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**(2007) 08 RAJ CK 0010**

**In the Rajasthan High Court**

**Case No : Civil Writ Petition No. 3421 of 1994**

Tarsem Singh

APPELLANT

Vs

Judge, Labour Court and Others

RESPONDENT

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**Date of Decision : 13-08-2007**

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 25F

**Citation : (2007) 08 RAJ CK 0010**

**Hon'ble Judges : Gopal Krishan Vyas, J**

**Bench : Single Bench**

**Advocate : Manoj Bhandari, for the Appellant; Raghu Raj Kanwar,A.G.A., for the Respondent**

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## **Judgement**

G.K. Vyas, J.—In this petition, the Petitioner has prayed for quashing award dated 16.11.1992 and prayed for direction to reinstate the Petitioner back in service. It is also prayed that Respondents may be directed to make payment of salary and grant him benefits u/s 25-F of the Industrial Disputes Act, 1947 and consider his case for re-employment u/s 25-H of the Act of 1947. The Petitioner has further prayed that the Respondents may be directed to grant him semi-permanent status in service upon completion of two years.

2. According to facts of the case, the Petitioner was initially appointed in the month of August, 1981 on the post of Chowkidar on daily-rated basis and his services were terminated with effect from 1.8.1994. The Petitioner raised an industrial dispute before the Conciliation Officer, Sriganganagar and, after failure of the conciliation proceedings the matter was sent to the appropriate Government. The appropriate Government referred the matter to the learned Judge, Labour Court, Bikaner for adjudication of the following question.

After the reference was made, a claim petition was filed by the Petitioner workman and reply was also filed by the Respondents. Thereafter, certain documents were filed before the Labour Court, Bikaner and affidavits of the workman and one Banwari Lal, Jr. Engineer were filed. After considering all

aspects of the matter as well as documentary and oral evidence on record, the learned Labour Court arrived at the finding that the Petitioner's services were terminated with effect from 1.8.1984 illegally though he had completed 240 days in preceding one calendar year and his services were terminated in violation of Section 25-F of the Industrial Disputes Act, 1947. However, the Labour Court passed order that in view of the reply filed by the Respondents that the Sub-Division where the Petitioner was appointed is abolished on 30.6.1985, therefore, the Petitioner shall be entitled to wages only upto 30.6.1985. The Labour Court further observed in the order that if, on 30.6.1985, the date on which North-East CAD Bhakra Sub-Division was abolished, any retrenchment was made after following Section 25-F of the Industrial Disputes Act in respect of other employees then Petitioner shall be entitled for the same relief u/s 25-F of the Industrial Disputes Act.

3. Learned Counsel for the Petitioner argued that the learned Judge, Labour Court has committed error of law exceeding his jurisdiction while passing the order that if, on 30.6.1985, the date on which North-East CAD Bhakra Sub-Division was abolished, any retrenchment was made after following Section 25-F of the Industrial Disputes Act in respect of other employees then Petitioner shall be entitled for the same relief u/s 25-F of the Industrial Disputes Act, because once the reference is made by the appropriate Government only to adjudicate upon the validity of the termination of the services of the Petitioner with effect from 1.8.1984, further jurisdiction to travel beyond the reference cannot be assumed by the Labour Court. Learned Counsel for the Petitioner contended that the Labour Court came to the conclusion that the services of the workman Petitioner were illegally terminated in violation of the provisions of Section 25-F of the Industrial Disputes Act then it is obvious that the Sub-Division where the Petitioner workman was appointed was in existence on the date of such illegal termination. According to learned Counsel for the Petitioner, if on a subsequent date the said Sub-Division was abolished, the learned Labour Court had nothing to do with that aspect of the matter inasmuch as it was not the subject-matter of the reference made for adjudication to the Judge, Labour Court, Bikaner. Learned Counsel for the Petitioner submitted that in view of the authoritative pronouncements of this Court as well as Hon'ble Supreme Court, the approach of the Labour Court is totally erroneous. It is prayed that once it has been held by the Judge, Labour Court that Petitioner workman's services were terminated in violation of the provisions of Section 25-F of the Industrial Disputes Act then the workman was to be reinstated in service with full back wages.

4. It is next contended by learned Counsel for the Petitioner that the finding arrived at by the Labour Court upon appreciation of the evidence on record on the question of validity of the termination of the Petitioner's services was not challenged by the Department and, therefore, the same attained finality. It is submitted by learned Counsel for the Petitioner that the Petitioner may be reinstated in service and may be granted benefit of regularization and further Respondents may be directed to declare the Petitioner semi-permanent after

completion of two years of service in view of the Rules of 1964.

5. Per contra, the learned Dy. Government Advocate supported the order under challenge and submitted that in this case no interference is required because the department where the Petitioner was employed was abolished on 30.6.1985, therefore, when this fact was brought to the knowledge of the Labour Court, the Labour Court rightly passed order for payment of salary upto 30.6.1985, the date on which the Sub-Division was abolished. It is further submitted by the learned Dy. Government Advocate that the order of the Labour Court with regard to making compliance of Section 25-F of the Act in the event of abolition of the Sub-Division is also in consonance with law. It is urged that the Labour Court has rightly observed that if any person is given benefit of Section 25-F as a result of abolition of the Sub-Division the same benefit may be given to the Petitioner, therefore, no interference is called for in this case.

