

Las Chand Vs. Assistant Engineer, P.H.E.D. (Water Works) and anr.

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Court : Rajasthan

Decided On : Jan-08-1991

Reported in : 1991WLN(UC)21

Judge : G.S. Singhvi, J.

Appeal No. : S.B. Civil Writ Petition No. 2572/89

Appellant : Las Chand

Respondent : Assistant Engineer, P.H.E.D. (Water Works) and anr.

Disposition : Petition allowed

Judgement :

G.S. Singhvi, J.

1. The petitioner was appointed as Baildar on 28.9.1984 on daily wage of Rs. 14/-. According to him, he worked for 283 days in 1984, 290 days in 1985, 289 days in 1986, 292 days in 1987, 253 days in 1988 and 34 days up to February, 1989. Thus he completed more than 240 days service during last 12 months. However, by an oral order of termination issued by the Assistant Engineer, Public Health & Engineering Department, Jhalawar, his service was dispensed with. According to the petitioner, after oral termination of his service on 9.2.1989, 5 persons, namely, Sarvashri Prem Chand, Govind, Vinod Kumar, Chhitar and Kishan all residents of

Jhalawar were appointed. The petitioner has challenged the termination of his service on ground of breach of Section 25F, 25G and 25H of the Industrial Disputes Act, 1947. The petitioner has also prayed that he is entitled to regularisation of his service under Rule 3(3) of the Rajasthan Public Works Department (B & R) including Gardens, Irrigation, Water Works and Ayurvedic Department Workcharged Employees Service Rules, 1964, because he has rendered more than 2 years service as work charge employee.

2. In reply to the writ petition, the respondents have filed a statement showing that the petitioner had worked for 72 days in 1984, 249 1/2 days in 1985, 293 days in 1986, 278 days in 1987, 252 days in 1988 and 33 days in 1989. It has been stated that the P.H.E.D. is not an 'Industry' under Section 2(j) of the Industrial Disputes Act, 1947. According to the respondents, when his work was not found satisfactory, the petitioner was not allowed to work. Respondents have stated that the petitioner has not worked for 240 days during last 12 calendar months. The respondents have disputed to the benefit of Rule 3(3) of the Rules of 1964.

3. During the course of hearing, learned Additional Government Advocate frankly and fairly stated that he does not want to press his objection that P.H.E.D. is not an industry. The only controversy which remains between the parties is as to whether the petitioner had completed 240 days service during last 12 months or not?

4. A perusal of the statements furnished by the parties clearly show that the petitioner was asked not to come on job after February 9, 1989. If 12 months are counted from that point of time, it is more than clear that the petitioner has rendered more than 270 days of service during last 12 months. Thus he has completed more than 240 days of service during last 12 months and his case is covered by the provisions of Section 25B of the Industrial Disputes Act, 1947. It has not been controverted by the respondents that the petitioner was either given notice nor one month's pay in lieu of notice as required by Section 25F(a) of 1947 Act, and he was not paid compensation as specified in Section 25F(b). Thus on the basis of uncontroverted facts, which have come on record, it is clear that there has been violation of the provisions of Section 25F(a) and (b) of 1947 Act.

Violation of these provisions renders the termination of the service of the petitioner void ab initio.

5. In view of the above it must be held that the action of the respondent No. 1 in terminating the service of the petitioner w.e.f. 9.2.1989 or from any early date was wholly illegal and contrary to the statutory provisions contained in Section 25F of the Act, of 1947 and the petitioner is entitled to regularisation.

6. As far as the question relating to regularisation of the service of the petitioner is concerned, an order has so far been passed by the respondents. The only appropriate order which can possibly be made in favour of the petitioner is that the respondent No. 1 or any other competent authority shall consider the case of the petitioner in view of the provisions of Rule 3(3) of 1964 Rules for the purposes of declaring the petitioner as semi-permanent and if he fulfils the requirements of the Rules then he is entitled to such declaration.

7. In the result, the writ petition is allowed. The termination of the service of the petitioner w.e.f. 9.2.1989 is declared to be illegal and void and is quashed. Respondents are directed to reinstate the petitioner in service and treat him as continuing in service w.e.f. 9.2.1989. Looking to the facts and circumstances of the case, I direct that the petitioner shall be entitled to receive 50% of his back wages. Respondents are also directed to pass appropriate orders within two months. The petitioner shall be reinstated within one month from today and the payment of 50% back wages shall be made within two months from today.

8. As far as the question of regularising the petitioner as semi-permanent is concerned, the respondents are directed to consider the petitioner's candidature for declaring him as semi permanent in accordance with Rule 3(3) of 1964 Rules and pass appropriate orders within 3 months.

9. Parties are left to bear their own costs.