State of Rajasthan and ors. Vs. Arun Kumar and ors.

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Court : Rajasthan

Decided On : Mar-10-2000

Reported in : [2000(87)FLR501]; (2000)IIILLJ1439Raj; 2000(2)WLN10

Judge : B.S. Chauhan, J.

Acts : Industrial Disputes Act, 1947 - Sections 25F; Industrial Disputes (Central) Rules, 1957 - Rule 2(7)

Appeal No. : S.B. Civil W.P. No. 825/1999

Appellant : State of Rajasthan and ors.

Respondent : Arun Kumar and ors.

Disposition : Petition allowed

Judgement :

B.S. Chauhan, J.

1. The instant writ petition has been filed against the Labour Court award dated April 17, 1998 (Annexure 1), by which the claim of the respondent-workman has been allowed directing the petitioners to reinstate workman and further to make payment of 50% of the back wages from the date of reference till the date of award.

2. The undisputed facts giving rise to this case are that the workman had worked under different units of the Public Works Department (hereinafter called, the 'P.W.D.') from November 1, 1990 to December 31, 1992. Subsequently, his services were terminated without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947 (for short, 'the Act'). The workman raised an industrial dispute and the Appropriate Government made the reference vide order dated November 4, 1995, which has been allowed by the impugned award. Hence this petition.

3. Admittedly, the workman had worked from November 1, 1990 to December 31, 1992 in different units of the Public Works Department and the case of the Department has been that as he had worked in different units which are independent and separate and the seniority of the workmen are maintained unit-wise under the provisions of the Rajasthan Work-charged Employees (including P.W.D. (B&R;), Irrigation, Garden, Forest and Ayurved) Rules, 1964 (for short, 'the Rules, 1964') and as he did not complete 240 days in any of the units, he was not entitled for any relief as the provisions of the Act were not attracted. However, the Labour Court held that he had worked for 285 days if counted backwards from the date of retrenchment, i.e. October 30, 1992 and it is immaterial whether he had worked in one unit or other, as all the units have been under the same department, the workman was entitled for the aforesaid relief, being entitled for protection of the provisions of the Act.

4. Mr. Rajendra Vyas, learned Additional Advocate, appearing for the petitioners has contended that the Rules, 1964 provide for a seniority unit-wise and promotions etc. are to be considered unit-wise. Rule 2(g) of the Industrial Disputes (Central) Rules, 1957 provides that in relation to Clause (g) of Section 2 of the Act, which defines the employer as the Officer Incharge of the industrial establishment shall be an 'employer' in respect of the establishment run by the Central or State Government. Thus, he has urged that as a unit is headed by a separate officer, i.e. Assistant Engineer, the unit is to be considered as an establishment and not the Department as a whole. Therefore, the period of service is to be counted unit-wise and it cannot be clubbed though it had been served under different units.

5. On the contrary, G.K. Vyas, learned counsel for the workman has contended that if the Department is the same and the workman is being shunted between various units of the department, he cannot be deprived of the benefits of the beneficial legislation, hence the petition is liable to be dismissed.

6. I have considered the rival submissions made on behalf of the parties and perused the record.

7. The Division Bench of this Court in Shiv Kumar v. State of Rajasthan, held that merely because the workman has worked in different Sub-Divisions of the same department, he cannot be deprived of the benefit of the Act and even in that situation, the provisions of Section 25F of the Act are attracted if he has completed 240 days in the proceeding twelve months counted backwards from the date of verbal retrenchment/ termination. Similar view has been reiterated by a Single Bench of this Court in Mangi Lal v. State S.B.C.W.P. No. 1586/1984 decided on September 13, 1994.

8. In Hem Kumar v. State of Rajasthan, a Single Bench of this Court has held that a workman, who has worked under different units under the same Department, is entitled for the relief under the Act for the reason that the appointment order does not say that he has been appointed under a particular scheme only and would be subject to the expiry of the said scheme and had it been so, the establishment could have taken the benefit of Section 2(oo)(bb) of the Act.

