
(2001) 12 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4355 of 2001

State of Rajasthan

APPELLANT

Vs

Lal Bahadur Yadav

RESPONDENT

Date of Decision : 12-12-2001

Acts Referred:

Constitution of India, 1950 — Article 311
Industrial Disputes Act, 1947 — Section 25

Citation : (2002) 2 WLC 404 : (2002) 4 WLN 601

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—The instant writ petition has been filed challenging the award dated 28.2.2001 passed by the Labour Court by which the claim of the respondent workman has been allowed.

2. The facts and circumstances giving rise to this case are that the respondent workman raised the industrial dispute and the appropriate Government, vide order dated 29.7.1997, made a reference as to whether the termination of the services of the respondent workman w.e.f. 1.6.1994 was in accordance with law and if not to what relief he was entitled. In pursuance of the said reference, the respondent workman filed a claim before the Labour Court to the effect that he had worked from 28.7.1993 to 31.5.1994 and his services had been terminated w.e.f. 1.6.1994 without complying with the provisions of the Industrial Disputes Act. The evidence was led before the Labour Court and after appreciating the said evidence it recorded the following findings of facts:

- (1) The workman had worked from 28.7.1993 to 31.5.1994.
- (2) He has worked for more than 240 days in a calender year counting backward from the date of termination.
- (3) That his services had been terminated in flagrent violation of the provisions

of the Industrial Disputes Act particularly Section 25(F) of the Act.

3. In view of the above, claim of the respondent workman has been allowed by the impugned award directing the reinstatement. However, on account of backwages, he has been awarded 25% of the backwages from the date of reference i.e. 29.7.1997 till the date of award. Hence, this petition.

4. Shri Rathore has solely raised the issue that Labour Court had committed an error and no award could have been made for the reason that the workman was merely a part time employee, and he did not fall within the definition of the workman as provided under the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act".)

5. I find no force in this contention for the reason that even a part time employee may be a workman in view of the Division Bench judgment of this Court in Managing Director and Another Vs. Faily Ram, This Court observed as under:

The essential condition of a person being a workman within a term of definition given in the Industrial Disputes Act is that he should be "employed" to do the work in the industry of his employer and that there should be the relationship between the employer and him as between master and servant. There is no room to incorporate into it the idea that only a permanent employee can be construed to be a workman. There is no room to think that a casual workman does not come within the scope of the definition of "workman". If jural relationship exists, it does not matter whether the employment is part-time or casual or part- time worker must be a regular worker. Here in this case, the petitioner respondent has been engaged as Mali to look after the garden of the Corporation for two to three hours every day on the lump sum monthly Rs. 100/-. Obviously, the relationship between him and the appellant is as between servant and master. He is under obligation to work for fixed hours everyday, therefore, jural relationship of master and servant does not exist between the appellant and the respondent....

In our opinion, part-time worker employed by the employer is a workman within the meaning of Industrial Disputes Act, and as such, the petitioner-respondent is a workman within the Act.

6. In the State of Assam and Others Vs. Shri Kanak Chandra Dutta, the Constitution Bench of the Apex Court held that even a part time employee was a civil servant for purpose of Article 311(2) of the Constitution. Though the case is that of a civil servant, the principle enunciated therein can be safely borrowed in the case of a workman under the Act. When a part time employee can be taken to be a civil servant, a part time employee in an industry should then also be taken to be a workman under the Act.

7. In Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another, , it was held "When the tailors generally attend the

shop every day if there is work is checked then even though there may be no regular hours of work or obligation to attend every day and the tailors could take the work home, there was relationship of employer and employee between the tailoring shop and tailors."

8. In *P.N. Gulati v. Labour Court* 1978 (II) L.L.J.. 46 a doctor was employed in industry for rendering medical aid to its employees on part time. The questions arose whether he should be taken to be a workman or not. The Division Bench held though the doctor was employed on part time, he was still a workman as defined in the Act.

9. In *Guru Darshan Singh v. State of Punjab* 1983 (1) S.L.J., 399, a learned Single Judge of P & H High Court following the dicta in *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, took the view that a part time employee is also the holder of a civil post. It was observed that the word "part time" has nothing to do with the nature of appointment. It only regulates the duration of working hours for which an employee is required to work in the capacity he has been appointed.

10. Therefore, the submission that part-time employee does not fall within the definition of the workman as provided under the Act is preposterous. At the most the workman may be paid back- wages as had been paid as part-time employee and he cannot claim the back-wages on the basis of the wages which a full-time employee is entitled.

11. No other point has been urged.

12. In view of the above, I find no ground to interfere with the impugned award. The petition is devoid of any merit and accordingly dismissed.