
(2009) 02 RAJ CK 0155
In the Rajasthan High Court

Suptd. Engineer P.W.D. and Others	Vs	APPELLANT
The Judge, Labour Court and Another		RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 23
Industrial Disputes Act, 1947 — Section 14, 17B, 25, 25F, 25G

Citation : (2009) 4 RLW 3117 : (2010) 6 SLR 773

Hon'ble Judges : Prem Shanker Asopa, J

Bench : Single Bench

Judgement

Prem Shanker Asopa, J.—Heard learned Counsel for the parties.

2. By this writ petition the petitioners-State has challenged the award of the labour Court dated 27.6.1994 (Annexure/6) whereby the respondent No. 2 who was working in Femine Relief works has been reinstated whose termination has been declared illegal and void on account of non-compliance of Section 25F of the Industrial Disputes Act, 1947 and further he has been granted the relief of reinstatement with continuity of service with all back wages.

3. The fact relevant for the purpose of deciding the controversy is that the respondent-workman was appointed on 1.10.1987 and has worked upto 30.11.1988 in the Femine Relief Works.

4. The submission of counsel for the petitioners-State is that the Femine Relief Works is exempted from the provisions of Industrial Disputes Act, 1947 on account of framing of the enactment of the State called as the Rajasthan Femine Relief Works Employees (Exemption from Labour Laws) Act, 1964 (for short Act of 1964) as well as notification issued in May 1988 before terminating the services of the respondent No. 2.

5. Counsel for the petitioners-State further submits that the labour Court has not considered the provisions of the Act of 1964 and further misconstrued the provisions of the notification issued on May 1988 by saying that the appointment

of the respondent No. 2 was on a prior date.

6. The legal submission of counsel for the respondent No. 2 is that the Act of 1964 as well as notification issued on May 1988 would not apply in view of the decision of the Full Bench majority judgment dated 12th of March 1984 passed in F.B.C.W.P. No. 1108/1982 and 38 other writ petitions titled as Bhanwar Lal etc. etc. v. R.S.R.T.C. and Anr. (121) reported in RLR 1984 619 and the Division Bench judgment of this Court dated 19.1.1989 passed in D.B. Civil Writ Petition No. 1204/1987 and 18 other writ petitions titled as Sheesh Ram v. The Assistant Engineer, P.W.D. and Ors.; wherein it has been held that in view of Section 25J, the provisions of the Act of 1964 would not apply. He further submits that equally the notification will not apply and in case the same are applied then the same would be violative of Article 14 & 16 of the Constitution of India as held in the aforesaid judgment.

7. I have considered the aforesaid aspect of the matter and gone through the contents of the writ petition.

8. Although the labour Court has not considered the provisions of Rajasthan Femine Relief Works Employees (Exemption from Labour Laws) Act, 1964 and notification issued on May 1988 whereby the Femine Relief Works has been exempted from the provisions of labour laws.

9. Before proceeding further it would be relevant to refer the Section 3 of the Act of 1964 which is as follows:

The Rajasthan Femine Relife Works Employees (exemption from Labour Laws) Act, 1964.

1.

2.

3. Labour laws not to apply femine relief works etc.,

Notwithstanding anything contained in any - labour law, no such law shall apply nor the same shall be deemed ever to have applied any matter covered by any such law.

4. Bar of cognizance of courts.- (1) As from the commencement of this Act, no court shall take cognizance of any matter in respect of any employee of the femine relief works under labour law.

(2) All proceedings instituted by or on behalf of or for the benefit or any employee of the femine relief works pending in any court under any labour law at the date of commencement of this Act shall be void and dismissed.

(3) Any order, decision or award given by any court, under any labour law after the commencement of this Act shall cases to have legal force,

(4) any right or claim, whether accrued due or otherwise, under any such law

shall become unenforceable.

(5) Power to amend the schedule: the State Government may, by notification in the official gazette and with the previous approval of the Central Govt., add to or delete from, the schedule, any enactment relating to labour.

(6) Repeal : The Rajasthan Relief Works Employees Exemption from labour laws) Ordinance, 1964 is hereby repealed.

