

**Ganesh Lal Vs. the Judge, Industrial Disputes Tribunal and ors.**

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**Court :** Rajasthan

**Decided On :** Jan-12-2007

**Reported in :** [2007(113)FLR780]; RLW2007(2)Raj1222

**Judge :** H.R. Panwar, J.

**Appellant :** Ganesh Lal

**Respondent :** The Judge, Industrial Disputes Tribunal and ors.

**Judgement :**

**H.R. Panwar, J.**

1. By the writ petition being S.B. Civil Writ Petition No. 2063/03 under Article 226 and 227 of the Constitution of India filed by petitioner Ganesh Lal (for short 'the workman' hereinafter) and writ petition being S.B. Civil Writ Petition No. 4198/01 filed by the State and Ors. (for short 'the employer' hereinafter) the award dated 16.5.2001 passed by nonpetitioner, the Judge, Industrial Disputes Tribunal and Labour Court, Udaipur (for short 'the Industrial Tribunal' hereinafter) in Labour Case No. 135/97, has been impugned, whereby the reference made by the State Govt. under Section 10 of the Industrial Disputes Act, 1947 (for short 'the I.D. Act' hereinafter) was answered and it has been held that the retrenchment of the workman w.e.f. 1.6.1992 is illegal and instead of ordering reinstatement, the Industrial Tribunal granted compensation of Rs. 41,000/- in favour of the workman.

2. Since both the writ petitions involve common question of law and facts and arise out of the same impugned award and between the same parties, therefore, with the consent of learned Counsel for the parties, they are heard and being decided together.

3. The workman seeks a direction to the non-petitioners- employer to reinstate him in service with full back wages and consequential benefits. The employer seeks setting aside of the impugned award dated 16.5.2001.

4. I have heard learned Counsel for the parties.

5. A reference was made by the Appropriate Government on 28.5.1997 whether the removal of the workman Ganeshlal Paliwal by the employer w.e.f. 1.6.1992 was just and valid, and if not, what relief the workman was entitled to. A statement of claim was filed by the workman stating that he was appointed on the post of Chowkidar on 21.5.1987 at Distribution Center, Gogunda and worked there upto 31.12.1991. Thereafter he was transferred to Distribution Centre, Kotda where he worked upto 31.5.1992. It is also stated that in addition to the work of Chowkidar, he also performed the work of distribution of grains and was paid the salary per month on minimum daily wages basis. It has also been averred that he worked for more than 240 days in every calendar year from 21.5.1987 to 31.5.1992 and his termination from services on 1.6.1992 was against the principles of natural justice. Neither notice or notice pay nor any compensation have been given before termination of his services.

6. Before the Industrial Tribunal, the employer filed reply to the claim made by the workman and stated that the workman was never appointed on the post of Chowkidar on regular basis, as a matter of fact he used to be engaged as and when there was requirement of work and therefore, there was no need to comply with the provisions of Section 25F of the I.D. Act before terminating the services of the workman. The employer specifically came with a case that there is no sanctioned post of Chowkidar with them and those who were regularly appointed as Chowkidar, have also been declared surplus as there being no sanctioned post of Chowkidar. However, it was admitted that the workman was engaged as daily rated labourer and has not completed 240 days in a calendar year. Considering

the material placed before the Industrial Tribunal, the Industrial Tribunal came to the conclusion that the workman was not appointed on regular sanctioned post but he was appointed on daily wages basis and had completed 240 days in one calendar year and without complying with the provisions of Section 25F of the I.D. Act, his services were terminated and therefore, the termination of the services of the workman w.e.f. 1.6.1992 was found to be illegal.

7. The case set up by the workman is that he had been working as Chowkidar w.e.f. 21.5.1987 to 1.6.1992 and his services were terminated w.e.f. 1.6.1992. Be that as it may. The Industrial Tribunal found the termination of the services of the workman in violation of the provisions of Section 25F of the I.D. Act and instead of reinstating him, the workman was granted a lump sum compensation of Rs. 41,000/-.

8. Learned Counsel for the workman submits that the Industrial Tribunal declined the relief of reinstatement and back wages on the ground that Sections 11 and 19 of the Rajasthan (Regulation of Appointment to Public Services and Rationalization of Staff) Act, 1999 (for short 'the Act of 1999' hereinafter) take away the power of reinstatement. Learned Counsel further submits that the provisions of the Act of 1999 to the extent take away the powers of reinstatement/appointment have been held to be unconstitutional by the Division Bench of this Court in BhawaniSingh and 17 Ors. v. State and Ors. 2002 (3) WLC (Raj.) 728 : RLW 2003 (3) Raj. 1755 and therefore, the Industrial Tribunal fell in error in declining relief of reinstatement.

9. Learned Deputy Government Advocate appearing for the employer submits that even according to the workman he was daily rated worker and he was not regularly appointed as there being no sanctioned post of Chowkidar and therefore, his engagement itself was dehors the rules and even if the provisions of the Act of 1999 to the extent taking away the powers of reinstatement have been held to be unconstitutional, yet in view of catena of decisions of Hon'ble Supreme Court, the petitioner is not entitled for relief of reinstatement with back wages. He further submits that since the engagement of the workman being not a regular and against the sanctioned post, therefore, awarding compensation in lieu of

reinstatement by the Industrial Tribunal is also illegal. He has relied on decisions of Hon'ble Supreme Court in State of M.P. and Ors. v. Arjunlal Rajak : (2006)IILLJ104SC and Nagar Mahapalika (Now Municipal Corpn.) v. State of U.P. and Ors. : (2006)IILLJ748SC and a Division Bench decision of this Court in State of Rajasthan and Ors. v. Rashid Mohammad 2004 (5) WLC (Raj.), 463.

