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Court : Rajasthan

Decided On : Feb-19-1992

Reported in : 1992(1)WLN286

Judge : Rajesh Balia, J.

Appeal No. : S.B. Civil Writ Petition No. 2397 of 1991

Appellant : Hem Kumar

Respondent : The State of Rajasthan and ors.

Judgement :

Rajesh Balia, J.

1. The facts giving rise to the present petition may briefly be stated as under:

2. The petitioner was appointed as Junior Engineer on daily wages on 27-5-1987 by the District Rural Development Agency, Bhilwara for discharging the duties at Panchayat Samiti, Raipur under Special Schemes Organisation, Jaipur. It is not disputed that at the relevant time, the scheme in progress was a forerumer to Jawaher Rozgar Scheme, into which it ultimately merged. By order dated 22-2-1990, the services of the petitioner were terminated, while the posts under Jawahar Rozgar Youjna were still continuing: which led the petitioner to file the writ petitioner No. 1656 of 1990. The said petitioner came to be decided by this

Court on 23-1-1 991. The Court held that the petitioner was being continued under various schemes, however, since his appointment order did not specifically state that his services will come to and with the expiry of the scheme, the petitioner's case cannot be considered to fall within the purview of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 (for short, ' the Act of 1947') and finding the termination of the petitioner's services in violation of provisions of Section 25F of the Act of 1947; the termination of the services of the petitioner was set aside. The petitioner was directed to by re- employed. He was further awarded 1/4th of the back wages. In pursuance of the said order, the petitioner was reinstated on 28- 1-91 and was paid 1/4th of the back wages upto 27th January, 1991. Again by order dated 7-5-1 991, petitioner's services have been terminated by stating that since the 254 posts of Junior Engineers under Jawahar Rozgar Yojna have been abolished with effect from 28-2-1 991, the Services of all Junior Engineers under Jawahar Rozgar Yojna were terminated. As a result thereof, petitioner's services were also terminated by order passed by the Collector, D.R.D.A., Bhilwara. The petitioner challenged this order on the ground that his services have again terminated without following the procedure provided under the Act of 1947.

3. Learned Counsel for the respondents has contended that the petitioner was appointed and continued under Rural Employment Schemes prior to commencement; of Jawahar Rozgar Yojna and on commencement of Jawahar Rozgar Yojna, the earlier rural employment schemes were merged and the became employee under Jawahar Rozgar Yojna. Since all the posts of Junior Engineers under this very scheme have been abolished, on abolition of posts in rural employment scheme, he is not entitled to reinstatement nor he is entitled to regularisation on the post. He places reliance on JT. 1992 (1) S.C. 394, wherein their Lordships of the Supreme Court have repelled the claim for reinstatement and regularisation of employees under Jawahar Rozgar Yojna at Delhi Development (Horticulture) Department of Delhi Administration.

4. This Court has also taken the view in S.B. Civil Writ Petition' No. 5368 of 1990 Riyaz Ali v. State of Rajasthan and Ors, and 36 connected cases, decided on October, 7, 1991 and further in SB. Civil Writ Petition No. 2568 of 1989 and connected cases, decided on 1 7 February, 1992 that persons employed directly

under Jawahar Rozgar Younja by D.R.D.A. are not entitled to relief of reinstatement. In view of the aforesaid decisions of Hon'ble Supreme Court and of this Court which are in accordance with aforesaid Supreme Court decision, the relief of reinstatement is not possible to be granted to the petitioner, inasmuch as the fact that all the 254 posts of Junior Engineers under Jawahar Rozgar Yojna stand abolished and such abolition of the posts has not been found to be malafide. In the absence of any posts to which the petitioner could be reinstated under his employer, the relief of reinstatement cannot be allowed.

5. This brings he to consider, the question whether the petitioner's services have validly been terminated and if not, to what relief he is entitled to. It is contended by the learned Counsel for the petitioner that in view on decision of this Court in his earlier petition dated 23-1-1 991, that he is governed by Industrial Disputes Act, 1947 and the provisions of Section 25F applies to his appointment, it is not open to be contended by the respondents and when the petitioner was reinstated with 1/4th back wages, his services have been treated to be continuous and there remains no dispute about the fact that this services have been reinstated in accordance with Section 25F of the Act of 1 947, he is entitled to seek a declaration to the effect that termination of his services is illegal. While it is true that the court in the earlier petitioner has said that the order of appointment does not say that the appointment of the petitioner is under any particular scheme only and it will be subject to expiry of the scheme, it may be noticed that from the order, it was in the absence of plea and, in fact, that plea did not been exists, that termination of services were as a result of scheme or abolition of post. However, the circumstances have considerably changed. The termination which has now been brought about is as a result of abolition of all the posts created under the particular scheme. This fact is not disputed. Law has now been enunciated by the Supreme Court, after the aforesaid Judgment, that no permanent right of employment is created for the persons employed under specified schemes for rural employment of the nature of Jawahar Rozgar Yojna. This necessarily brings to fore that the appointments given under these scheme are necessarily subjected to the conditions that they will not go beyond the scope of the scheme itself and has to be prima facie treated as fixed term employment, expiring with abolition of posts created under the scheme. It may also be noticed that in Riyaz Ali's case

(supra), the question of entitlement under the Industrial Disputes Act have been left open to be determined by forum under Industrial Disputes Act and not under Article 226 of the Constitution of India.,

6. In view of these circumstances, I am not inclined to interfere in the matter by invoking Article 226 of the Constitution of India. I leave the petitioner to prospectus his remedy, if any, available under the Act of 1947 by an appropriate authority under the said Act.

7. The petitioner accordingly sends disposed off with aforesaid observations.

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