
(2013) 02 RAJ CK 0094

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 59 of 2007

State of Rajasthan

APPELLANT

Vs

Judge, Labour Court and Another

RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:

Constitution of India, 1950 — Article 227

Industrial Disputes Act, 1947 — Section 2(s), 25F, 25G, 25H

Citation : (2013) 1 CDR 479

Hon'ble Judges : Narendra Kumar Jain, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : R.L. Jangid and A.A.G. with Mr. H.S. Bishnoi, for the Appellant; P.R. Mehta for the Respondent No. 2, for the Respondent

Judgement

Dinesh Maheshwari, J.—This intra-Court appeal is directed against the order dated 19.07.2005 passed in CWP No. 1283/1999 whereby the learned Single Judge of this Court has dismissed the writ petition filed by the appellant in challenge to the award dated 06.03.1999 whereby the Labour Court, Bhilwara answered the reference in favour of the workman (respondent No. 2 herein) and directed his reinstatement with effect from 01.05.1988 with 50% back wages. Shorn of unnecessary details, the relevant background aspects of the matter could be noticed in the following: The reference as made by the Government under the notification dated 04.04.1997 in relation to the grievance of the respondent No. 2 had been as under:--

2. The respondent No. 2 had earlier filed a writ petition (CWP No. 2016/1989) challenging the alleged oral order of termination of his services after 30.04.1988. However, the writ petition was dismissed by this Court on 15.02.1996 on the ground that the alternative remedy, of raising industrial dispute before the appropriate Government, was available. Thereafter, the respondent No. 2 raised the dispute and hence, the aforesaid reference came to be made to the Labour Court, Bhilwara. The respondent No. 2 submitted before the Labour Court that he

was employed by the District Treasury Officer on daily wages with effect from 01.02.1986 for carrying out the job of a Lower Division Clerk ("LDC"); and he continued to work as such until 30.04.1988, when his services were abruptly terminated by an oral order.

3. The appellant countered the submissions so made with the assertions that the respondent No. 2 was not engaged as an LDC but worked only as a daily-rated employee at the wages of Rs. 25/- per day for a short period between 01.02.1986 to 30.04.1988. It was also submitted that LDCs were appointed in the department by the State Government through the Public Service Commission; and that the Treasury Department did not come within the definition of industry and, therefore, the provisions of Sec. 25-F of the Industrial Disputes Act, 1947 ('the Act'/'the Act of 1947') were not attracted in the matter.

4. The Labour Court rejected the contentions of the appellant as regards non-applicability of the Act of 1947 with the observations that all the activities of the department could not be considered related with the sovereign functions. The Labour Court further observed that in the present case, the workman himself filed a writ petition in the High Court but the same was dismissed only on the ground of alternative remedy; and if such a remedy was not available, the High Court would not have ordered so. The Labour Court also found that the workman had completed 240 days of service in a calendar year and his services could not have been terminated without compliance of the requirements of Sec. 25F of the Act. It was also observed that in place of the workman, other retired employees were given the work, which was entirely unjustified. The Labour Court further observed that the workman was entitled to be regularized but such a benefit was not given to him only due to illegal termination of services. However, the Labour Court left this aspect at that only with the observations that until passing of the regular recruitment test or following the special rules, the workman could not be regularized. In the conclusion, the Labour Court answered the reference in favour of the respondent and made the award directing his reinstatement with 50% back wages from the date of termination of services.

5. The appellant attempted to question the award aforesaid in the writ petition leading to this appeal, being CWP No. 1283/1999. The learned Single Judge found no reason to interfere in the well reasoned award under Art. 227 of the Constitution of India while observing, inter alia, as under:--

After hearing the parties, the Labour Court arrived at the findings that the workman had worked for more than 240 days prior to his termination of the service and the workman was divested of his employment illegally. The Labour Court arrived at a categorical finding that the services of the workman have been brought to an end without complying with the provisions of Sec. 25F. It was further noticed by the Labour Court that after termination of the services of the workman, the Department has engaged retired personnel for the same work. On these findings the learned Labour Court held the workman entitled to

reinstatement in service and further allowed 50 per cent back-wages to him.

I have heard learned counsel for the parties and carefully perused the material on record.

The award is well reasoned and has been passed after hearing the parties. Counsel for the State is unable to point out how the findings arrived at by the Labour Court are perverse. The findings are findings of fact and this Court is not inclined to interfere in a finding of fact in exercise of jurisdiction under Art. 227 of the Constitution of India unless material irregularity or perversity is brought to the notice of the Court. Before the Labour Court material facts have not been controverted by the Department and rather, in the cross-examination, the relevant averments of the workman have been admitted. In these facts and circumstances, no interference is called for.

