

Rajeev Kumar Sharma Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Mar-27-1995

Reported in : 1996(1)WLC216; 1995(2)WLN534

Judge : Arun Madan, J.

Appeal No. : S.B. Civil Writ Petition No. 680 of 1989

Appellant : Rajeev Kumar Sharma

Respondent : State of Rajasthan and ors.

Disposition : Petition dismissed

Judgement :

Arun Madan, J.

1. Heard the learned Counsel for the parties. The question of law which has been raised in this writ petition is as to whether the Cattle Feed Plant which is a unit, of Rajasthan Co-operative Dairy Federation Ltd. and which is being run by the State Government for the purpose of meeting out need of cattle feed falls within the definition of 'industry' as defined under Section 2(j) of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the Act')? The case of the petitioner in short is that he was appointed on 5.5.88 by the respondent No. 2 on the post of Chemist and the petitioner joined his services with effect from 6.5.88 at Nadbai with

respondent No. 3 It has been contended in the writ petition that the petitioner worked on the said post continuously from 6.5.88 to 2.1.89 without any break and thus worked for more than 240 days. The salary of the petitioner for December, 1988 and 2 days of January, 1989 was still outstanding as on date of the filing of the writ petition in this Court. On 2nd January, 1989 the services of the petitioner were terminated. It is the impugned order of termination dated 2nd January, 1989 which has been challenged by the petitioner on the ground that it tantamounts to retrenchment as per Section 2(00) of the Act and hence the workman is entitled for protection of mandatory provisions of Chapter 5-A and 5-C of the Act which includes Section 25F, 25G, 25H and 25T of the Act. It has been further contended in the writ petition that the petitioner was not served with any show-cause notice nor paid any compensation in lieu of notice nor any retrenchment compensation was given to him prior to effecting retrenchment in accordance with the provisions of Section 25F of the Act for the reason that he had completed 240 days of continuous service with the respondents.

2. In the reply to the writ petition filed on behalf of the respondents, it has been specifically contended in para 2 that the petitioner had not worked continuously for the period 6-5-88 to 2-1-89 and that the petitioner had himself absented from duties continuously for 5 to 15 days in the months of May, October, November and December, 1988. In support of this contention the respondents have placed on record a true photostat copy of the Muster-Roll vide Annex-R/1 showing the total number of days for which the petitioner actually worked was only 164 days in all. It has been further contended by the respondents that since the petitioner did not complete 240 days of continuous service hence he was not entitled for the protection of the mandatory provisions of Chapter V-A and V-C of the Act. It has been further averred in para 5 of the reply that the post, on which the petitioner was working, has since already been filled-up by another candidate who was declared surplus by the respondents and as such there is no vacant post of Lab Assistant/Chemist with the respondents, moreover, employment of the petitioner was only temporary and seasonal confined to the famine period of 2 months only and later on the said period was further extended till the famine work was complete and on completion of the said work the services of the petitioner were dispensed with as no longer required by the respondents. In support of this contention

advanced at the bar the learned Counsel for the respondents has contended that the petitioner had not worked for 240 days continuously in a calendar year from May, 1988 to January, 1989 and hence the petitioner is not entitled to invoke the benefit of Section 25F of the Act. The actual working days of the petitioners are as under:

May, 1988 - 20 days

June, 1988 - 21 days

July, 1988 - 26 days

August, 1988 - 25 days

September, 1988 - 26 days

October, 1988 - 21 days

November, 1988 - 9 days

December, 1988 - 15 days

January, 1988 - 1 day

Total - 164 days

3. It has been further contended on behalf of the respondents that the petitioner has got alternative remedy available to him by way of approaching the Labour Court under the Act and without availing the alternative remedy the petitioner is not entitled to invoke the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India.

4. The learned Counsel for the petitioner has placed reliance on the judgment of this Court in the matter of Mohan Lal Kumar v. U.O.I., reported in 1991 (2) RLR 658 but the said judgment is of no help to the petitioner since in the said case the question which had arisen for consideration of this Court was regarding as to whether the State Government could refuse to make reference of the dispute to the Tribunal under Section 10 of the Act merely because in some other matter

similar Controversy was pending before the Apex Court. It was held by this Court that the ground on which the Central Government had refused to take any action on the Conciliation Report is not at all germane to the dispute involved in this case and hence this Court directed the respondents to make reference under the I.D. Act to the appropriate forum where the parties can agitate the question as to whether the establishment in which the petitioner was working is an 'industry' or not.

5. After hearing the learned Counsel for the parties and also having perused the relevant documents placed on the record I am of the considered opinion that the writ petition has no merit and deserves to be dismissed since as against the minimum requirement of 240 days of continuous service, the petitioner had only put in 164 days in all from May, 1988 to 2nd January, 1989 and hence even on merits the petitioner has no case and as such he is not entitled to protection of Section 25F, 25G, 25H and 25T of the Act. I am further of the opinion that no purpose will be served by remanding this case to the Tribunal and the aforesaid case of this Court in the matter of Mohan Lal Kumar (supra) and the judgment of the Constitution Bench of this Court in the matter of Gopal Lal Tell v. State of Rajasthan and Ors. decided on 1st March, 1995 are also of no help to the petitioner.

6. Consequent the writ petition is dismissed with no order as to costs.

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