
(2015) 07 RAJ CK 0113
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5837 of 1998

Surendra Nath Tripathi

APPELLANT

Vs

The Judge, Labour Court No. 1 and Others

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 227
Industrial Disputes Act, 1947 — Section 25G

Citation : (2015) 07 RAJ CK 0113

Hon'ble Judges : Anupinder Singh Grewal, J

Bench : Single Bench

Advocate : Deepak Sharma, Sandeep Maheshwari and Dheeraj Singhal, for the Appellant; R.A. Katta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anupinder Singh Grewal, J—This petition is directed against the award of the Labour Court dated 28.09.1998 dismissing claim of the petitioner wherein he had challenged the order dated 02.03.1988 by which his services were terminated.

2. The petitioner was appointed as Lower Division Clerk for a period of two months in Kota vide order dated 31.08.1987 (Annexure-1). He is stated to have joined the said post on 02.09.1987 (Annexure-2). Vide order dated 28.10.1987 (Annexure-3), services of the petitioner were extended for two more months and he continued to work till 30.12.1987. However, he is stated to have continued in service till 08.03.1988 and vide order dated 02.03.1988, the services of the petitioner were terminated w.e.f. 29.02.1988. The petitioner then challenged the order of his termination by preferring a writ petition, which was dismissed on the ground that the matter pertains to the Industrial Disputes Act, 1947 (in short "the Act of 1947") and thus, the petitioner had remedy under the Act. The petitioner filed claim before the Labour Court on 09.10.1990 (Annexure-5), which was dismissed vide order dated 28.09.1998 (Annexure-9).

3. Learned counsel appearing for petitioner has stated that the Labour Court has

erred in law in not accepting the claim of the petitioner, eventhough services of the petitioner were terminated in violation of the Act of 1947 as well as Rule 20 of Rajasthan Agricultural Produce Marketing Rules, 1975 (in short "Rules of 1975"). He has placed reliance on the judgments in the case of General Manager, Northern Railway v. Judge, Central Industrial Tribunal [(1991) 1 RLR 577], Oriental Bank of Commerce Vs. Presiding Officer, Central Govt. Industrial Tribunal and Another, (1994) 2 LLJ 770 , Surya Prakash Sharma v. Rajasthan Text Book Board, Jaipur [(1991)2 RLR 691], Ex-Major N.C. Singhal Vs. Director General Armed Forces Medical Services, New Delhi and Another, AIR 1972 SC 628 : (1972) LabIC 342 : (1972) 1 LLJ 249 : (1972) 4 SCC 765 : (1972) 4 UJ 388 , Gauri Shanker v. State of Rajasthan [Civil Appeal No. 3701/2015, decided on 16.04.2015], Raj Kumar Dixit v. M/s. Vijay Kumar Gauri Shankar, Kanpur Nagar [Civil Appeal No. 4370/2015, decided on 12.05.2015], and Mackinon Mackenize & Company Ltd. v. Mackinon Employees Union [Civil Appeal No. 5319/2008, decided on 25.02.2015].

4. Per contra, learned counsel for respondents has submitted that the petitioner had been appointed without any advertisement or inviting names from the Employment Exchange, and hence termination of his services after about six months is fully justifiable and in accordance with law. He has also cited judgments in the case of Mohd. Javed v. State of Rajasthan [2011 WLC (UC) 375 (Raj.)], Batala Cop. Sugar Mills v. Sowarn Singh [2005(8) SCC 481], Amarchand v. Judge, Labour Court [2008 WLC (UC) 347 (Raj.)], UP State Cooperative Land Development Bank v. Tazmulk Ansari [1994 Supp. (2) SCC 745], State of Haryana and others Vs. Piara Singh and others etc. etc., AIR 1992 SC 2130 : (1992) 5 JT 179 : (1993) 2 LLJ 937 : (1992) 102 PLR 547 : (1992) 2 SCALE 384 : (1992) 4 SCC 118 : (1992) 3 SCR 826 : (1992) 3 SLJ 34 : (1992) 2 UJ 692 , and Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, AIR 1992 SC 2070 : (1992) 65 FLR 571 : (1992) 4 JT 489 : (1993) 1 LLJ 190 : (1992) 2 SCALE 155 : (1992) 4 SCC 33 : (1992) 3 SCR 712 : (1993) 1 SLJ 124 in support of his submissions.

5. I have heard learned counsel for the parties and perused the record.

6. It is apparent that the petitioner had been appointed on purely temporary basis initially for a period of two months and had subsequently continued in service for total period of about six months. Neither any advertisement was published nor applications were invited from the Employment Exchange. The reliance placed by the learned counsel for the petitioner on Rule 20 of the Rules of 1975 appears to be misplaced as the petitioner was not appointed by Market Committee (Mandi Samiti). The case of the petitioner would be governed by Rajasthan State Agricultural Marketing Board (Service) Bye-laws, 1977 (in short "Bye-laws of 1977"), which have been framed under Rajasthan State Agricultural Market Produce Act, 1961. By-law 23 is reproduced as under:

"23. Urgent Temporary Appointment:

A vacancy in the Service which cannot be filled in immediately either by direct recruitment or by promotion under the byelaws may be filled in by the Appointing Authority by appointing in an officiating capacity thereto an employee eligible for appointment to the post by promotion or by appointing temporarily, thereto a person eligible for direct recruitment to the service where such recruitment has been provided under the provision of these Bye-laws.