10. The relevant portion of the Full Bench judgment reported in Bhanwar Lal etc. etc. v. R.S.R.T.C. and Anr. runs as under:

115. As a result of the above discussion, I have got no hesitation in holding that Article 14 read with Section 16 of the Constitution provides a protective umbrella to permanent employees of the Corporation and, they cannot be removed by termination simpliciter" without attaining the age of superannuation under Regulation 57 or earlier in the Corporation interest on attaining the age of 50 years or after putting the 25 years of service or on the ground of misconduct on a proper inquiry after getting opportunity of defending.

116. There is additional reason for the above view which, I have taken and that is the industrial jurisprudence concept which is now holding the field in India. It is admitted case that the petitioners are workmen in Industry and the provisions of the Industrial Disputes Act applies to them. Section 25J of the Act in terms provides that the provisions of this Act and Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).

117. In fact, in view of Section 25J of the Act the provisions of Clause 13 of the Standing Orders of the Corporation so far as it relates to the workmen who are covered by this Chapter becomes dead provisions and, clause 13 of the standing Orders cannot be applied for achieving the object of "hire" and fire". Even the respondents counsel Dr. Singhvi could not contest this obvious and patent legal position that Section 25J of the Act would prevail against clause 13 of the Standing Orders and if that is so, it is obvious that this Chapter V-A of the Act applies to the present petitioners and, therefore, for all intents and purposes even if clause 13 of the Standing Order is held to be valid, then also, the validity of termination order would depend upon the compliance of various provisions of Chapter V-A.

25-F.I.D. Act.

118. The relevant provisions of this Chapter V-A of the Act are contained in Sections 25F, 25G, 25J, 25N, so far as the present cases are concerned. Non-compliance of any of them would make termination illegal.

119. u/s 25F of the Act, if employee is to be retrenched, he is required to be paid one month's notice pay in advance or one month's notice along with

compensation in Clause (b) which should be equivalent to 15 days average pay for every completed year of continuous service. Again u/s 25G, the principle of "last come first go" applied. Sections 25F and 25F of the Act read as under:

25-F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer, until:

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid at the time of retrenchment, compensation, which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette).

25-G. Procedure for retrenchment-Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workman in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

120. Since according to the last authoritative pronouncement of the Apex Court in (87) State Bank v. N.S. Money AIR 196 SC 1111 ; (88) Santosh Gupta Vs. State Bank of Patiala, L. Robert D' Souza v. The Executive Engineer Southern Rly. All India Industrial Service Law Journal 319, the ratio decidendi of which I have discussed in details in answering the reference in the case of (90) Bank of Raj. v. Raj. Bank Employees and Anr. D.B. Civ. Spl. Appl. No. 223/81 decided on 13.5.83 element of surplusage is not necessary the earlier decision holding so cannot be followed. It is well established and settled law that all types of removal or termination of Industrial employees except on the ground of punishment or the exceptions which are contained in the definition of "retrenchment" and the element of insistence of requirement of surplusage is not necessary. The present termination of all the petitioners would also be treated as "retrenchment" for the purpose of Industrial Disputes Act. A legal and logical corollary of that it would be that it would attract the provisions of Chapter V-A and since the industrial undertaking fulfills the conditions mentioned in the Chapter, the validity of the termination orders shall have to be scrutinized on the touch stone of the requirements of Section 25G and 25-F of the Act, in particular.

25-N.I.D. Act.

11. The relevant portion of the Division Bench judgment passed in *Sheesh Ram v. The Assistant Engineer, P.W.D. and Ors.* runs as under:

We may first examine this contentions of the respondent as to whether the petitioners had voluntarily left the job. In case they had voluntarily left the job, the provisions of Section 25F were then not required to be complied with by the respondents.

It was vehemently contended by the learned Government Advocate that the petitioners had voluntarily left the job and did not turn up on duty. We are not at all impressed with this submission. We fail to understand that one who has not more than 240 days service will voluntarily leave the job and would not turn up on duty. In these days when prices are soaring up and unemployment is looming large no workman would voluntarily leave the job. The writ petitions were filed soon after the termination of the services. If the workmen had voluntarily left the job, they would not have not promptly come to the Court to seek the redressal of their grievances. After all it is the normal human conduct which should be looked into to decide whether one had acted in a particular manner. The petitioners who are poor people, and have no means to maintain their flesh and bones together would not voluntarily leave the job. The petitioners have filed their affidavits in which they have categorically stated that their services were terminated by verbal orders and the respondents refused to take work from them. We are inclined to accept these allegations made in the affidavits. We, therefore, reject the defence of the respondents that the petitioners had voluntarily left the job and did not turn up on duty.

