

Rajendra Kumar Sharma Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jul-14-2000

Reported in : [2000(87)FLR109]; (2000)IILLJ1466Raj; 2000(3)WLC6; 2001(3)WLN70

Judge : Ar. Lakshmanan, C.J. and; Arun Madan, J.

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

Appeal No. : D.B. Special Appeal (W) No. 627/1996

Appellant : Rajendra Kumar Sharma

Respondent : State of Rajasthan and ors.

Advocate for Def. : R.N. Mathur and; Ajay Purohi, Advs.

Advocate for Pet/Ap. : Manish Bhandar, Adv.

Judgement :

Dr. Ar. Lakshmanan, C.J.

1. Heard Mr. Manish Bhandari for the appellant and Mr. R.N. Mathur, Additional Advocate General on behalf of the State of Rajasthan.

2. This appeal is directed against the judgment dated February 26, 1996 in SB. Civil Writ Petition No, 3712/1995 passed by a learned Judge of this Court, The

appellant filed 3 a writ petition against the order of termination passed by the respondents. According to the appellant, the principles of natural justice as well as the procedures prescribed under the CCA Rules have not been followed. The appellant's father Gopal Chand Sharma was a Government employee who died on July 29, 1983 while in service. It is stated that at the time of death of the appellant's father, the appellant was an infant. The appellant's mother also died on May 6, 1979. The appellant's father married a second wife. When the appellant attained the age of 16 years, he moved an application for compassionate appointment and the appellant was given appointment by the respondent in the year 1984. It is further stated that the appellant's services were found to be satisfactory and he was also given selection grade on the completion of 9 years service. While so, a notice dated February 27, 1988 was issued to him stating that he had misrepresented to the respondents while obtaining the compassionate appointment. The appellant filed a reply to the show cause notice. However an order of termination was passed on December 31, 1988. The appellant thereafter filed a Writ Petition (135/1989) to quash and set aside the order dated December 31, 1988. In the said writ petition the grievance of the present appellant was that the provisions of Section 25-F of the [Industrial Disputes Act, 1947](#) have not been complied with before terminating his services. The said contention was accepted by this Court and the order of termination was quashed and set aside, on the limited aspect for compliance with the provisions of Section 25-F of the I.D. Act, as the same had not been done earlier. Thereafter the appellant was reinstated. This being the only limited question, the intimation was given to the appellant (petitioner in the aforesaid writ petition) that immediately on the expiry of notice period, his services shall stand automatically terminated and after his termination he will be entitled to the benefits as per the provisions of Section 25-F of the Act treating his earlier services of 11 years, an average salary at the rate of 15 days per year shall be paid to him on each completed year of service.

3. Thereafter the Government referred the matter to the Lokayukta as referred to in para 10 of the writ petition. A complaint was made against one Mr. Babulal Jain the then District Education Officer, Mr. K.D. Pandey, Office Superintendent and Mr. Sita Ram Verma, UDC to the Lokayukta of the State of Rajasthan. It was found that since appointment of the appellant was made by one Mr. Ganpat Lal

Vyas and therefore, the Lokayukta directed the State Government in its Department of Personnel on December 30, 1994 to remove the appellant from service after complying with the provisions of Section 25-F of the I.D. Act.

4. The present writ petition was disposed of at the admission stage. Para 7 of the Judgment may be usefully reproduced hereunder:

'7. The petitioner, who got employment by concealment of material fact, cannot get any dividend or benefit for his own wrong on the ground that he has already served for a period of 11 years. As stated earlier the petitioner's services were terminated immediately after the fact of concealment came to the notice of the concerned authorities, but the petitioner continued to remain in service on the technical plea taken by him regarding non-compliance of the provisions of Section 25-F of the Industrial Disputes Act.'

5. The learned single Judge also has observed that no favourable consideration can be made in favour of a person who has got employment by concealment or misrepresentation of fact. Since the initial appointment of the appellant itself was bad, the learned single Judge has refused to grant any relief to the appellant by invoking his jurisdiction under Article 226 of the Constitution of India.

6. Being aggrieved against the said order, the appellant has preferred the above writ appeal. When the writ appeal came up for admission before this Court on an earlier occasion, we requested Shri R.N. Mathur learned Additional Advocate General to accept notices on behalf of the State of Rajasthan and assist the Court in regard to the factual and legal aspect of the matter. Accordingly Shri Mathur appeared and invited our attention to the various exhibits filed in the writ petition and also to other documents. According to Shri Mathur since the services of the appellant have been so terminated after complying with the provisions of Section 25-F of the Act and since the principles of natural justice have been followed, no further opportunity be given to the appellant to invoke Section 25-F of the ID. Act. On the other hand Mr. Manish Bhandari submitted that since it is a punishment of termination, such an order could have been taken by the State only after adopting the procedure prescribed under Rule 16 of the CCA Rules so that the appellant may get full opportunity of defence before an order prejudicial to the appellant is

passed. However, the State without adopting such procedure terminated the appellant's services and the appellant was left with no option but to prefer a writ petition not only on the ground of illegality committed by the respondents in passing the impugned order but also on the ground that the same was otherwise being illegal inasmuch as the respondents had not even complied with the provisions of Section 25-F of the I.D. Act, 1947. This argument of the learned counsel for the appellant is reflected in page 5 (para 4) of the appeal memorandum. It is stated in the said para that in fact the termination took place on August 27, 1995 whereas the compensation was offered to the appellant subsequent to the said date as such the order of termination passed by the respondents is not only illegal on the ground that they failed to follow the procedure as prescribed under the CCA Rules and at the same time, they failed to make compliance of the provisions of Section 25-F of the Industrial Disputes Act and the Rules made thereunder and despite all these facts, the writ petition filed by the appellant against the order of termination made in 1995 was dismissed by the learned single Judge vide order dated February 26, 1996.

7. At this juncture Shri Mathur has argued that the plea now raised by the appellant in this appeal that the provisions of Section 25-F of the I.D. Act has not been complied with, was not raised in the writ petition.

8. We have perused the writ petition filed, by the appellant. It is true that no such averment has been taken by the appellant in the writ petition in regard to non-compliance of Section 25-F of the Act. However, the learned single Judge has held that the services of the appellant have been terminated after complying with the provisions of Section 25-F and therefore the counsel who appeared in the writ petition before the learned single Judge did not take any ground that the provisions of Section 25-F have not been complied with. The writ appeal is a continuation of the proceedings with writ petition. Since the submission being a question of law, we entertain the said plea raised in the appeal.

9. It is not in dispute that the appellant has served the department for a period of eleven years. It is the specific contention of Mr. R.N. Mathur that the notice issued after the disposal of Writ Petition No. 135/1989 itself is in compliance with the

provisions of Section 25-F of the Act.

10. On the other hand learned counsel for the appellant submits that the termination took place on August 27, 1995 whereas the compensation was awarded to him subsequent to the said date as such the order of termination passed by the respondents was illegal.

11. We are of the opinion that since there is dispute regarding compliance of the provisions of Section 25-F of the Act, we are not expressing any opinion on the said issue and it is open to the appellant to approach the appropriate forum for necessary relief. We make it clear that if such proceedings are initiated, it shall be confined only with regard to the compliance/non-compliance of the provisions of Section 25-F of the Act. The appeal is ordered accordingly.

12. We appreciate the services rendered in assisting the Court by Shri R.N. Mathur, Additional Advocate General assisted by Shri Ajay Purohit.

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