
(1994) 03 RAJ CK 0079
In the Rajasthan High Court
Case No : Civil Writ Petition No. 201 of 1994

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

Date of Decision : 04-03-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 7A, 7B

Citation : (1995) 1 RLW 595 : (1994) 2 WLC 316 : (1994) 1 WLN 416

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Judgement

G.S. Singhvi, J.—Heard learned Counsel for the petitioner and perused record of the case

2. Award dated 27th July, 1993 passed by the Labour Court, Jaipur in case No. L.C.R. 189/86, is under challenge in this writ petition.

3. Facts of the case are that the workman-Ram Narain son of Tejpal who was employed in the P.W.D., Sub Division-A, Jaipur City on 1.7.1980 was retrenched from service by notice dated 29.6.1985. Retrenchment of the workman became subject matter of a dispute between the parties and when the parties failed to arrive at settlement, the Government made a reference of the dispute by notification dated 20th June, 1987.

4. In his statement of claim, the workman pleaded that notice of retrenchment dated 29.6.85 was served upon him on 1.7.85 and, therefore, termination of his service with effect from 29.6.85 was brought about without giving him one month's notice. A subsequent notice issued on 27.7.85 extended the date of termination of service to 30.7.85 but that too was not in accordance with Section 25F(a) of the Industrial Disputes Act, 1947. The workman also pleaded that amount of retrenchment compensation was not offered to him on or before the date of retrenchment and, therefore, there was non-compliance of Section 25F(b) of the Act of 1947. The employer contested the claim of the workman and

stated that service of the workman had been dispensed with by notice dated 29.6.85. Retrenchment compensation was offered to him by the competent authority but the workman declined to accept the same. When the workman declined to accept the same, it was sent by money order. That too was not accepted. Parties led their respective evidence. After considering the pleadings and evidence led by them, the Judge, Labour Court held that service of the workman had been terminated by way of retrenchment and that the evidence produced by the employer regarding offer of retrenchment compensation was contradictory. The Labour Court held that although the employer had come forward with the plea that on refusal of the workman, the amount of retrenchment compensation was sent by money order, neither receipt of money order by which the amount was alleged to have been sent nor receipt of acceptance of money order was produced by the employer and thus, the employer failed to prove that there was a real offer of the compensation amount on or before the date of retrenchment. On the basis of these findings the Labour Court held that termination of service of the workman having been brought about in contravention of Section 25F(b) of the Industrial Disputes Act, the same is liable to be declared as void. Accordingly, the Labour Court granted a declaration of invalidity regarding termination of the service of the workman and ordered his reinstatement with all consequential benefits.

5. In assailing the award, Shri Rajendra Prasad Sharma, learned Counsel for the petitioner, has strenuously argued that the Labour Court has failed to consider the documentary evidence produced before it by the employer. He invited my attention to Annexure-1 and submitted that a clear stipulation has been made by the Junior Engineer in the said document that the amount of retrenchment compensation was offered to the workman but he did not accept the same. Shri Sharma argued that the money has been sent back by the Junior Engineer for being deposited in the Government account. He submitted that non-production of receipt of money order or acknowledgment receipt of the money order cannot be treated as an adverse factor against the employer and the Labour Court has no jurisdiction to ignore the other documentary evidence produced by the employer. According to Shri Sharma, the conduct of the workman in accepting the salary and refusing the retrenchment compensation is by itself sufficient for holding that the employer did make an offer of retrenchment compensation and he declined to accept the same. Second submission made by Shri Sharma is that award of back wages to the workman along with all consequential benefits, is arbitrary. He submitted that the workman had not pleaded in his statement of claim that he was not in gainful employment or was not at all in employment and even though the employer had not raised a plea of gainful employment or may not have led evidence to show that the workman was in gainful employment after termination of service, the Labour Court ought not to have passed the award of full back wages.

