
(2008) 04 RAJ CK 0066
In the Rajasthan High Court

State of Rajasthan

APPELLANT

Vs

Uchchav Lal and Another

RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2008) 04 RAJ CK 0066

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant petition has been filed by employer-petitioner assailing order of Labour Court dated 21st March, 2002 whereby while holding termination of respondent-workman dated 1st October, 2002 to be violative of Article 25-F of Industrial Disputes Act, 1947, workman has been directed to be reinstated in service with 25% of back wages.

2. Brief facts of the case are that respondent-workman was engaged on daily wages basis in the year 1988 as Cattle Guard and his services were terminated w.e.f. 1st October, 1992 which was initially challenged by him by filing C.W. No. 2259/93 which was dismissed on 15th September, 1995 holding that such disputes can be raised before the appropriate forum provided under the Act, 1947. Thereafter, respondent-workman filed application before the conciliation officer and after failure report was submitted, the appropriate government made a reference to the Labour Court. After due adjudication, learned Labour Court recorded a finding, which has been considered in detail and it was observed that respondent-workman was working at the relevant time @ Rs. 22/- per day and one month's wages was paid @ Rs. 572/- and Rs. 858/- towards compensation. Looking to his wages, respondent-workman was entitled for one month's wages which should have been Rs. 660/- computed @ Rs. 22/- per day and compensation in terms of Section 25F(b) to be considered 15 days wages of each completed year of service which comes to Rs. 990/- against which a sum of Rs.

858/- was paid to respondent-workman and accordingly, observed that a short payment was tendered and paid to respondent-workman and thus, action of the employer-petitioner was in violation of Section 25F of the Act, 1947.

3. So far as grant of 25% back wages is concerned, respondent-workman specifically deposed in his statement that he was not gainfully employed elsewhere and four members in his family which includes his wife and three children and he has been financially assisted by his brother. After taking note of the same, it was considered appropriate to grant 25% back wages to respondent-workman for the intervening period.

4. Counsel for petitioner while assailing the order on merits, particularly, with respect to compliance made u/s 25F of the Act is concerned, submits that total one month's wages and compensation has been computed taking note of total period of actual working of respondent-workman and accordingly, paid, as such learned Labour Court has committed a manifest error in holding the action of the petitioner to be violative of Section 25F of the Act. Counsel further submits that there was no material on record so far as awarding 25% back wages to respondent-workman is concerned. Counsel further submits that since respondent-workman is not in employment for sufficient long time and the award was stayed by this Court, he may be adequately compensated in lieu of reinstatement.

5. Respondent-workman has filed reply to the writ petition and while supporting finding recorded under impugned award, further submits that since large number of persons were terminated by single stroke given effect from 1st October, 1992 the award was passed in favour of workman which has been assailed by petitioner- State before this Court and two writ petitions preferred by State Government bearing number C.W. Nos. 4978/02 dismissed on 4th February, 2003 and 5712/02 also dismissed by a detailed order by this Court on 24th May, 2006 and both the issues which have been raised by petitioner, have been extensively considered and repelled by this Court.

6. I have considered the submission of both the counsel and perused the material on record.

7. Learned Labour Court while taking note of material on record, has specifically observed that respondent-workman was working @ Rs. 22/- per day and as provided u/s 25F the employer at the time of passing of order of termination was under an obligation to pay one month's wages under Sub-section (1) and 15 days wages of each completed year of service. Under Clause (b) of Section 25F of the Act, if employer has failed to make payment in terms of order such action as held by this Court to be nullity in the eye of law and consequence is ordinarily reinstatement. In Para 12 of the award after taking into consideration the material, learned Labour Court has observed that there was a short payment with regard to one month's wages and so also towards compensation as well and against one month's wages of Rs. 660/- he was paid Rs. 572/- and with regard

to compensation he is entitled to get Rs. 990/- Rs. 858/- was paid and accordingly, there was a clear violation of Section 25F of the Act. After going through the material on record and so also finding which has been recorded in Para 12 of the award, this Court does not find any infirmity which may call for interference.

8. So far as payment of 25% back wages is concerned, respondent-workman has specifically deposed before Labour Court, of which fact has been recorded in Para 15 taking note thereof, learned Labour Court in exercise of its discretion granted 25% back wages. This Court does not find any manifest error committed by Labour Court in exercising its discretion in granting back wages to the extent of 25% back wages to the workman.

9. So far as last submission made with respect to entitlement of compensation in lieu of reinstatement is concerned, it is true that reinstatement is not automatic and each case has to be examined on its own facts but at the same time other workmen who were similarly situated persons in whose favour award was passed against them writ petitions were dismissed and they have been reinstated. This Court is not inclined to take different view than what has been earlier expressed, of which reference has been made supra.

10. Consequently, I find no force in the writ petition, the same stands dismissed.