9. In Sarvajanik Nirman Vibhag Mazdoor Sangh, Bhilwara v. Judges of the Labour Court, the judgment of the Division Bench in Shiv Kumar (supra) was considered by the learned single Judge. Further, reliance was placed upon the judgment in Mahi Karamchari Sangh v. State of Rajasthan, wherein this Court has explained 'unit' as an expression to mean territorial jurisdiction of the Authority competent to make appointment on the work-charge establishment which has been defined under Clause (2)(1)(i) of Rule 2 and includes such establishment as his employee upon actual execution or upon the subordinate supervision of the Departmental Labour, store and machine in connection with such work or Sub-work. The Court further observed as:

'It would appear that for the different categories of workmen, there are different appointing authorities having their own territorial jurisdiction and appointments are made on work charge establishment which have relation to the actual execution of a particular work and Sub-work.'

10. The Court observed that the judgment in Mahi Karamchari Sangh (supra) had not been placed before the Division Bench in Shiv Kumar (supra) and held that in such a situation, workman cannot claim benefits of the provisions of the Act.

11. In Vijay Singh v. State of Rajasthan, 1987 (1) RLW 71 this Court has categorically held that period of employment of the workman under different units cannot be clubbed together for the purpose of completion of statutory period of 240 days.

12. In Hindustan Steel Works Construction Ltd v. Hindustan Steel Works Construction Ltd. Employees Union, Hyderabad, AIR 1995 SC 1163 : 1997-III-LLJ (Suppl)-1224, the Hon'ble Supreme Court considered the issue of absorption of the employees retrenched by the Construction Company after completion of the work under one unit and did not absorb all of them and transferred to another unit. In the said case, the Tribunal had held that since all the units of the company constitute one single establishment, the retrenchment was bad and the workmen were entitled to be absorbed in another unit. The matter was agitated before the single Judge of Andhra Pradesh High Court and the learned single Judge found that the establishment at one place is a separate establishment, may be under the same employer and each unit, being a separate undertaking, the provisions of the Act were not attracted and the workmen so retrenched were not entitled of absorption. The matter was taken before the Division Bench, which held that it was incumbent on the part of the employer company to absorb workmen sought to be retrenched for the reason that there was 'functional integrality between the workmen at Vizag Unit and the units at Hyderabad. The service conditions of the workmen in all the units are similar. There is a unity of employment, control, administration and ownership and so there is a functional integrality which makes the company a single undertaking. If that be so, the conclusion which is irresistible is that the units at Hyderabad are not separate establishments but they are all

components of one single establishment.' The Hon'ble Supreme Court placed reliance upon its earlier judgments in Management, Hindustan Steel v. Workmen AIR 1973 SC 878. Workmen of Straw Board . v. Straw Board . AIR 1974 SC 1132 : 1974-I-LLJ-499, and Isha Steel Treatment, Bombay v. Association of Engineering Works Bombay, AIR 1987 SC 1478 : 1987-I-LLJ-427, wherein it had been held that the matter should be decided after addressing the question 'whether one unit has same componental calendar that closing of one leads to closing of other or that one cannot reasonably exist without the other. Functional integrality will assume an aided significance in a case of closure of a branch or unit.' The fact of unity of ownership, supervision and control and some other common fee-tors do not and cannot justify a contrary conclusion; all the tests evolved in several decisions of the Court need not all be satisfied in a case as the same may merely serve as guidelines and in a case where the work is not of a perennial nature and it is completed, the establishment may come to an end at that place though establishment may be having work at another place and that the work must be of different nature or of the same, there may not be functional integrality between the several units or several construction works undertaken by the employer. In case the closure of one unit does not lead to the closure of other, it cannot be held that there is a proximity between several units/works undertaken by the employer. In case an employer has different units throughout India or all over the world then each of the work of construction project undertaken by the employer represent distinct establishment and do not constitute units of a single establishment and the Court held that the units at Hyderabad were distinct establishments and once this was so, the workmen of the said units had no right to demand absorption in other units at Hyderabad or somewhere else.

13. The instant case falls within the four corners of the aforesaid judgment of the Apex Court and if the evidence on record is examined from that angle, the conclusion is inevitable that the units, though under the same department, cannot be said to be having any integrality with another and in view of the above for the reason that petitioner has been agitating the same point consistently and there is no material on record to show to the contrary. Thus, the Award of the Labour Court is liable to be set-aside.

14. The writ petition succeeds and is allowed. The impugned Award dated April 17, 1998 (Annexure 1) is hereby set-aside. In the facts and circumstances of the case, there shall be no order as to costs.