

**State of Rajasthan and ors. Vs. Ramesh Kumar and anr.**

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**Court :** Rajasthan

**Decided On :** Apr-21-2005

**Reported in :** (2005)IIILLJ683Raj; RLW2005(2)Raj1415

**Judge :** N.N. Mathur and; Manak Mohta, JJ.

**Acts :** [Industrial Disputes Act, 1947](#) - Sections 25F

**Appeal No. :** D.B. Civil Special Appeal No. 529 of 2004

**Appellant :** State of Rajasthan and ors.

**Respondent :** Ramesh Kumar and anr.

**Advocate for Def. :** Arjun Purohit, Adv.

**Advocate for Pet/Ap. :** O.P Boob, Additional Government Adv.

**Judgement :**

**N.N. Mathur, J.**

1. This special appeal is directed against the judgment of the learned Single Judge dated 03.02.2004, dismissing the writ petition.

2. Briefly stated that facts of the case are that the respondent No. 1 Ramesh Kumar was engaged as a casual labour on temporary basis in the year 1985 in the Irrigation Department of the State of Rajasthan. The State Government by order

dated 17.11.1988, abolished the posts of work-charged employees with effect from 01.02.1988. It was further directed to dispose of the service of the work-charged employees appointed during the period from 01.04.1985 to 30.09.1988. Accordingly, the services of the respondent-workman alongwith similarly large number of persons situated were retrenched by order dated 07.12.1988. On industrial dispute being raised, a reference was made to the Labour Court, Sri Ganganagar. The Labour Court found the order of termination illegal, being in violation of mandatory provisions of Section 25F of the [Industrial Disputes Act, 1947](#). Thus, by award dated 11.04.2002, the Labour Court directed the appellants to reinstate the workman with 30% back-wages from the date of reference i.e., 27.12.2000. The State Government challenged the award by way of writ petition. The learned Single Judge by an impugned order dated 03.02.2004, dismissed the writ petition.

3. We have heard learned Counsel for the parties and perused the record. The undisputed facts of the case are that the respondent-workman Ramesh Kumar had worked as a work-charged employee during the period from 01.04.1985 to 06.12.1988. His services were terminated by order dated 07.12.1988. The order of termination was accompanied by a cheque of Rs. 2,313/- which included a notice pay and the retrenchment compensation. The notice was not accepted by the respondent-workman. The respondent-workman was in the pay-scale of Rs. 700-10-850-15-865. His last salary drawn was Rs. 826/-. The department gave a bifurcation of Rs. 2,313/- as follows:--

1. Salary for the month of November, 1988 : Rs. 826.002. Seven day's salary of December, 1988 : Rs. 194.003. One month's Notice pay : Rs. 861.004. Compensation amount : Rs. 432.00  
Total Amount : Rs. 2313.00

4. The labour Court found that the amount offered to a retrenchment compensation fell short of amount required to be paid in as much as it was calculated only on the basis of the one year through the respondent-workman had worked for there year. In view of the findings, the Labour Court found the order of termination illegal and accordingly made an award for reinstatement with 30% back-wages.

5. Section 25F of the [Industrial Disputes Act, 1947](#) postulates three conditions to be fulfilled by an employer for effecting a valid retrenchment, namely:--

(a) One month's notice in writing indicating the reasons for retrenchment or wages in lieu of such notice;

(b) Payment of compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) Notice to the appropriate Government in the prescribed manner.

6. In the instant case, the Labour Court found that the respondent-workman had worked for three years. Out of the three years, he had worked as casual labour for two years. For one year, he was in the regular pay-scale as indicated above. In terms of Sub-clause (b) of Section 25F, the respondent-workman was required to be paid compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. Admittedly, the appellants have not taken into account two years service as rendered by the workman as casual labour while calculating the compensation to be paid under Sub-clause (b) of Section 25F.

7. The learned Single Judge has rightly observed that even on the appellant's own pleadings, the compliance of provisions of Section 25F has not been made as the respondent-workman had worked for little more than three years. Thus, we do not find any illegality with the finding recorded by both the Courts below, as far as the legality of the order of removal is concerned.

8. However, we are of the view that neither the Labour Court nor the learned Single Judge has correctly addressed the question if respondent could be paid compensation in lieu of re-instatement. It is not in dispute that large number of work-charged employees were retrenched in view of the decision taken by the State Government. The order of termination has been found to be illegal on a technical ground inasmuch as that there has been a bonafide error in calculation of the amount of compensation. Perhaps, the appellants were of the view that the

period spent by the respondent-workman as a casual labour was not required to be counted. Thus, instead of three years, only one year was taken into account. There is also a gap of more than 14 years from the date of termination to the date of re-instatement. In *Rolston John v. Central Government Industrial Tribunal-Cum-Labour Court and Ors.* (AIR 1994 SC 131), the Court, considering the fact that the order of termination was set aside on a technical ground, directed for payment of compensation in lieu of re-instatement. In *Rattan Singh v. Union of India and Anr.* (1997 (11) SCC 396), the Apex Court considering the fact that 20 years had elapsed since the date of termination directed for payment of consolidated sum of Rs. 25,000/- in lieu of compensation for back wages as well as re-instatement. In *Sain Steel Products v. Naipal Singh and Ors.* (2001 AIR SCW 2426), the Apex Court considering the fact the workman was not in employment since 1975, directed for grant of compensation in the sum of Rs. 50,000/- in lieu of reinstatement. A Division Bench of this Court in *Dal Chand and 5 Ors. v. Judge, Labour Court and Ors.* (2004 (2) WLC 514 (Raj.)), considering large number of decisions of the Hon'ble Apex Court has held as follows:--

'A discretion is vested with the Tribunal or the Court to grant relief to the workman by way of awarding compensation in lieu of reinstatement. The vesting of such discretion with the Court or the Tribunal has been felt necessary in the interest of industrial harmony and peace. While in case of victimisation the workman must be restored to its original position by way of reinstatement. However, in case of the order of termination being found illegal on a technical ground or in case where the post is of trust and confidence and the employer has not entrusted him on the said post or in case where the employee is found guilty of such activity subversive to the Industry or the office or the organization or where in a case the industry is in sever doldrums or where the industry or the project has been closed down or in a case where there is a long gap from the date of termination, the discretion should normally be exercised not to compel the employer to take him in job by way of reinstatement.'

9. In the instant case, the order of termination is set aside on technical ground and further keeping in view the long gap between the order of termination and the reinstatement, we are of the view that it is a fit case in which instead of

reinstatement, the Labour Court could have awarded compensation. Considering all the facts and circumstances of the case, in our view Rs. 25,000/- would be an appropriate amount to be awarded as compensation for the back-wages as well as reinstatement.

10. Consequently, the special appeal is partly allowed. The order of learned Single Judge dated 03.02.2004 is set aside. The writ petition is allowed. The award made by the Labour Court, Sri Ganganagar dated 11.04.2002 is modified to the extent that instead of reinstatement, the respondent-workman Ramesh Kumar S/o Ghissa Ram shall be paid a consolidated sum Rs. 25,000/- in lieu of compensation for back-wages as well as reinstatement.

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