Provided that such an appointment will not be continued beyond a period of six months without referring the case to the Selection Committee for concurrence where such concurrence is necessary and shall be terminated immediately on its refusal to concur."

7. Upon perusal of By-law 23, it is evident that in case appointment is to be continued beyond six months, then the matter has to be referred to the Selection Committee, and in case concurrence of the Selection Committee is not obtained, then the appointment shall be terminated immediately.

8. It is, thus, palpably clear that urgent temporary appointment can continue only for a period of six months, and thereafter it has to be duly approved by the Selection Committee. An employee who has been appointed only for the period of six months, would not have any right to continue further unless his case has been duly considered and approved by the Selection Committee. It is apparent that object of the aforementioned by-law is that stop-gap arrangements should not continue indefinitely and such cases should be considered by the Committee before their services are extended further.

9. The petitioner has not been able to make out any case for his continuation in service beyond the period of six months. The petitioner in his claim before the Labour Court has pleaded that he had continued after 29.02.1988 but he has stated in his cross-examination that he did not claim any salary w.e.f. 01.03.1988.

10. It is, thus, evident that petitioner had continued only till 29.02.1988 as he has not demanded salary for the period from 01.03.1988 to 08.03.1988. The Labour Court has also found that the attendance of the petitioner is not marked in the register for the month of March, 1988, and the petitioner/workman had admitted that the register remained with the Assistant Engineer and there was no impediment in marking attendance. The Labour Court has also held that there was no advertisement or names invited from the Employment Exchange when the petitioner was appointed. It has, infact, relied upon the statement of the petitioner that he had himself submitted application for his appointment, meaning thereby that it was a back door appointment contrary to Articles 14 & 16 of the Constitution of India.

11. The petitioner/workman had claimed that two persons junior to him namely, Shri Narain Singh Chauhan and Anju Saxena had been retained after his services were terminated. This has been denied in the reply filed by the respondent, wherein it is stated that the services of those two persons had also been

terminated.

12. The judgments, relied upon by the learned counsel for the petitioner in the case of General Manager, Northern Railway v. Judge, Central Industrial Tribunal (supra) and Oriental Bank of Commerce v. Presiding Officer, Central Government Industrial Tribunal (supra), are distinguishable on facts from the instant case as they pertain to cases where awards were passed in favour of the workmen after recording finding of fact that their termination was illegal and in violation of Section 25G of the Act of 1947 as their juniors had been retained. In the case at hand, as already discussed, the Labour Court has categorically held that removal of the petitioner from service cannot be held to be illegal and there was no violation of Section 25G of the Act of 1947 as no person junior to the petitioner was retained.

13. In the judgment of Hon''ble Supreme Court in Surya Prakash Sharma v. Rajasthan Text Book Board, Jaipur (supra), violation of Section 25G of the Act of 1947 was also made out as the juniors of the workman had been retained.

14. The reliance of the learned counsel for the petitioner on the judgment in Ex-Major N.C. Singhal v. Director General Armed Forces (supra) is misplaced as it relates to the change in service conditions of an Army Officer with retrospective effect.

15. In the judgment relied upon by the learned counsel for the petitioner in the case of Mackinnon Mackenzie & Company Ltd. v. Mackinnon Employees Union (supra), the action of the Management in terminating the services of the workmen had been found to be malafide. As already discussed, no such act is made out in the instant case.

16. In the judgments of Hon''ble Supreme Court in Gauri Shanker v. State of Rajasthan (supra) and Raj Kumar Dixit v. M/s. Vijay Kumar Gauri Shankar (supra), the directions of the High Court for payment of compensation instead of reinstatement were set aside and the awards allowing reinstatement of the workman were restored. However, in the instant case, the question of reinstatement would arise only if the award is found to be illegal.

17. In the exercise of writ jurisdiction, interference with the award of Labour Court would be called for only in case there is patent error of law or the finding is perverse. Even if another view is possible, this Court is not inclined to interfere as it does not exercise appellate jurisdiction. Reference can be made to the judgment of Hon''ble Supreme Court in the case of Sadhana Lodh Vs. National Insurance Company Ltd. and Another, (2003) 1 ACC 33 : (2003) ACJ 505 : AIR 2003 SC 1561 : (2003) 6 JT 126 : (2003) 1 SCALE 739 : (2003) 3 SCC 524 : (2003) 1 SCR 567 , wherein it has been held as under:-

"7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face

of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision."

18. In the aforementioned facts and circumstances, the petitioner has not been able to make out any case for interference with the well reasoned award of the Labour Court, which does not suffer from any infirmity.

In the result, the instant petition is dismissed.