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**(2002) 02 RAJ CK 0117**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 2305 of 1998**

State of Rajasthan

APPELLANT

Vs

Kanhaiya Lal and Others

RESPONDENT

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**Date of Decision :** 19-02-2002

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 25F, 25H

**Citation :** (2002) 94 FLR 283 : (2002) 2 RLW 1289 : (2002) 2 WLC 575

**Hon'ble Judges :** Arun Madan, J

**Bench :** Single Bench

**Advocate :** Suresh H. Mathur, for the Appellant; Narendra Chaudhary, for the Respondent

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## Judgement

Madan, J.—The State has come up by way of this writ petition challenging the Award of the Labour Court, Kota dated 21.11.1996 (Ann. 3) on the ground inter alia that as per the claim statement filed by respondent No. 1 workman, he was employed with the petitioner-Forest Department, Kota with effect from 1.4.1985 and was deputed to work under respondent No.2. He has worked in Nursery Jalwara and Plantation Bajranggarh as Cattle Guard under petitioner No.2 Regional Forest Officer Kishanganj (Kota). He was removed from the services of petitioner No.2 at the behest of petitioner No. 1.

2. In his claim statement, the workman had averred that he had worked continuously from 1.4.1985 to 31.3.1989 and had completed more than 240 days of service.

3. In reply to the claim statement, it was admitted that the respondent-workman worked at Jalwara and Bajranggarh on the post of Cattle Guard but he left the services of the department voluntarily with effect from 1.3.87 and never reported back to duty thereafter.

4. It was further contended that the claimant (respondent) had not completed 240 days of service in any calendar year, therefore, he was not entitled to any

relief.

5. The petitioner State has filed an affidavit of one Ram Lal Chouhan and he was also cross examined on it. On due appreciation of evidence adduced before the Labour Court, it came to the conclusion that the removal of the claimant-respondent from services of the department with effect from 1.4.89 was illegal and improper and he was entitled to reinstatement and so also backwages with benefit of continuity in service.

6. It is in the aforesaid circumstances that the impugned Award has been challenged by the Forest Department on the ground that the Award of the Labour Court is against the facts on the record and law applicable; the Labour Court has also erred in concluding that the claimant had not completed 240 days of service and therefore, the finding of the Labour Court are perverse, illegal and contrary to the law of the land.

7. I have heard the learned counsel for the parties and also perused the impugned Award of the Labour Court as also the material available on the record as well as the law on this aspect. Prima facie. I am of the considered opinion that the findings arrived at by the Labour Court are not open to challenge and since they have been recorded on due appreciation of evidence adduced before it. Since the Labour Court has recorded a positive finding that the workman had completed 240 days of service from the period 1.4.85 to 1.4.89 and also in regard to the fact that his removal from service has been admitted in cross-examination by the departmental witnesses namely, Gajanand and Bharmal Suman, it is in the back-drop and the above background that the following question u/s 10(1)(c) of the Act has been referred by the State Govt. to the Labour Court vide its Notification dated 16.11.93:-

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8. During the course of hearing, learned counsel for the petitioner has laid much emphasis on the ratio of decision of the Apex Court in the matter of State of Gujarat and Ors. v. Pratamsingh Narsingh Parmar (1), decided on 31.1.2001, wherein the question which arose for consideration before the Apex Court was as to whether the Forest Department of the State Government is an "industry" or not? and if it is an "industry" whether the termination of an employee by the department for not complying with the provisions of Section 25F of the Act is not open to challenge?

9. The Apex Court on taking over all view of the matter has observed as under:-

"If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes "an industry". Ordinarily, a

Department of the Government cannot be held to be an industry and rather it is a part of the sovereign function."

10. It is in the above context that the Apex Court held that the High Court had erred in law in applying the principles enunciated in the judgment of the Apex Court in the matter of Chief Conservator of Forests v. Jagannath Maruti Kondhare and Ors. (2), by holding that the Forest Department could be held to be "an industry". In this context, the Apex Court further observed that looking to the scheme of the Act, we are afraid that the aforesaid decisions cannot have any application to the facts of the present case where there has not been any assertion of fact by the petitioner in establishing that the establishment to which he had been appointed is "an industry". In this view of the matter, the Apex Court was of the view that the learned Single Judge as well as the Division Bench committed serious error of law in holding that to the appointment in question, the provisions of the Act would apply. The appeal preferred by the State Government was accordingly allowed by the Apex Court.

11. In the instant case, the respondent workman had made a positive assertion in his claim petition before the Labour Court that the institution where he worked is an industry and he had continuously worked for 240 days for the period 1.4.85 to 31.3.89 though he was appointed as a daily wager and that prior to termination of his services, the provisions of Section 25F of the Act had been violated since he was neither given one months notice nor one month's pay in lieu thereof. The employer had also not prepared any seniority list or published the same in violation of the provisions of Section 25H of the Act, as after his termination, number of persons came to be appointed by the employer.

12. A perusal of the impugned Award reveals that there is a positive finding recorded in para-7 that the respondent workman had rendered 240 days of service during the period 1.4.85 to 4.4.89 and this fact has also not been admitted in cross examination by the evidence led on behalf of the employer-department. Hence, on an overall view of the matter, the Labour Court came to the conclusion that retrenchment of the workman with effect from 1.4.1989 was wrong and illegal, being contrary to the provisions of the Act.

13. Counsel for the petitioner has placed reliance upon the decision of this Court in the matter of Deputy Conservator of Forests and Ors. v. Suresh Kumar Sharma and Others (3), and Khuma Ram Chaudhary v. The Registrar, Co-operative Societies, Jaipur (4).

14. I have examined the ratio decision of both the above matters, in my view they are not attracted to this case, being distinguishable on facts and law.

15. At this stage learned counsel for the petitioner has submitted that interest of justice would be well served if the respondent-workman is directed to be paid only 50% of backwages instead of the entire amount as claimed by him for the period in question, Moreover, the respondent workman has already been reinstated in services of the department as per the impugned Award under

challenge. Hence, in my view, allowing 50% of backwages for the period in question would meet the ends of justice. The petitioner-department is accordingly directed to pay 50% of the backwages for the period in question to the respondent-workman, within a period of eight weeks from today as also agreed to by the learned counsel for the parties.

16. With the above modification in the impugned Award dated 21.11.1996 (Ann. 3), the writ petition stands disposed of.