10. While arguing the petition filed by the State of Rajasthan, learned Deputy Government Advocate has contended that the petitioner State has never appointed the workman on the post of Watchman or any other post. He was engaged on daily wages basis as a labourer according to the need and also submits that the workman who was engaged on daily wages basis a labourer has not worked for 240 days in any calendar year, therefore, there is no violation of the provisions of Section 25F of the I.D. Act.

11. Before the Industrial Tribunal, the workman came with a specific case by submitting the statement of claim as also producing evidence that he was engaged by the State on 21.5.1987 on the post of Watchman and he continued to work till 31.12.1991, thereafter he was transferred on 1.1.1992 to the Distribution Centre, Kotda where he continuously worked upto 31.5.1992. Learned Industrial Tribunal on appreciation of the evidence before it held that the workman has worked for 240 days in a calendar year and he has been retrenched from service without complying with the provisions of Section 25F of the I.D. Act and as such the termination of the workman was held to be invalid. In my view, the finding of fact arrived at by the Industrial Tribunal is based on sound and proper appreciation of the evidence and calls for no interference in the writ jurisdiction.

12. In State of M.P. and Ors. v. Arjunlal Rajak (supra) Hon'ble Supreme Court held that it is beyond any doubt or dispute that a daily-wager does not hold a post. The Forest Department is a wing of the State. Its employees hold a status. For acquiring that status and for obtaining the constitutional protection in terms of Article 311 of the Constitution, all appointments must be made in conformity with the constitutional scheme as laid down under Articles 14 and 16 of the Constitution as well as the rules made in terms of the proviso to Article 309 of the Constitution or in terms of a legislative Act. Concededly, while appointing the respondent, the

constitutional provision or the statutory provisions had not been followed. The rights and liabilities of the parties are, therefore, governed by the terms of the contract and/or the provisions of the statute applicable in relation thereto. The respondent was not given any offer of appointment in writing. He admittedly worked in different departments of the State. His last posting was in the production division of the Forest Department in the district of Guna which as noticed above stood abolished. It is however, true that while terminating the services of the respondent the appellants had not complied with the mandatory requirements of Section 25F of the Industrial Disputes Act, and thus, ordinarily, the workman could have been directed to be reinstated with or without back wages, but it is also well settled that when a project or a scheme or an office itself is abolished relief by way of reinstatement is not granted. Accordingly, keeping in view the fact that the services of the respondent therein were terminated on the ground that the production unit in which he was working itself had been closed, the Hon'ble Supreme Court awarded monetary compensation of Rs. 10,000/- to the workman.

13. In Nagar Mahapalika (Now Municipal Corpn.) v. State of U.P. and Ors. Hon'ble Supreme Court finding the appointment of the workman therein in violation of the U.P. Mahapalika Adhiniyam, 1959, held that since the provisions of the U.P. Industrial Dispute Act, 1947 had not been complied with, instead and in place of issuing a direction for reinstatement of service, interests of justice would be subserved if a compensation of Rs. 30,000/- is directed to be paid.

14. A Division Bench of this Court in State of Rajasthan and Ors. v. Rashid Mohammad (supra) while dealing with a case where the respondent Rashid Mohammad was appointed as a Guard on daily wages basis on 01.2.1990 and was finally removed on 17.5.1994 and taking into consideration the facts that already nine years have elapsed, modified the judgment of the learned Single Judge by directing that instead of reinstatement, the petitioner would be entitled to a lump sum amount of Rs. 50,000/- as compensation for full and final settlement of all his claims while relying on the decisions of Hon'ble Supreme Court in Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd. AIR 1979 SC 95, Chandu Lal v. The Management of PAN American World Airways : (1985)IILLJ181SC , Gujarat State Road Transport Corporation and Anr. v. Malu

Amra : (1994)IILLJ552SC , Sain Steel Products v. Naipal Singh and Ors. AIR 2001 SCW 2426, O.P. Bhandari v. Indian Tourism Development Corporation Ltd. and Ors. : (1986)IILLJ509SC and Rolston Johan v. Central Government Industrial Tribunal and Labour Court and Ors. : AIR 1994 SC131 .

15. In the instant case, the workman was not appointed on regular sanctioned post but was appointed on daily wages basis. However, finding that the workman has completed 240 days in an year and without complying with the provisions of Section 25F of the ID Act, his services have been terminated, therefore, the Industrial Tribunal found that the termination of services of the workman was illegal. In the circumstances, therefore, since the workman was not appointed against a regular sanctioned post, therefore, the Industrial Tribunal was justified in awarding lump sum compensation in lieu of reinstatement finding that the provisions of the I.D. Act have not been complied with while terminating the services of the workman. However, in the facts and circumstances of the case and looking to the length of services rendered by the workman, in my view, the compensation awarded by the tribunal appears to be on lower side and therefore, it deserves to be enhanced from Rs. 41,000/- to Rs. 60,000/-.

16. In view of the aforesaid discussion and keeping in view the decisions of Hon'ble Supreme Court referred herein above, the writ petition filed by the workman is partly allowed and the impugned award dated 16.5.2001 is modified to the extent that the compensation awarded by the tribunal is enhanced from Rs. 41,000/- to Rs. 60000/-. The writ petition filed by the State is dismissed. There shall be no order as to costs.

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