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Assistant Engineer (the) and anr. Vs. the Judge, Labour Court and ors.

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Court : Rajasthan

Decided On : Jul-19-2005

Reported in : 2006(1)WLC16

Judge : R.P. Vyas, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 25F; [Constitution of India](#) - Articles 226 and 227

Appeal No. : S.B. Civil Writ Petition No. 2852 of 2005

Appellant : Assistant Engineer (the) and anr.

Respondent : The Judge, Labour Court and ors.

Advocate for Pet/Ap. : R.R. Kanwar, Adv.

Disposition : Petition dismissed

Judgement :

R.P. Vyas, J.

1. Heard at admission stage.

2. The Instant petition has been filed by the petitioner with the prayer that the judgment and award dt. 13.5.2002 (Annex. 3) passed by the learned Labour Court, Sri Ganganagar and notification dt. 2.12.2002 (Annex. 4) may be quashed and set

aside.

3. The brief facts of the case are that the respondent No. 2 - workman raised an industrial dispute before the Conciliation Officer. However, the said conciliation proceedings failed and the Conciliation officer submitted failure report to the appropriate Government. The appropriate Government vide notification dt. 27.12.2000 the matter for adjudication to the learned Labour Court, Sri Ganganagar.

4. The learned Labour Court issued notices to the parties. The respondent No. 2 workman submitted statement of claim alleging inter alia that he was appointed on 1.2.1984 on daily wage basis and worked continuously till 31.12.1986. It was alleged that the respondent-workman had completed 240 days in calendar year.

5. It was also alleged that his services of the respondent No. 21 workman were terminated in flagrant violation of mandatory provisions of [Industrial Disputes Act, 1947](#) (for short 'the Act of 1947') in as much as before terminating the services of the respondent - workman neither one month's notice nor salary in lieu thereof was given to the respondent- workman. Even before terminating the services of the respondent-workman, no seniority list was published.

6. Written statement was filed by the petitioners in which it was alleged that one month's notice and salary in lieu thereof to the tune of Rs. 338/- and further compensation to the tune of Rs. 1261/- was sent to the workman's house by demand draft, which was not received by the respondent - workman and therefore, the termination of services of the respondent - workman was brought about in accordance with law and there was no violation of Section 25F of the Act of 1947 and it was further submitted that the respondent No. 2 workman is not entitled to any relief prayed for.

7. It has also been alleged that before raising the industrial dispute, the respondent - workman also filed a writ petition before this Court which was disposed of with a direction to raise the industrial dispute before the conciliation officer.

8. After recording evidence of both the parties, the learned Labour Court, Sri Ganganagar vide its judgment and award dtd. 13.5.2002 (Annex. 3), allowed the claim petition filed by the respondent No. 2 workman and directed reinstatement of respondent- workman with 30% back wages from the date of notification i.e. 27.12.2000.

9. In the instant petition, the main contention of the petitioners is that services of respondent-workman was terminated after following the mandatory provisions of Section 25F of the [Industrial Disputes Act, 1947](#) (hereinafter referred to as the Act of 1947) in as much as one month's salary and compensation in lieu thereof has been given to the respondent-workman.

10. It has also been submitted by the learned Counsel for the petitioners that the industrial dispute was raised by the respondent-workman after inordinate delay. In this regard, it has been submitted by the learned Counsel for the petitioner that the respondent-workman initially filed a writ petition before this Court which was disposed of vide order dtd. 11.1.1994 with a direction to the respondent-workman to raise the industrial dispute before the conciliation officer. However, in compliance of direction of this Court, the respondent-workman raised the industrial dispute on 23.3.1999 i.e. after about 5 years and hence, the claim petition filed by the respondent-workman was liable to be dismissed on this ground alone.

11. I have heard the learned Counsel for the petitioners at length and scrutinised and scanned the material available on record.

12. In my opinion, the findings recorded by the learned Labour Court are based on correct appreciation of evidence. The services of the respondent No. 2 - workman were retrenched on 31.12.1986 and the compensation as required by Section 25F of the Act of 1947 was sent to the workman's house on 6.1.1987. Thus, admittedly, the compensation was not paid to the respondent- workman at the time of his retrenchment, but was sent later on, which is against the mandatory provisions of Act of 1947. Section 25F (b) of the Act of 1947 specifically provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the workman has been paid, at the time of retrenchment, compensation which

shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months.

13. Admittedly, the respondent-workman has not been paid the compensation at the time of retrenchment in compliance of provisions of Section 25F of the Act of 1947. Hence, before retrenching the services of the respondent- workman, mandatory provisions of Section 25F of the Act of 1947 have not been complied with.

14. That apart, the respondent-workman has not been paid compensation while counting the same in conformity with the provisions of Section 25F of the Act of 1947, hence, the provisions of Section 25F of the Act of 1947 have not been complied with in their true letter and spirit.

15. So far as delay of about 5 years in raising the industrial dispute is concerned, it is settled proposition of law that Labour Law is a benevolent legislature and it should not be rejected on mere technical grounds. Similar view has been taken by the Hon'ble Supreme Court in umpteen number of cases wherein there was delay of about 10 to 12 years. Therefore, this argument raised by the petitioner is hereby rejected.

16. The findings of facts recorded by the Labour Court are based on correct appreciation of entire evidence and material available on record and it cannot be said that the findings of the Labour Court are erroneous or perverse or patently unreasonable or based on no material on record. The findings of facts recorded by the Labour Court do not suffer from any basic illegality or infirmity.

17. Apart from that, under Article 227 of the [Constitution of India](#), the High Court cannot interfere with the exercise of the discretionary power vested in the inferior Court or Tribunal, unless its findings are clearly perverse or patently unreasonable. While exercising the powers under Article 227 of the [Constitution of India](#), the High Court does not act as Court of appeal.

18. The High Court's power of revision under Article 227 of the Constitution would be restricted to interference in cases of grave dereliction of duty or flagrant violation of law, and would be exercised most sparingly, in cases where grave

injustice would be done unless the High Court interferes. It cannot be used as appellate or revisional power nor will the High Court, in exercise of this power, substitute its own judgment for that of the inferior Court, whether on a question of fact, or of law, or interfere with the intra vires exercise of a discretionary power, unless it is arbitrary or capricious, or unless there was no evidence at all on which the inferior court could have come to conclusion it did or there was error of finding on a jurisdiction fact.

19. From perusing the judgment and award dtd. 13.5.2005 (Annex. 3) passed by the learned Labour Court, Sri Ganganagar it does not reveal that there is patent illegality and irregularity or error of law apparent on the face of record and the findings recorded by the learned Labour Court are perverse. Therefore the same does not require any interference by this Court under Article 226/227 of the [Constitution of India](#).

20. For the reasons mentioned above, the present writ petition is dismissed. No order as to costs.

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