6. I have carefully perused the order under challenge. There is force in the contention advanced on behalf of the Petitioner. The thing which was not in existence at the time of termination of the services of the workman cannot be taken into account by the Labour Court but, in this case, while answering the reference made by the appropriate Government, the learned Judge, Labour Court has gone beyond the subject-matter of the reference bringing in extraneous consideration to adjudicate upon the claim of the workman. This has resulted in miscarriage of justice. The finding of the Labour Court beyond the subject-matter of the reference is contrary to law and cannot be sustained.

7. The appropriate Government referred the question for adjudication whether the termination of the services of the workman by oral order of the Assistant Engineer with effect from August 1984 was valid or not, and, if not, what relief the workman is entitled to? Therefore, once the Judge, Labour Court arrived at the finding that the termination was illegal then the course left open to the Labour Court was either to grant relief of reinstatement with full back wages or, in the alternative, to grant compensation in lieu of reinstatement. However, none of these consequential order was passed by the Labour Court and, taking into consideration extraneous factors, the Labour Court vitiated its conclusion.

8. The Labour Court cannot enlarge the scope of reference nor can it deviate therefrom. It may be observed that the Labour Court derives its jurisdiction from the reference made by the appropriate Government and, therefore, it is bound to act within the four corners of the reference. In the case of *Rambagh Palace Hotel Ltd. Vs. State of Rajasthan and Others*, this Court, at Jaipur Bench, aptly observed as follows:

It is settled law that the Industrial Tribunal can only adjudicate the reference made to it by the Government and cannot substitute its own reference or terms of reference or even cannot go beyond the terms of the reference. It is the function of the Tribunal to answer the reference as is referred to and once the reference has been made on the demand made by the workers/union, it is

incumbent on the Labour Court or Industrial Tribunal to decide the same....

9. The Supreme Court, in the case of State Bank of Bikaner and Jaipur Vs. Om Prakash Sharma, . laid bare the well settled proposition of law and, in the context, categorically held as follows:

In the instant case, the award of the Labour Court suffers from an illegality, which appears on the face of the record. The jurisdiction of the Labour Court emanated from the order of the reference. It could not have passed an order going beyond the terms of the reference. While passing the award, if the Labour Court exceeds its jurisdiction, the award must be held to be suffering from a jurisdictional error. It was capable of being corrected by the High Court in exercise of its power of judicial review. The High Court, therefore, clearly fell in error in refusing to exercise its jurisdiction. The award and the judgment of the High Court, therefore, cannot be sustained....

10. In my considered opinion, the remaining part of the order passed by the Labour Court with regard to granting benefit upto 30.6.1985 upon the fact brought to the notice of the Labour Court that on that date the Sub-Division where the workman was employed was abolished is totally without jurisdiction. Likewise, further observation of the Labour Court that if, on 30.6.1985, the date on which North-East CAD Bhakra Sub-Division was abolished, any retrenchment was made after following Section 25-F of the Industrial Disputes Act in respect of other employees then Petitioner shall be entitled for the same relief u/s 25-F of the Industrial Disputes Act deserves to be quashed. Such order cannot be made by the Labour Court without these facts being relevant to the subject-matter of the reference made to the Labour Court. Having arrived at the finding that the termination of the services of the workman on the post of Chowkidar was illegal, the only course left with the Labour Court is to hold the workman entitled to reinstatement with full back wages or, in lieu thereof, compensation. In the facts and circumstances of the case, no useful purpose will be served to remand the case because the finding of the Labour Court upon the validity of the termination order of the Petitioner has attained finality and is not under challenge in these proceedings.

11. Learned Counsel for the Petitioner stated at Bar that the Petitioner is ready to forgo back wages if the Petitioner is reinstated because, in the meantime, the Petitioner has crossed the upper age limit for employment. In these circumstances, on the question of relief as a sequel to the finding of the Labour Court that the services of the workman Petitioner was illegally terminated in violation of Section 25-F of the Industrial Disputes Act, it is deemed just and proper to direct the Respondents to reinstate the Petitioner in service by way of appointing him afresh and grant him benefit of continuity of service because, admittedly, the Petitioner was appointed in the year 1981 and he continued upto August 1984 and, thereafter, under the work-charge rules number of persons were appointed in the Irrigation Department and they were granted semi permanent status. Learned Counsel for the Petitioner submitted that similarly

situated Chowkidar Mahendra Kumar was granted benefit of regularization. He further submitted that number of persons have been regularized in service who were appointed in between 1981 and 1984.

12. Consequently, this writ petition is partly allowed. The part of the award passed by the Labour Court dated 16.11.1992 on the question of relief, quoted as under:

is quashed and set side. As a result of the finding arrived at by the Labour Court on the validity of the termination of the service of the Petitioner workman, the Petitioner is held entitled to reinstatement in service. Accordingly, the Respondents are directed to reinstate the Petitioner back in service on the post of Chowkidar. However, the Petitioner shall not be entitled to back wages, though his continuity in service from the year 1981 shall be maintained and he shall be granted all consequential benefits as would be available to him as a result of this order.

13. The Respondents shall comply with this order within a period of three months from today failing which the Petitioner shall further be entitled to cost quantified at Rs. 10,000/- from the Respondents.