

Nazir Singh Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jan-11-1994

Reported in : (1994)IILLJ1059Raj; 1994(1)WLC414; 1994(1)WLN553

Judge : K.C. Agrawal, J.

Acts : [Constitution of India](#) - Article 226; [Industrial Disputes Act, 1947](#) - Sections 2, 10 and 25F; Rajasthan Work-Charged Employees Service Rules, 1964 - Rule 3(3)

Appeal No. : S.B.C.W. No.149/1987

Appellant : Nazir Singh

Respondent : State of Rajasthan and ors.

Advocate for Def. : B.C. Bhansali, Adv.

Advocate for Pet/Ap. : S.L. Jain, Adv.

Disposition : Petition dismissed

Judgement :

K.C. Agrawal, J.

1. This is a petition under Article 226 of the [Constitution of India](#) seeking mandamus directing the respondents to reinstate the petitioner by quashing the notice of retrenchment dated December 30, 1986. (Annex. 2).

2. The petitioner entered in the service of the respondents as a Chowkidar on February 1, 1984 on the daily wages of Rs. 11/-, The appointment of the petitioner was on verbal instructions. The service of the petitioner was terminated by the order dated December 30, 1986 (Annex. 2).

3. The petitioner contended that he being in service for the last more than two years had become a workman within the meaning of Section 2(s) of the [Industrial Disputes Act, 1947](#) (hereinafter to be referred as 'the Act') and that he could not be retrenched without following the provisions of Section 25F (a) and (b) of the Act. He claimed that he was entitled to be declared as semi-permanent under Rule - 3(3) of the Rajasthan Work-charged Employees Service Rules, 1964 (hereinafter to be referred as 'the Rules'). Rule 3(3) of the Rules reads as under: -

'3. Categorisation - (3) Employees in continuous service for two years or more, except those covered by sub-rule (1), shall be eligible for the status of semi-permanent work-charged employees or of semipermanent regular technical staff, provided their record of service, in the opinion of the Competent authority, is satisfactory.'

4. The petitioner contended that as his service was terminated without complying with the provisions of Section 25F(a) and (b), the termination order is liable to be quashed.

5. The writ petition was contested by the respondents and the claim set-up by the petitioner that he had acquired the status of semipermanent on account of Rule 3(3) of the Rules was denied. The respondents alleged that Section 25F of the Act was fully complied with.

6. Section 25F of the Industrial Disputes Act reads as under:-

'25-F. Conditions precedent to retrenchment of workman. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a) the workman has been given one month's notice in writing indicting the reasons for retrenchment and the period of notice has expired, or the workman has been

paid in lieu of such notice, wages for the period of the notice.

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the official Gazette.'

7. The manifest object of the provisions of Section 25F of the Act is to compensate the workmen for loss of employment as to provide them the wherewithal to subsist until they find fresh employment.

8. Section 25F of the Act gives no positive and unregulated right of retrenchment to employers, but only imposes three conditions precedent to the making of retrenchment. The conditions in other Acts for effecting retrenchment have not been dispensed with.

9. There was a dispute before me as to whether three conditions precedent to the making of retrenchment have been complied with or not.

10. The respondents asserted that all the three conditions precedent to the making of retrenchment have been complied with. The respondents claimed that retrenchment allowances and other dues were offered to the petitioner, but he refused to accept the same. The respondents asserted that the amount was sent by banker's cheque, but the petitioner refused to accept the same. In order to prove their case, the respondents have filed photostat copies of the envelope and cheque.

11. Giving a different version than what had been set-forth in the counter affidavit by the respondents, it was pleaded by the petitioner that no payment of salary had been offered by the respondents to him. Neither did the notice mention the ground of termination nor did the petitioner say that payment would be accepted after instructions from the Union.

12. After hearing the learned counsel for the parties, I find that there was a dispute on facts between them and without the resolution of the dispute of facts, the controversy involved in this writ petition could not be solved. For giving a finding on those facts, the parties were required to adduce evidence, oral and documentary, which the Industrial Court or the Labour Court would have permitted them to do. Article 226 of the [Constitution of India](#) is not meant to short-circuit or circumvent statutory procedures. If the petitioner wanted to obtain relief, he should have availed the remedy of raising an industrial dispute.

13. About compliance of Section 25F of the Act also there is a dispute between the parties. The petitioner claimed that none of the three conditions precedent to the making of retrenchment had been complied with, but the respondents contended that the provisions of Section 25F of the Act had been fully and completely complied with. For deciding even this dispute, evidence was required. The petitioner should have approached the Industrial Court for getting the relief claimed in this writ petition. In general, a disputed question of fact is not investigated in a proceeding under Article 226 of the [Constitution of India](#), particularly where an alternative remedy is available. (See Jai Singh v, Union of India AIR 1977 S.C. 898).

14. The cases relied upon by the petitioner's counsel have no application.

15. Consequently, the writ petition fails and is dismissed with no order as to costs.