

Roopa Vs. Rajasthan Tourism Development Corporation Ltd. and anr.

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Court : Rajasthan

Decided On : Apr-07-1986

Reported in : 1986(2)WLN195

Judge : Suresh Chandra Agrawal, J.

Appeal No. : S.B. Civil Writ Petition No. 1966 of 1985

Appellant : Roopa

Respondent : Rajasthan Tourism Development Corporation Ltd. and anr.

Disposition : Petition allowed

Judgement :

Suresh Chandra Agrawal, J.

1. In this writ petition, the petitioner, Roopa, has challenged the Award (Annexure 4) dated 11th October, 1984 made by the Labour Court, Jaipur to the extent the Labour Court has denied back wages to the petitioner while ordering his reinstatement in service.

2. The petitioner was employed as Chowkidar in Swagat Paryatan Vishram Grah, Station Road, Jaipur, which is one of the units of the Rajasthan Tourism Development Corporation (here in after referred to as 'the Respondent Corporation') Jaipur. He was appointed on the said post on 19th April, 1982. The

services of the petitioner were terminated with effect from 1st February, 1983. The said termination of the services of the petitioner gave rise to an industrial dispute and the State Government, by order dated 2nd January, 1984, referred for adjudication to the Labour Court the dispute as to whether the termination of the services of the petitioner by the General Manager of the respondent Corporation was valid and proper and if not to what relief he was entitled. The case of the petitioner before the Labour Court was that he had worked continuously for more than 240 days at the time when his services were terminated and that he was entitled to the protection of Section 25F of the Industrial Disputes Act (here in after referred to as 'the Act') and that the services of the petitioner were terminated in contravention of the mandatory provisions of Section 25F of the Act. The Labour Court accepted the said contention of the petitioner and found that the petitioner had worked for 287 days till January, 1983 and that he was entitled to the protection of Section 25F of the Act and since the provisions of Section 25F were not followed, the termination of the services was illegal. The Labour Court was, however, of the view that since the petitioner, in his statement of claim, had not said that after his services were terminated, he was not working elsewhere and he had also not mentioned this fact in his affidavit, he was not entitled to any back wages. The Labour Court, therefore, while holding that the termination of the services was illegal and directing the reinstatement of the petitioner, held that he was not entitled to back wages. Feeling aggrieved by the aforesaid Award of the Labour Court' in so far as it denies back wages to him, the petitioner has filed this writ petition.

3. At the request of the learned Counsel for the petitioner and the learned Counsel for respondents Nos. 1 and 2 that the writ petition may be finally disposed of at the stage of admission, arguments were heard for final disposal of the writ petition at the stage of admission.

4. Shri Shah, the learned Counsel for the petitioner, has submitted that in view of the finding recorded by the Labour Court, that the termination of the services of the petitioner was illegal being in violation of provisions of Section 25F of the Act, the Labour Court ought to have awarded back wages to the petitioner and that the Labour Court has erred in denying back wages to the petitioner on the ground that

in the statement of claim as well as in affidavit, the petitioner did not state that he was not employed elsewhere after his services were terminated. The submission of Shri Shah was that in cases of wrongful termination of service, award of back wages is the normal rule and in case the employer wants that the back wages should be denied to the workman on the ground that he was gainfully employed elsewhere, the employer should produce the necessary material before the Labour Court in support of the said plea and since in the present case the respondent Corporation did not produce any material before the Labour Court to show that the petitioner was gainfully employed after his services were terminated, the Labour Court was not justified in denying back wages to the petitioner. In support of his aforesaid submission, Shri Shah has placed reliance on the decision of the Supreme Court in Hindustan Tin Works Pvt. Ltd. v. The Employees of Hindustan Tin Works Pvt. Ltd. and Ors. : (1978)11LLJ474SC , Surendra Kumar v. Industrial Tribunal : (1981)11LLJ386SC , Shambhu Nath Goyal v. Bank of Baroda (1983) 4 SCC 481, Gujarat Steel Tubes Ltd. v. Mazdoor Sabha : (1980)11LLJ137SC , and G.T. Lad and Ors. v. Chemical and Fibres of India Ltd. : (1979)11LLJ257SC .

5. In Hindustan Tin Works Pvt. Ltd. v. The Employees of Hindustan Tin Works Pvt. Ltd. and Ors. (supra), the Supreme Court has observed as under:

Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idle-ness. That is the normal rule.

It was further observed:

If the normal rule in a case like this is to award full back wages, the burden will be on the appellant-employer to establish circumstances which would permit a departure from the normal rule.

6. The aforesaid observations in Hindustan Tin Works Pvt. Ltd. v. The Employees of Hindustan Tin Works Pvt. Ltd. and Ors. (supra) were reiterated in Gujarat Steel Tubes case (supra). In Shambhu Nath Goyal v. Bank of Baroda (supra) the Supreme Court has held that the workman was not expected to prove the negative & that if the Management has not adduced the necessary evidence to show that

the workman was gainfully employed in the intervening period the Tribunal was justified in awarding back wages. In view of the aforesaid decisions of the Supreme Court it must be held that the Labour Court was not justified in denying back wages to the petitioner on the ground that neither in the statement of claim nor in his affidavit the petitioner had stated that he was not employed elsewhere after his services were terminated. As to whether the petitioner was gainfully employed after his services were terminated, was a matter which should have been raised by the respondent Corporation and since there is nothing on record to show that the respondent Corporation raised this plea and adduced evidence in support of the same, the Labour Court was not justified in denying back wages to the petitioner.

7. In the result the writ petition is allowed and the Award (Annexure 4) made by the Labour Court is set aside to the extent it denies back wages to the petitioner and in its place a direction is substituted that the petitioner will be entitled to back wages for the period from the date of the termination of his services till his reinstatement. No order as to costs.

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