

Surendra Kumar Vs. Resident Engineer and anr.

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Court : Rajasthan

Decided On : Feb-13-2007

Reported in : RLW2007(3)Raj2482

Judge : Gyan Sudha Misra and; K.C. Sharma, JJ.

Appellant : Surendra Kumar

Respondent : Resident Engineer and anr.

Disposition : Appeal dismissed

Judgement :

K.C. Sharma, J.

1. This appeal has been preferred against the order of the learned Single Judge dated 1.11.2001 by which the writ petition filed by the respondent-Rajasthan Housing Board through Resident Engineer, Division 111, Ballabhbari, Kota, was allowed and the award passed in favour of the respondent-workman, who is the appellant herein, was set aside on the ground that the respondent/appellant herein-the workman, had failed to prove that he had discharged duties for 240 days within twelve months as he had attempted to prove his case only on the basis of affidavit which could not be proved by the muster roll furnished by the respondent-Rajasthan Housing Board. The Labour Court, however, had passed the award in favour of the appellant-workman granting him reinstatement along

with full back-wages against which the respondent Rajasthan Housing Board had filed a writ petition which was allowed by the learned Single Judge by setting aside the award passed by the labour Court in favour of the appellant- workman.

2. Assailing the judgment and order of the learned Single Judge, it was submitted by the counsel for the appellant that the appellant-workman possibly could not have produced any evidence in support of the fact that he had worked continuously for not less than 240 days and, therefore, the learned Single Judge was in error in holding that the continuous working days of the appellant-workman could not be treated as gospel truth. It was further submitted that the muster-roll was lying with the management of the employer, i.e. The Rajasthan Housing Board and they had failed to produce the muster-roll which could prove the working of 240 days in favour of the appellant-workman.

3. In order to test the merit and strength of the argument advanced by the counsel for the appellant, we have perused the award of the labour court as also the judgment and order of the learned Single Judge by which the award of the labour Court was set aside. While doing so, we have noticed that the appellant workman had not worked 240 days continuously in the Rajasthan Housing Board as according to his own case, he had worked for two months in the Rajasthan Municipal Corporation for which the muster-roll was not produced by the Rajasthan Housing Board. If that is the admitted position, then the lacuna in the workman's case, which has caught the attention of this Court, is that the appellant-workman admittedly has not worked for 240 days in the Rajasthan Housing Board. But, in order to fill in the lacuna, he came up with a case that he had worked for two months in the Rajasthan Municipal Corporation. If that is the factual position, we fail to understand as to how the duties discharged by the appellant in an altogether different organisation, which was Rajasthan Municipal Corporation, could be counted as continuous duties discharged in the Rajasthan Housing Board. The Rajasthan Housing Board is a separate entity and has absolutely no connection with the Rajasthan Municipal Corporation (Rajasthan Nagar Palika) and, therefore, if the Housing Board did not produce the muster-roll of Nagar Palika, we fail to understand how this could have been expected to be produced by the Rajasthan Housing Board. The labour Court has not assigned any reason

as to how the duties discharged by the appellant-workman in the Nagar Palika could be counted as duties discharged in the Rajasthan Housing Board so as to conclude that the appellant workman had worked continuously in the Rajasthan Housing Board for 240 days. So, even if we were to accept the contention of the counsel for the appellant to the extent that the workman possibly cannot produce any evidence in support of his duty period except the affidavit, which is sworn by the workman, which is to be verified from the muster-roll produced by the management, we are not prepared to accept that the duties discharged in different organisations, which is not a composite whole or one entity, can be clubbed so as to hold that the workman has discharged continuous duties for 240 days in one unit. Admittedly, the respondent has not discharged continuous duties in Rajasthan Housing Board for 240 days and when he was faced with this difficulty, he tried to fill in this gap by filing an affidavit that he had worked for two months in Rajasthan Nagar Palika.

4. As already stated, even if this period were to be counted towards the period of duty, the same cannot be clubbed as continuous duty which can be held to have been discharged in the Rajasthan Housing Board. Thus, the appellant-workman had miserably failed to prove his case that he had completed 240 days of duty in the Rajasthan Housing Board and yet the labour Court passed an award in his favour that he should be reinstated with entire back-wages from 1.12.1986 to 22.11.1995, which is the date of the award. Thus, a workman, whose continuous work period was not free from doubt, has been reinstated in service with back-wages for approximately 10 years by award of the labour Court, which we cannot approve for the reasons stated hereinbefore. We, therefore, uphold the order of the learned Single Judge who had been pleased to set aside the award of the labour Court. The appeal thus has no merit and hence it stands dismissed.