

(2005) 01 RAJ CK 0064
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4013 of 2002

Tola (Smt.)

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-01-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2005) 104 FLR 1054 : (2005) 1 RLW 472 : (2005) 3 SLJ 264 : (2005) 1 WLC 753

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : B.D. Mittal, for the Appellant; Rameshwar Dave, for the Respondent

Judgement

Sunil Kumar Garg, J.—The petitioner has filed the present writ petition under Article 226/227 of the Constitution of India on 1.10.2002 against the respondent with a prayer that by an appropriate writ, order of direction the judgment and award dtd. 19.2.2002 (Annex.5) passed by the learned Judge, Labour Court, Udaipur (respondent No. 3) be modified to the extent the the petitioner be granted the relief of reinstatement in place of amount of compensation of Rs. 35,000/- as awarded by the learned Judge, Labour Court, Udaipur (respondent No. 3) to the petitioner.

2. It arises in the following circumstances:

i) That the petitioner was initially appointed as Beldar with effect from 1.10.82 and she continued in the services upto 15.5.1987.

ii) That the services of the petitioner were retrenched w.e.f. 15.5.1987.

iii) That further case of the petitioner is that the petitioner raised an industrial dispute and the appropriate Government made a reference of the dispute to the respondent No. 3 vide notification dated 24.5.1994 to the effect whether termination of services of petitioner Smt. Tola by Executive Engineer, Left Main Canal through Executive Engineer-I, was valid and justified and if not what relief

the workmen were entitled to.

iv) That the petitioner submitted her statement of claim before the respondent No. 3 and the respondents submitted reply (Annex.2) thereto.

v) That the learned Labour Court (respondent No. 3) after hearing the parties passed an award dtd. 19.2.2002 (Annex.5) inter alia holding:

That the order of retrenchment of the petitioner passed by the respondents was illegal and against the provisions of Section 25F of the Act of 1947, but in view of provisions of Rajasthan (Regulation of appointments to Public Service and Rationalisation of Staff) Act, 1999 (hereinafter referred to as the act of 1999) instead of her reinstatement, the learned labour Court directed that the compensation to the tune of Rs. 35,000/- be paid to the petitioner.

iv) Aggrieved by the impugned judgment and award dtd. 19.2.2002 (Annex.5) whereby the learned trial Court did not direct reinstatement of the petitioner, this writ petition has been preferred by the petitioner.

3. In this writ petition, the main submission of the learned counsel for the petitioner is that the reinstatement has been denied to the petitioner only on the basis of provision of Act of 1999, but Section 9,11, and 19 of the Act of 1999 have been struck down by the Division Bench of this Court in the case of Bhawani Singh Vs. State and Others, therefore, the petitioner is entitled to reinstatement as when the Labour Court had come to the conclusion that termination order of workmen were illegal, thus, in normal rule, reinstatement should have been ordered, but the same was not ordered by the Labour Court because at that time, provisions of Act of 1999 were in force and awarding compensation is not a routine matter, but in exceptional circumstances, the compensation in lieu of reinstatement is awarded and hence, the impugned judgment and award dtd. 19.2.2002 (Annex.5) should be modified to the extent that the order of reinstatement should be passed in favour of the petitioners.

4. Heard.

5. The Hon''ble Supreme Court in number of cases has held that when the order of termination is found to be illegal, the general rule is to grant reinstatement and compensation should be awarded in exceptional circumstances. In this connection, reference may be made to the following authorities of the Hon''ble Supreme Court:

i) Tulsi Das Paul v. The 2nd Labour Court, (1972) 4 SCC 205.

ii) Vikramaditya Pandey v. Industrial Tribunal, (2001) 2 SCC 423.

6. Since in the present case, the special exceptional circumstances which did not warrant reinstatement, do not exist today as the provisions of Sections 9, 11 and 19 of the Act of 1999 have been declared unconstitutional, therefore, the findings of the learned Labour Court (respondent No. 3) by which the petitioner was awarded compensation only in lieu of reinstatement cannot be sustained.

7. Thus, it is held that the petitioner is entitled to reinstatement in place of compensation, but on reinstatement, he would not be entitled to back wages.

8. For the reasons mentioned above, the writ petition is liable to be partly allowed and the judgment and award dtd. 19.2.2002 (Annex.5) are liable to be modified to the above extent.

9. According, the present writ petition is partly allowed in the manner that the respondents are directed to reinstate the petitioner in service forthwith, but he will not get back wages from the date of termination till the date of reinstatement. The order of compensation to the tune of Rs. 35,000/- to the petitioner passed by the learned Labour Court, Udaipur (respondent No. 3) is quashed and set aside. If the amount of compensation has been paid to the petitioner, the petitioner is directed to return that compensation and on return of the compensation, the order of her reinstatement be passed.

10. The judgment and award dated 19.2.2002 (Annex.5) passed by the learned Labour Court, Udaipur are modified to the above extent. No order as to costs.