6. In my opinion, neither of the submissions advanced by Shri Sharma merit acceptance.

7. A look at the award shows that the Labour Court has taken into consideration the oral as well as documentary evidence led by the parties. There is inherent contradiction in the evidence produced by the employer on the question of offer of retrenchment compensation to the petitioner. Shri R.S. Sharma, Assistant Engineer, Public Works Department, Sub-Division VIII, Jaipur City who has appeared as witness on behalf of the employer, has made statement that amount was sought to be given by the Assistant Engineer but he refused to accept the same, it is stated by Gopal Singh, another witness of the employer, that the Assistant Engineer has offered the retrenchment compensation in his chamber. However, in his cross-examination the Assistant Engineer stated that the amount of retrenchment compensation had been sent to the Junior Engineer for being delivered to the workman. The Labour Court noted that if the amount had been offered by the Junior Engineer or Assistant Engineer and that it had been deposited back on non-acceptance by the workman, the theory of sending it by money order becomes highly suspicious. Moreover, there is serious contradiction in the statement of two witnesses. The Labour Court has further taken into consideration the document dated 27.7.85 which contains a stipulation that the workman was asked to collect the retrenchment compensation from the office of the Executive Engineer but he refused to accept the same. The Labour Court further observed that if the money order has been sent to the workman on his refusal of the amount, the employer would have produced postal receipt or acknowledgment receipt. But neither of these documents have been produced. This analysis of evidence as made by the Labour Court does not suffer from any infirmity warranting interference by this Court. Failure of the employer to produce material evidence which was in its possession goes a long way to establish that the theory put forward by the petitioner about the money order having been sent to the workman is an after-thought. No reason has been assigned before the Labour Court or even before this Court as to why the postal receipt has been withheld by the employer. In my considered view, the inherent contradiction in the statement of two witnesses of the petitioner and employer's failure to produce material evidence, clearly justify the conclusion that offer of compensation was not made on or before the date of retrenchment, as required u/s 25F(b) of the Act of 1947. Once the Labour Court had recorded this conclusion, it was left with little option but to grant declaration about termination of service. Law on the subject was laid down as early as in 1960 in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, and the same has held field till this day. In *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*, a Constitution Bench of the Supreme Court has reiterated the principle of law laid down in *Mazdoor Sabha's* case (supra). In *Mohan Lal Vs. Management of Bharat Electronics Ltd.*, their Lordships of the Supreme Court also reiterated the principle that once termination of service of a workman is found to be contrary to Section 25F of 1947 Act, it will be deemed as if the termination had never come into existence and the workman will be treated to be continuing in service. Only in exceptional circumstances, some of which were highlighted in

Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, and of which notice has been taken in S.B. Civil Writ Petition No. 1452/85 Kailash Chand v. Judge, Labour Court, decided on 18.8.92, a relief of reinstatement with continuity of service and consequential benefits, is the normal relief which is to be given to the workman. It is burden of the employer to prove and pleaded that the workman was gainfully employed. Argument of Shri " Sharma that the workman had not pleaded that he was not gainfully employed, merits summary rejection. No workman can possibly lead evidence that he was gainfully employed. In the present case, the employer had not raised a plea before the Labour Court that the workman was gainfully employed after termination of his service and, therefore, it is not open to the petitioner to raise this plea for the first time before this Court in this writ petition. Having failed to request the Labour Court to make an adjudication on this issue, the petitioner cannot now be permitted to raise this point for the first time before this Court.

8. For the reasons aforesaid, this writ petition fails and is dismissed.

9. The proceedings which have taken place before the Labour Court in this case give an impression to the Court that the Labour Courts and the Industrial Tribunals constituted u/s 7A and Section 7B of the Act of 1947, are not serious about the task assigned to them. It has taken more than 6 years to the Labour Court to decide a small issue regarding validity of retrenchment of a workman and by no standard it can be said to be a reasonable period. It is necessary to remind the Presiding Officers of the Labour Courts/Industrial Tribunals in Rajasthan that they are duty bound to decide a dispute expeditiously. They cannot act leisurely in deciding the disputes involving termination of workmen. They must realise that delay in deciding such like matters cause grave injury to both the sides. A workman who is out of employment does not get benefit of salary and active service till the matter is adjudicated in his favour. Not only he, but his entire family suffers on account of delay. On the part of employer an award passed after years together declaring termination of service as illegal or void on account of non-compliance of law, results in payment of back wages to the workman without work. It is not an individual officer of the Government who makes such payment out of his own pocket. It is the public exchequer which is to pay the amount of backwages. There is no manner of doubt that the expenditure incurred in the functioning of Labour Courts/Industrial Tribunals, is borne by the revenue of the State in which all citizens of the State contribute. This delay in deciding the cases of this nature, on one hand, causes injury to the workman and on the other hand causes injury to the public at large. Thus, realisation on the part of the Presiding officers of the Labour Courts/Industrial Tribunals in deciding such type of matters with great urgency is a must. Therefore, I would direct the Registrar. Rajasthan High Court to issue written instructions to the Presiding Officer of all the Labour Courts/Industrial Tribunals in Rajasthan to expedite hearing of the cases involving retrenchment/ termination of service of the workmen. It should be made specifically clear to these officers that uncalled

for delay in deciding such like matters will be viewed seriously by the Court.