the amount which was not legally due in the petitioner as per the correct calculation.

4. I have considered the submissions made by the learned Counsel for the petitioner.

5. The service of the notices on the petitioner were made in accordance with law and inspite of the service of the notices, the petitioner did not care to appear before the Authorities and did not defend their case and, therefore, when the petitioner did not appear before the Authorities, the Authorities had no alternative except to proceed ex-parte against the petitioner. No sufficient reasons have been shown by the petitioner for their non-appearance before the learned Judge of the Labour Court, Bikaner", and the learned Authority under the Payment of Wages Act, Sri Ganganagar, and, therefore, the ex-parte orders passed against the petitioner cannot be said to be illegal. The learned Judge of the Labour Court proceeded with the matter in accordance with law on the basis of the evidence available before it and has considered the evidence produced by the applicant before him in a right perspective. No interference is called-for in this Award. While exercising the extraordinary powers in the matter of certiorari, the validity of an order has to be fudged on the basis of material available at the time when the order was passed and not on basis of the material which have been subsequently placed on record. If the petitioner did not care to appear before the Authorities concerned and did not contest the case then no interference can be made on the basis of the fresh evidence produced before this Court. The same is the case with the order Annexure.6, passed by the learned Authority under the Payment of Wages Act.

6. In this view of the matter, I do not find any merit in this writ petition and the same is hereby dismissed.