

State of Rajasthan and anr. Vs. Judge, Labour Court and anr.

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Court : Rajasthan

Decided On : Aug-16-2000

Reported in : (2002)IVLLJ678Raj; 2001(1)WLN682

Judge : N.N. Mathur, J.

Acts : Rajasthan Public Work Department (B and R including, Gardens, Irrigation, Water Works and Ayurvedic Departments Work-Charged Employees Service Rules, 1964 - Rule 27

Appeal No. : S.B.C. W.P. No. 5700/1993

Appellant : State of Rajasthan and anr.

Respondent : Judge, Labour Court and anr.

Disposition : Petition allowed

Judgement :

N.N. Mathur, J.

1. This writ petition under Article 226 of the Constitution of India has been filed by the State against the Award of Labour Court, Jodhpur dated January 22, 1993 directing the appellant to reinstate the second respondent Kishna Ram Bishnoi with consequential benefits.

2. At the instance of second respondent Kishna Ram Bishnoi (hereinafter referred to as 3 'workman'), a reference was made to the State Government. Workman filed the statement of claim stating that in the year 1982, he was engaged as Helper in village Karda-Diga Water Supply Project. In the year 1985, he was given status of work charged employee. He was being paid a sum of Rs. 548/- per month. However, abruptly by order dated October 19, 1987, he was removed from service. A reply was filed on behalf of Asstt. Engineer, PHED, Sub-Division, Raniwada, Distt., Jalore. It was averred that workman was appointed as Assistant in the year 1982. He was given duty on water pump. He was not regularly attending the duty, as such, a notice was given to him on June 4, 1984. He was given status of work charged employee in the year 1985. He was entrusted with the job of Chowkidar. He did not improve his work and, therefore, he was transferred from village Karda to village Raiseen on Water Supply Project by order dated May 14, 1987. He did not report at Raiseen. He was given notices one after another i.e. on May 20, 1987, May 26, 1987, May 28, 1987, June 6, 1987 and October 9, 1987 but he did not respond to any of these notices. The workman was found to be habitual absentee and as such, he was removed from service on October 19, 1987. The termination was found to be bad by the Labour Court, on the ground that no enquiry was held.

3. It is contended by learned counsel for the petitioner that Labour Court has committed error in setting aside the order of termination only on the ground that no inquiry was conducted. It is also submitted that workman was given notice which was not accepted by him. The learned counsel for the petitioner has brought to my notice Rule 27 of the Rajasthan PWD (B & R) Including Gardens, Irrigation, Water Works and Ayurvedic Departments Work-charged Employees Service Rules, 1964 (hereinafter referred to as 'Rules of 1964'). It provides that a habitual absence without leave or absence without leave for more than 10 days, shall be treated as misconduct. Learned counsel has placed reliance on the decision of Hon'ble Apex Court reported in State of Punjab and Ors. v. Jit Singh and Ors., AIR 1997 SC 29 : 1996 (10) SCC 162.

4. On the other hand, Mr. S.K. Vyas, learned counsel for the workman submits that termination without inquiry into the alleged misconduct, is illegal. He has placed

reliance on the decision of this Court reported in *Hotel Man Singh Palace Ajmer v. Judge Labour Court and Anr.*, 2000-II-LLJ-1241.

5. I have considered the rival contentions. As far as the case cited by Mr. Vyas is concerned, it has no application to the facts of the instant case. In the said case, no domestic inquiry was held and a request was made by the Management before the Labour Court that opportunity may be given to adduce the evidence of misconduct, which was denied. Instant case is squarely covered by the decision of Apex Court in *State of Punjab v. Jit Singh (supra)*. Considering the provisions of Punjab Public Works Department Code, it was held that the employees governed by the said code, are not the public or civil servants. Thus, no inquiry was required to be held. It was also found that employee was guilty of misconduct as he remained absent for more than 10 days.

6. I have gone through the Rules of 1964. The work-charge employee is not entitled to any pension, leave, travelling allowances. He is also liable to be terminated, under the Rules of 1964. Rule also contemplates removal of service on the ground of misconduct. Rule 27 of the Rules of 1964 provides that habitual absence without leave or absence without leave for more than ten days, shall be treated as misconduct.

7. Lethargic people with casualness in approach and no sense of duty cannot be permitted to continue in service. Sooner the department gets rid of such persons, better, it is. It is unfair to large number of unemployed youth to tolerate such persons at the cost of public money in the name of natural justice. The Apex Court in *Chairman, Board of Mining Examination and Chief Inspector of Mines and Anr. v. Ramjee*, AIR 1977 SC 965 : 1977 (2) SCC 256 has observed that natural justice is no unruly horse, no lurking land-mine, nor a judicial care, if fairness is shown by the decision maker to the man proceeded against, the form, features and fundamentals of such essential processual propriety being conditioned by the fact and circumstances of each situation, no breach of natural justice can be complained of. The Court disapproved of unnatural expansion of natural justice, without reference to administrative difficulties. In the instant case, respondent was irregular to his duty on water pump, supplying water. He did not realise, even

absence of half an hour from scheduled duty would cause public inconvenience and anger. He did not report to transferred place. She did not choose to reply any of the notices. In these circumstances, Department was right in removing him from service. They were remiss in tolerating such person at the cost of public inconvenience. Thus, the Labour Court committed error in directing to reinstate the respondent workman.

8. Consequently, I allow this writ petition and quash and set aside the award dated January 22, 1993, passed by the Labour Court. There shall be no order as to cost.

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