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Court : Rajasthan

Decided On : Jan-08-1997

Reported in : 1997(2)WLC98; 1997(1)WLN76

Judge : J.C. Verma, J.

Appeal No. : S.B. Civil Writ. Petition No. 3797 of 1995

Appellant : Laxman Singh

Respondent : State of Raj.

Disposition : Petition allowed

Judgement :

J.C. Verma, J.

1. The petitioner has challenged the impugned order. Annex. 3, dated 13.4.94. According to the petitioner. He had worked with the Department for 5 years i.e. from 1.1.86 to 1.4.91. His services were terminated as per the petitioner in violation of the mandatory provisions of the Industrial Disputes Act. A demand was raised on the respondents and the Labour Authorities were moved for referring the matter to the appropriate Labour Court. The Conciliation Officer acting under Section 12 of the Industrial Disputes Act (in short the Act hereinafter) had sent the failure report. On receipt of the failure report, the Government had passed the

impugned order to the fact that it has been found by the Conciliation Officer that the petitioner has not completed 240 days of service. Therefore, no dispute exists between the parties. This order has been challenged by the petitioner.

2. The respondents had filed the reply and has tried to support the order on the ground that in case the petitioner has not completed 240 days of service, as has been found by the Conciliation Officer. There is no existence of the dispute at all. The contention of the respondents is to be straight away rejected on the ground that Section 2A of the Act defines the Industrial dispute as termination, retrenchment and discharge. Admittedly, the services of the petitioner was terminated and has case falls under the term of Industrial dispute. The petitioner had alleged that he has worked for more than 5 years. The Conciliation Officer had given the report, on the record produced by the respondents to the effect that the petitioner had not worked 240 days preceding the 12 months from the. date of termination.

3. Counsel for the respondents states that as a matter of fact there was no termination, but it was a case of abandonment on the part of the petitioner. May it be so, it has been repeatedly held by the Apex Court that so far as the termination of the services of the workman is concerned, the Government authorities cannot adjudicate upon the merits of the case. A reliance has been placed on AIR 1985 SC page 1915, to support the proposition whether the petitioner has completed 240 days or not, is a matter of evidence to be gone into by the appropriate authority, i.e. the Labour Court on the reference being made by the State in this behalf. It is a mis-normer on the part of the Labour authorities, even other-wise to say that if the employee has not completed 240 days. There is no case for adjudication or there does not exist any dispute. Even employee having much less service can definitely raise a dispute and can allege before the appropriate authorities that his rights have been violated by retaining the junior persons and not complying with the provisions of Section 25G and 25H of the Act. The worker can also allege the unfair labour practice of hire and fire policy, being adopted by the employers in certain cases. The workman can also allege in the given case of victimisation and discrimination. Completion of 240 days service only gives and bestows ah additional right on the workman for payment of compensation as

required under Section 25F(b) of the Act, violation of which renders the order of termination as void ab initio, as has been held by the Apex Court. Therefore, the plea of workmen Section 25F(b) of the Act is an extra plea apart from challenging the termination on the other grounds. The employers are to justify the termination of the services, industrial legislation, specifically prohibits the hire and fire policy. Victimisation or unfair labour practice at the whims of the employer. The fact whether services were terminated by the respondent or he had voluntarily abandoned the job is also a fact, which is to be determined by the Labour Court. The Apex Court in 1964 AIR (SC) page 1617 has categorically held that the question of fact or question of law arising out of the industrial matters is to be determined and adjudicated by the Tribunals constituted under the Act and not by the Government.

4. Even if a demand notice is given at a belated stage, it has been repeatedly held by the Courts that the reference cannot be declined on the ground of delay only because in that situation. If any relief is to be curtailed that is also the jurisdiction of the Tribunals constituted under the Act.

5. In the present case, the period of service rendered by the petitioner was to be adjudicated to the effect whether he had completed 5 or 6 years or less than 240 days which could only be proved by leading evidence before the Labour Court. While passing the order Annex. 3 the authorities have totally ignored the existing law and same is to be set aside.

6. A direction is given to the respondents to refer the matter without any further delay within a period of one month from the date of the receipt of this order and in case the matter is referred for adjudication to the appropriate Labour Court, it shall be highly appreciable if the Labour Court decide the matter within six months from the receipt of the reference order.

7. With the aforesaid directions, the writ petition is allowed with a cost of Rs. 500/-.