The writ petition fails and is hereby dismissed.

6. Assailing the award and the order aforesaid, the learned Additional Advocate General contended that: the respondent claimed himself having been appointed as Lower Division Clerk but then, the Lower Division Clerks are appointed only under the rules applicable to the department concerned after selection through Public Service Commission; that any appointment contrary to the rules does not invest the claimant with any right; and that the respondent, a daily wager, was not holding any post and did not derive any legal right. The learned AAG further contended that the respondent was allegedly appointed in the Treasury Office related with the Finance Department of the Government and the Finance Department is not an "industry" nor the daily-rated employees therein have any right to the post. The learned AAG also submitted that where an establishment is claimed to an industry, the burden lies upon the person concerned to establish so and, ordinarily, a Government Department cannot be regarded as an industry. The learned AAG has referred to and relied upon the decisions in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others, , State of Gujarat and Others Vs. Pratamsingh Narsinh Parmar, , Branch Manager, M.P. State Agro Industries Development Corpn. Ltd. and Another Vs. Shri S.C. Pandey, , Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, , Mahendra L. Jain and Others Vs. Indore Development Authority and Others, and R.S. Garg Vs. State of U.P. and Others, . Per contra, the learned counsel for the respondent has argued that there are specific findings on facts by the Labour Court, as affirmed by the learned Single Judge, that the respondent was covered by the definition of "workman" under Sec. 2(s) of the Act and that it had been a case of not only violation of Sec. 25-F of the Act but also of violation of Secs. 25-G and 25-H thereof. It is submitted that even if the respondent was referred as LDC, his was a case of daily-rated employment not connected directly with the sovereign functions. Thus, according to the learned counsel, the respondent's services could not have been terminated without compliance of the requirements of the Act of 1947 and for violation, the award has rightly been made in his

favour. It is also submitted that the dispute arose in the year 1988 and the respondent approached the Court by way of writ petition in the year 1989 but specific objection was taken by the present appellant about availability of alternative remedy of raising the industrial dispute and the said petition was dismissed only on that ground. Thus, according to the learned counsel, the appellant is now not entitled to raise the ground suggestive of non-applicability of the Act of 1947 when the matter was referred to the Labour Court only in view of its objection and then, the award was made in favour of the respondent. The learned counsel has further submitted that the scope of interference in the findings of fact as recorded in the award of the Labour Court remains very limited and as no such case of interference is made out, the respondent is entitled to be reinstated.

7. During the course of submissions, upon the Court considering the alternative proposition of awarding of compensation in lieu of reinstatement, if at all the other part of the award was not interfered with, the learned counsel for the respondent submitted that there had not been any delay on the part of the respondent who had immediately taken up the proceedings for vindication of his rights and, ordinarily, the relief to be granted is of reinstatement and not of compensation. The learned counsel has referred to the decisions in *Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana)*, , *Vikramaditya Pandey Vs. Industrial Tribunal and Another*, and *General Manager, Telecom Vs. A. Srinivasa Rao and Others*,

8. After having given thoughtful consideration to the rival submissions and having examined the record, we do not feel persuaded to consider interference in the matter on the factual aspects but then, as regards the final relief, in our view, interest of justice shall be served with awarding of compensation in lieu of reinstatement.

9. Having regard to the facts and circumstances of the case, the decisions as referred by the learned AAG do not appear requiring detailed discussion herein. The principles in the referred decisions are not of and cannot be of any doubt that an appointment made without complying with the applicable rules would remain invalid and incapable of regularisation; that a daily-wager does not hold a post when he is not appointed in terms of the rules framed; that a claim of regularisation by the casual labour cannot, ordinarily, be countenanced; that the burden lies on the person claiming that the employer is an industry to substantiate such a claim before the Court; and that a Government Department, ordinarily, cannot be regarded as an industry. However, the fact situation of the present case, on relevant aspects, is different.

10. Even if the respondent had claimed himself having worked as LDC, he also made it clear that he was engaged as a daily-rated employee on Rs. 25/- per day. The stand of the appellant had also been specific that the respondent was engaged not against any regular post but for the weeding work of the record-room on daily wages of Rs. 25/-. Hence, the submissions about illegality of

appointment and disentitlement to regularization turn out to be not of much substance in the present case. As noticed, the Labour Court, even when made some observations about likely entitlement of the respondent for regularization, did not grant any such relief.

