

(1989) 04 RAJ CK 0028
In the Rajasthan High Court
Case No : C.W.P. No. 1589 of 1987

Yashwant Singh Yadav

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 12-04-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25B(2), 25F

Citation : (1989) 59 FLR 607 : (1991) 1 LLJ 501 : (1989) 2 RLW 290 : (1989) 2 WLN 276

Hon'ble Judges : S.S. Byas, J;D.L. Mehta, J

Bench : Division Bench

Advocate : Rajendra Soni, for the Appellant; M.I. Khan, A.A.G. and G.C. Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

Byas, J.—In this petition under Article 226 of the Constitution, the petitioner prays for quashing orders Annexure 8 & Annexure 9 each dated 13th June 1987 by which his services were terminated with forthwith effect.

2. As per averments disclosed in the petition, the petitioner was initially appointed as a Class IV employee in Ayurvedic Aushdhalaya, Bhupkhera, District Alwar on 28th November 1985 on daily wages basis vide order Annexure 1. This appointment was made for 53 days. Subsequently, the term of his appointment was extended by Annexure 2 dated 28th January 1986 and by order Annexure 3 dated 25th April 1986 till further orders. He thus continued to work as a Class IV employee in the Government Ayurvedic Aushdhalaya upto 13th June 1987. All of a sudden, his services were abruptly terminated by orders Annexure 8 and Annexure 9 each dated 13th June 1987 issued by the respondents Nos. 2 and 3 respectively. The petitioner challenges the termination of his service on the grounds that the Ayurvedic Aushdhalaya is an industry as defined in the Industrial Disputes Act, 1947 (hereinafter to be referred to as "the Act") and he is a workman as defined therein. He has continuously worked for more than 240

days during the period of 12 calendar months preceding the date of 13th June 87 when his services were terminated. The termination of his service amounts to retrenchment. His retrenchment was made without following the mandates of Section 25F of the Act inasmuch as no notice or wages in lieu of notice and compensation were paid to him as required u/s 25F. The retrenchment is, therefore, invalid. The relief claimed is that the impugned orders Annexure 8 and Annexure 9 be quashed and he be reinstated with full back wages. The prayer has been also made that work of a regular Class IV employee was taken from him but he was paid only daily wages which is much less than the regular pay scales of a Class IV employee. He, therefore, also seeks directions to the respondents to pay him the salary of a regular Class IV employee.

3. The petition was resisted by the respondents. The appointment of the petitioner as a Class IV employee on daily wages basis was admitted and it was stated that it was not a whole-time appointment. The petitioner was employed as a part-time employee. He is, therefore, not a workman as defined in the Act. Since he was a part-time employee, he cannot be taken to be a workman as defined in the Act. As such the provisions of Section 25F of the Act were not required to be followed. The petition is, therefore, misconceived and hence not maintainable.

4. Before proceeding further, we may point it out that in the return filed by the respondents, no defence has been taken that the Government Ayurvedic Aushdhalaya is not an industry. Probably this defence was not taken in view of the pronouncements of their Lordships of the Supreme Court made in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, and *Lalit Hari Ayurvedic College Pharmacy, Pilibhit Vs. Lalit Hart Ayurvedic College Pharmacy Workers' Union, Pilibhit*. We, therefore, take that the Government Ayurvedic Aushdhalaya is an industry. We may also state here that the petitioner was Class IV employee in the Ayurvedic Aushdhalaya. Of course, he was paid daily wages. He is, therefore, a workman as defined in the Act. It matters little whether he was employed on daily wages basis or otherwise. He was certainly a workman because he was employed to do the manual work in the Aushdhalaya for hire i.e. to say on daily wages.

5. There is no dispute between the parties that the petitioner was appointed on 28th November 1985 vide Annexure 1. He continued to work till 13th July 1987 when his services were terminated by orders Annexure 8 & Annexure 9. Though there were breaks in his service, the fact remains that he had worked upto the day preceding that date of 13th July 1987 when his services were terminated. He has thus put continuous service within the meaning of Section 25B(2) of the Act. There is again no dispute that the provisions of Section 25F of the Act were not followed or complied with inasmuch as no notice of one month's duration or wages in lieu of such notice and compensation mentioned therein were paid or tendered to the petitioner. There is thus a clear breach and violation of the provisions of Section 25F of the Act. We need not reiterate that if the termination

of the service of a workman amounts to retrenchment and the provisions of Section 25F have not been followed, such retrenchment is invalid and non est. Such a termination will then have to be set aside. This is trite law and we need not encumber our judgment with the various decisions on the point.

6. The petition is resisted mainly on the ground that the petitioner was only a part-time employee, and, therefore, he cannot be taken to be a workman under the Act. It is true that the petitioner was only a part-time employee as is mentioned in his documents Annexure 1 to Annexure 9. In all these documents issued by the respondents he has been shown as part-time employee and his appointment was made as a part-time employee from time to time. The contention of the learned counsel for the petitioner is that even a part-time employee is a workman as defined in the Act. As such the provisions of the Act are equally applicable to him and he is entitled to protection thereunder.