The next contention raised by the respondents is that the provisions of the Industrial Disputes Act are not applicable to the Famine Relief Works. Our Attention was drawn to the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws), Act, 1964 (for brevity "the Act"). It was argued that Section 3 of the Act specifically lays down that no Labour Law shall apply to the Famine Relief Works. In the Schedule of the Act, the Industrial Disputes Act, 1947 has been shown. By virtue of the provisions of Section 3, the provisions of the Industrial Disputes Act are not applicable. It was on the other hand contended by the learned Counsel for the petitioners that by virtue of the provisions of Section 25J of the Industrial Disputes Act, the provisions of the Famine Relief will not govern the case. We have given our thoughtful consideration to the respective submissions. It would not useful to notice the provisions of Section 25J of the Industrial Disputes Act. It reads as under:-"25-J. Effect of laws inconsistent with the Chapter. (1). The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law (including Standings orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946): (Provides that where under the provisions of any other Act or rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service

or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to them than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act).

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employees and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter.)

The Famine Relief Act no doubt lays down that the Industrial Disputes Act which is a labour law shall not apply to the Famine Relief Works. But the bar contained in Section 3 of the Famine Relief Act has no legal standing in view of the overriding provisions of Section 25J of the Industrial Disputes Act. Section 25J contains the non-obstante clause and has overriding effect over the inconsistent provisions contained in any other law including the standing orders. If there is any repugnancy between the provisions of the Famine Relief Act and the Industrial Disputes Act, the provisions of the Industrial Disputes Act will prevail over the provisions of the Famine Relief Act. We are, therefore, of the considered opinion that by virtue of Section 25J, Chapter V-A of the Industrial Disputes Act would have over-riding effect on any inconsistent provision in any other law.

In *R.S.R.T.C. v. Rangi Lal* 1984 RLW 248, a....situation arose and it was held that the provisions of Standing Order so far they were inconsistent and Section 25J of the Industrial Disputes Act, would not prevail.

In *v. State of Rajasthan* AIR 1983 SC 32, the provisions of the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964 came to be reviewed by their Lordships. The Act also lays...down....will not be applicable to the Famine Relief Works. Their Lordships held that the provisions of the Famine Relief Act were violative of Articles 14 and 23 of the Constitution. Same is the situation arose in these writ petitioners. The provisions of Section 3 of the Famine Relief Act are thus violative of Article 14 of the Constitution. The provisions of Section 25 of the Industrial Disputes Act will over-ride the provisions of the Famine Relief Act. The second defence drawn by the respondent is thus also jijelese and ineffective.

Admittedly, each of the petitioners had actually worked for more than 240 days during the period of twelve calendar months preceding the dates on which their services were terminated. Admittedly again this termination amounts to retrenchment and the retrenchment was made without following the mandates of Section 25F of the Industrial Disputes Act. Any retrenchment made in violation of the mandates of Section 25F of the Industrial Disputes Act. Any retrenchment made in violation of the mandates of Section 25F of the I.D. Act is bad,

inoperative and no nest. The petitioners must, therefore, be allowed.

In the result, we allow the writ petitioners. The termination of the petitioners services under the oral or verbal orders is set aside. The respondents are directed to reinstate the petitioners forthwith with back wages.

12. Since the issue involved is of legal issue and is of wider importance and further the remand would not serve any purpose as the same is covered by the aforesaid two judgments, I am inclined to decide the same in this writ petition.

13. The Full Bench while considering the validity of Clause 13 of the Standing Orders of the R.S.R.T.C. has considered the Section 25J of the Industrial Disputes Act and held that the same would not apply in respect of the workmen who are covered by Chapter 5A and in case the same is applied then it would be violative of Article 14 and 16 and contrary to the provisions of Section 25J according to which the provisions which are more beneficial to the workmen would apply.

14. It is also relevant to mention here that the operation of the award was stayed on 26.5.1995 and there was no application filed by the respondent u/s 17B, therefore, I am deem it proper that the petitioner be reinstated with continuity of service and he will be entitled for 50 per cent back wages.

15. Therefore, in my view, neither the Act of 1964 would apply for nor the notification issued thereunder would apply and for this additional reasons, the writ petition filed by the petitioners-State partly allowed and the judgment of the labour Court is modified as under:

(i). The termination of the workman is declared illegal and he is entitled for reinstatement with continuity of service and 50% backwages.