

Sunil Kumar Vs. State

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Court : Rajasthan

Decided On : Feb-13-1992

Reported in : 1992(1)WLN255

Judge : R. Balia, J.

Appeal No. : S.B. Civil Writ Petition No. 3863 of 1988

Appellant : Sunil Kumar

Respondent : State

Disposition : Petition allowed

Judgement :

R. Balia, J.

1. The petitioner was appointed as daily rated Junior Assistant on 1.12.1986 in Rajasthan Financial Corporation, Sirohl on which post he continued to function on 9.5.1988. By order dated 9.5.88 petitioners, services were terminated without any notice and without any compensation. The petitioner, challenges action of the respondent terminating petitioner's services on two fair grounds:

2. Firstly, it is contended that Respondent Corporation being an industry within the meaning of this Section 2(j) of the Industrial Disputes Act, 1947 and petitioner being a workman under Section 2(s), he is entitled to benefit of provisions of

Industrial Disputes Act. Since, he was in the services of the respondent continuously for the period of more than one year, his services could not have been terminated without complying with the pre-conditions of valid retrenchment under Chapter V-A of the Industrial Dispute Act. He has neither been given a notice of one month as required under Section 25F of the Industrial Disputes Act nor salary in lieu of one month notice. It has further been stated that no retrenchment compensation as required under Section 25F has also been paid. Above facts are not disputed.

3. In view of the undisputed position, the Petitioner is entitled to be reinstated on the first contention as alleged. The termination of petitioner's services by the respondent being in violation of Section 25F are held to be void ab initio and petitioner is entitled to reinstate with full back wages.

4. The second contention raised by the petitioner is that while his services have been terminated, the services of two persons namely Shri Raj Kumar and Smt. Vimla Devi have been regularised on the post as Junior Assistant, though they were appointed later than the petitioner. On this he contends that termination order is violative of provisions of Section 25G also. On this score, the respondent has joined issue. According to the respondent, the requisite qualification for regular appointment of Junior Assistant prescribed under the policy was first class graduate in Arts and Science or second class graduate in Commerce. For Scheduled Caste & Scheduled Tribed candidates, a requisite qualification were relaxed to second class graduate in Arts/Science or graduate in Commerce. The respondent contends while petitioner was from general category and only third class graduate in Commerce, he was not eligible for regular posting as Junior Assistant. It is stated that while Raj Kumar was a member of Scheduled Caste, he was not required to hold second Class graduate degree in Commerce and Smt. Vimla Devi was appointed only as a Librarian, because she was holding diplohia in Librarian Science. From the schedule prescribed qualifications experience and age for direct recruitment placed before me, it does not transpire that any post of Librarian was included in the schedule under the policy. No order of appointment of Smt. Vimla Devi showing that she was appointed as a Librarian has been placed on record. However, it is admitted case of the parties that she does not

possess requisite qualification required for Junior Assistant as per the policy.

5. In view of the fact, that the petitioner succeeds on the first point alone. I do not propose to examine second contention. However, in view of the admitted position of qualifications and provisions of policy placed before me, I deem it proper to direct if anybody including Smt. Vimla Devi has been appointed under designation of as Junior Assistant without holding the requisite qualification as the policy, the petitioner will be treated similarly.

6. The petition is allowed, there will be no order as to costs.

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