11. So far the submissions about the Finance Department being not an industry and the Act of 1947 being not applicable are concerned, in our view, the Labour Court cannot be said to have committed any jurisdictional error in rejecting the same. As noticed, the respondent was engaged as a daily-rated employee on the weeding work and, as the facts have surfaced, even after termination of his services, other retired persons were engaged for the same job on daily wage basis. Thus, difficult it is to hold conclusively that it were a case of engagement on any work related with sovereign functions. Moreover, the facts cannot be ignored that earlier, the respondent attempted to seek relief in the writ jurisdiction of this Court and therein, the objection was raised by the present appellant about availability of alternative remedy under the Act of 1947. The writ petition filed by the present respondent was dismissed only on the basis of such objection of the appellant. In the given background, as regards fact situation of the case and the past litigation, the Labour Court cannot be said to have committed any jurisdictional error in rejecting the contentions of the appellant and in answering the reference in favour of the respondent. The learned Single Judge has also rightly declined to interfere so far the principal part of the award is concerned.

12. In an overall compensation of the matter, we do not find it necessary to dilate on all other contentions urged on behalf of the appellant. Suffice it to observe that the present one is not a case of any such error for which, the findings as recorded by the Labour Court be interfered with.

13. Coming to the question of final relief, we are of opinion that the relief of compensation in lieu of reinstatement would meet the ends of justice in this case. This is for variety of facts and factors. In the first place, it is noticed that the respondent had worked only for a short period between 01.02.1986 to 30.04.1988. Secondly, the appointment was not made under the rules and it was an entirely casual engagement of weeding of record. Thirdly, there does not appear any legal right in the respondent to seek regular appointment on the post of LDC. Fourthly, a long time had otherwise elapsed from the date of alleged retrenchment inasmuch as the alleged retrenchment was effected way back on 30.04.1988.

14. It is also noticed that while admitting this appeal for consideration on 09.01.2007, this Court after hearing the learned counsel for the parties, stayed the operation of the award made by the Labour Court.

15. It appears that during the course of submissions in this matter earlier, the learned counsel for the respondent proposed that the respondent would be willing to give up his claim towards back wages if reinstatement was ordered but

we are afraid, in the given set of facts and circumstances, such a relief of reinstatement cannot be granted. The learned counsel for the respondent has argued that reinstatement is the normal relief in such matters and no case for departure is made out when the Labour Court has passed an award for reinstatement. True it is that in the case of Anoop Sharma (supra), the Hon''ble Supreme Court restored the award of the Labour Court for reinstatement with payment of back wages and in Vikramaditya Pandey (supra), the Hon''ble Supreme Court observed that once the termination of services of the employee was held to be wrongful or illegal, the normal relief of reinstatement with full back wages shall be available. It was also observed that the employer could plead and establish that there were special circumstances which warranted either non-reinstatement or nonpayment of back wages. However, it is difficult to find that the question if compensation in lieu of reinstatement could be granted in appropriate case had been pronounced otherwise by the Hon''ble Supreme Court. On the other hand, it is noticed that in several of the decisions, the Hon''ble Supreme Court has directed payment of lump sum compensation in place of reinstatement. In Haryana State Electronics Development Corporation Ltd. Vs. Mamni, in relation to an ad hoc appointee in a temporary post where 14 years had elapsed after termination, the Hon''ble Apex Court considered it appropriate to grant a lump sum in place of reinstatement. Following the decision in Mamni (supra) and a few other decisions, the Hon''ble Apex Court granted the similar nature relief of compensation in place of the directions for reinstatement in the case of Uttaranchal Forest Development Corporation Vs. M.C. Joshi, In the case of Arjun Singh and Others Vs. Labour Court and Others, a Division Bench of this Court has referred to several of the decisions providing for award of lump sum compensation in lieu of reinstatement in appropriate cases and approved the award so made by the Labour Court in relation to the workmen who had worked only for short periods of time or intermittently.

16. In the fact situation of the present case and in the totality of the circumstances, which have been noticed hereinbefore, in our view, ordering reinstatement on an uncertain nature job, of weeding of record in the Treasury Office which might have existed at the relevant time, would not be proper. We are of the considered view that it would be just and proper, in the given fact situation, to substitute the final relief as granted in the award impugned by that of lump sum compensation in the sum of Rs. 75,000/- (seventy five thousand) in lieu of reinstatement.

Accordingly and in view of the above, this appeal is partly allowed; the impugned order dated 19.07.2005 and impugned award dated 06.03.1999 are modified to the extent of granting lump sum compensation in the sum of Rs. 75,000/- [seventy five thousand] to the respondent No. 2 in lieu of reinstatement.

It shall be required of the appellant to make payment of the amount of compensation within a month from today, failing which, the payment shall be made with interest @ 9% per annum calculated from the date of award. There

shall, however, be no order as to costs of this appeal.