

Resident Engineer Vs. Lakhpati

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Court : Rajasthan

Decided On : May-19-2003

Reported in : RLW2003(4)Raj2509

Judge : Anil Dev Singh, C.J. and; K.S. Rathore, J.

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

Appeal No. : D.B. Civil Special Appeal (W) No. 100 of 1997

Appellant : Resident Engineer

Respondent : Lakhpati

Advocate for Def. : Shailesh Prakash Sharma, Adv.

Advocate for Pet/Ap. : J.K. Singhi, Adv.

Judgement :

Singh, C.J.

1. Heard learned counsel for the parties.

2. The respondent-workman was appointed as 'Bhishti', on 1.12.79, in the appellant-department. On 1.9.83, his services came to an end inasmuch as he was not allowed to work on the post of 'Bhishti'. The respondent-workman, being aggrieved by the action of the appellant, raised an industrial dispute, which was

referred to the Labour Court. The Labour Court, on the basis of the evidence on record, came to the conclusion that the services of the workman were terminated in violation of Section 25F of the Industrial Disputes Act 1947. Accordingly, the Labour Court by its order dated 03.01.95, set aside the order of termination of the respondent and directed his reinstatement. Thereupon the appellant filed a writ petition but the learned Single Judge of this Court, refused to interfere with the order passed by the Labour Court.

3. In this appeal, the appellant has challenged the order of the learned Single Judge, dated 16.5.96, whereby, the writ petition, calling in question the order of the Labour Court, directing reinstatement of the respondent-workman, was rejected.

4. We find no reason to disagree with the view, taken by the labour Court that the termination of the services of the respondent-workman, was violative of Section 25F of the Industrial Disputes Act.

5. The Labour Court as well as the learned Single Judge, however, overlooked the fact that the services of the respondent- workman were terminated in the year 1983, he worked in the department for a short period of 19 months. The gap from the year 1983, when his services were terminated, till the date of passing of the award, viz. 03.1.95, was a long one. Even between the date of the termination of the services of the respondent-workman and as of now, twenty years have elapsed. If he is to be reinstated, he could only be reinstated on daily wages basis, on the minimum of the wages. The possibility of the respondent-workman remaining employed elsewhere during this period of twenty years, cannot be ruled out altogether and his reinstatement may result in further complications and administrative difficulties as that post might have been manned by some other person. In a case, where a workman has remained not in touch with the job for such a long period of time, it may not be expedient to order reinstatement while setting aside the order of his termination. In such a case, compensation, in lieu of reinstatement, ought to be ordered, we are supported in this view by the following decisions of the Supreme Court:-

1. Rolston John v. Central Government Industrial Tribunal- cum-Labour Court and Ors. (1);

2. Gujarat State Road Transport Corporation and Anr. v. Mulu Amra (2);
3. Rattan Singh v. Union of India and Anr. (3);
4. O.P. Bhandari v. Indian Tourism Development Corporation Ltd. and Ors. (4);and
5. Sain Steel Products v. Naipal Singh and Ors. (5).
6. Recently, the same view was adopted by us, in State of Rajasthan v. Rashid Mohammad (6), wherein, it was held as follows:-

'Now, the question, which arises for consideration is: whether in the facts and circumstances of the case, the relief of 'reinstatement'. Where the retrenchment is found invalid, the normal rule is to pass , an order of reinstatement. However, it depends upon the facts and circumstances of each case and where there are circumstances of each case and where there are unusual or exceptional circumstances, which may warrant deviation from the normal rule of reinstatement and where it is not expedient to grant the relief of reinstatement, then, in appropriate cases, the 'compensation in lieu of reinstatement' may meet the ends of justice. In the instant case, a long period of nine years has elapsed since the date of termination and, therefore, the compensation in lieu of reinstatement and back wages would serve the ends of justice.'

7. Again, in Ram Niwas v. The Mining Engineer and Ors. (DB Civil Special Appeal (W) No. 270/203, decided on 24.4.2003), the following view was taken by us:-

'It is not disputed that the appellant worked only for a short period of one year and that too on daily wages. He was not regularly selected for the job. The gap from 20th June, 1992 to the date of passing of the award was a substantial one. Again between the date of the termination of the appellant and of now, eleven years have gone by. The appellant has not been in touch with the job for over a decade. It will not be appropriate to thrust the appellant on the respondent employer after such a long time. In case, the appellant is directed to be reinstated, question of seniority, emoluments and promotion would arise. It may affect the seniority and chances of promotions of employees, who have been working in absence of the appellant. Though, the normal rule is to direct reinstatement of a workman, whose

services have been terminated in violation of Section 25F of the Industrial Disputes Act, reinstatement is not a must in every case. In a fit case, it may not be expedient to order reinstatement on setting also of the order of termination. In such a case, compensation in lieu of reinstatement may be more desirable.'

8. Keeping in view, the aforesaid decisions, we consider it appropriate to direct payment of Rs. 75,000/-, as compensation, to the respondent - workman, in lieu of reinstatement and back wages. The appellant shall make the payment of Rs. 75,000/-to the respondent-workman, within a period of four weeks.

9. The appeal is disposed of with the aforesaid directions and observations. The Registry shall, however, list the matter, only for the purposes of finding as to whether or not the order has been complied with.

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