7. We have heard Mr. R.D.Soni learned counsel for the petitioner and the learned Addl. Advocate General, Govt. Advocate and the Additional Government Advocate at length on this point.

8. The clinching question before us is whether a part-time employee is a workman as defined in the Act. It would be useful to read the definition of "workman" as given in Section 2(s) of the Act:-

2(s) "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.

(i) to (iv)"

9. A plain reading of the definition makes it abundantly clear that in order to render a person "workman" what is required is that he should be employed in any industry to do any manual, skilled or unskilled etc. work for hire. The definition as given in the Act does not make any distinction between a full-time employee and a part-time employee. It does not lay down that only a person employed for full-time will be taken to be a workman and that one who is only a part-time employee should not be taken to be a workman. What is required is that the person should be employed for hire to discharge the work manual; skilled or unskilled etc. in an industry. If this test is fulfilled, a part-time employee will also be a workman as is a full-time employee.

10. We may notice a few decisions on the point. In the State of Assam and Others Vs. Shri Kanak Chandra Dutta, it was observed that even a part-time employee was a civil servant for purposes of Article 311(2) of the Constitution.

Though the case is that of a civil servant, the principle enunciated therein can be safely borrowed in the case of a workman under the Act. When a part-time employee can be taken to be a civil servant, a part-time employee in an industry should then also be taken to be a workman under the Act.

11. In *Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another*, it was held "When the tailors generally attend the shop every day if there is work and different rates are fixed for them according to their skill and their work is checked, then even though there may be no regular hours of work or obligation to attend every day and the tailors could take the work home, there was relationship of employer and employee between the tailoring shop and tailors."

12. In *P.N. Gulati v. Labour Court* 1978 II LLJ 46 a doctor was employed in industry for rendering medical aid to its employees on part-time. The questions arose whether he should be taken to be a workman or not. The learned Judges of the Division Bench held that though the doctor was employed on part-time, he was still a workman as defined in the Act.

13. In *K. Ramachandran v. State of Kerala* 1982 (3) SLR 642 . The question arose as to whether a part-time employee should or should not be taken to be a civil servant. Following the dicta laid down in *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, it was held that part-time service in civil also falls within the term of civil services.

14. In *Guru Darshan Singh v. State of Punjab*, (1983) 1 S LJ 399 a learned Single Judge of P & H High Court following the dicta in *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, took the view that a part-time employee is also the holder of a civil post. It was observed that the word part-time has nothing to do with the nature of appointment. It only regulates the duration of working hours for which an employee is required to work in the capacity he has been appointed.

15. Recently in *Govindhai Kanabhai Maru v. N.K. Desai* 1988 Lab IC 505 the question arose whether a part-time servant doing the work of a sweeper should or should not be taken to be a workman under the Act. The learned Judge held (at p. 507):-

"This court is in respectful agreement with the said judgment of the Division Bench. The definition of workman in the Act is couched in sufficiently wide terms so as to include even the part-time employees who have been in service over a long period. Therefore, it is held that the present petitioner falls within the definition and he should be treated as workman under the Act."

16. Mr. Khan, the learned Additional Advocate General, relied upon *G. Rangamannar Cherry, Proprietor, Sri Satyarayana Rice Mill, Nellore v. Industrial Tribunal, Hyderabad* 1959 II LLJ 565 in support of his submission that a part-time employee is not a workman as defined in the Act and as such the provisions

are not applicable to him.

17. We are unable to find ourselves in agreement with the view taken by a learned Single Judge in the aforesaid decision. The majority of the High Courts of the country as discussed above have taken the view that even a part-time employee is a workman within the definition of the "workman" as given in Section 2 of the Act. In our opinion, the definition of workman as given in Section 2(s) of the Act is comprehensive and wide enough to include even a part-time employee. We are of the considered opinion that even a part-time employee is covered by the definition of "workman" as given in Section 2 of the Act. With all respects we are unable to agree with the view expressed by the learned Judge of the A.P. High Court.

18. In the instant case, no doubt the petitioner was appointed as a part-time employee. He is a workman as defined in the Act. The termination of his service amounts to retrenchment and the retrenchment was made in violation of the provisions of Section 25F of the Act. He is, therefore, entitled to reinstatement.

19. The petitioner has claimed wages of a regular Class IV employee. We are unable to grant this relief to him. He has been appointed as a part-time employee on daily wages basis at the rate mentioned in his appointment orders issued from time to time. The wages of full time Class IV employee cannot be granted to him in this proceeding.

20. In the result, we allow the writ petition and quash the impugned orders Annexure 8 & Annexure 9 dated 13th June 1987 issued by the respondents Nos. 2 & 3. The respondents are directed to reinstate the petitioner. The petitioner is allowed back wages at the rate of fifty per cent.

21. No order as to costs.