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SooperKanoon Citation : sooperkanoon.com/768489

Court : Rajasthan

Decided On : May-10-1989

Reported in : 1989(2)WLN454

Judge : D.L. Mehta and; S.S. Byas, JJ.

Appeal No. : D.B. Civil Writ Petition No. 3868 of 1988

Appellant : Devi Singh

Respondent : State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

S.S. Byas, J.

1. In this petition under Article 226 of the Constitution the petitioner assails order Ex. 10 dated October 10, 1988 by which the respondent No. 2 viz. The child Development Project Officer, Wair terminated his services.

2. Material facts may be noticed in brief. The petitioner was appointed as a Chowkidar vide order Ex. 1 dated 26-8-1986 by respondent No. 2 viz. the child Development Project Officer, Women Child and Nutrition Department on daily wages for a period of three months. He joined the duty or that very day, and continued to work. The term of his service was extended from time to time by

orders Ex. 2 to Ex. 9. He continued to work under these orders His services were terminated by the impugned order Ex 10 dated 10 10-1988 w.e.f. 12-10-1988. The petitioner challenges the termination of his service on the grounds that the Department of Women Child and Nutrition is an industry and he was a workman there in. The termination of his services amounts to retrenchment as defined in the Industrial Disputes Act, 1947 (for short 'the Act'). The retrenchment was made without following the mandates of Section 25F of the Act No notice of requisite period was given to him nor wages in lieu of the period of notice nor compensation were paid or offered or tendered to him. The retrenchment is thus had and illegal. It is prayed that She petitioner should be forthwith reinstated with back wages.

3. The petition was opposed by the respondents. In the return filed by them, it was admitted that the petitioner worked as Chowkidar from 26 8-1986 to 11-10-1988 and thus worked for more than 240 days. It was also admitted that the provisions of Section 25F of the Act were not complied with. The defence is that the Women Child and Nutrition Department is no; an industry. Even if it is taken to be an industry, the petitioner is governed by the Rajasthan Service Rules (RSR) As such he cannot taken to be a workman as defined in the Act. The provisions of the Act were therefore, not attracted and hence should not be applied.

4. The fact that the petitioner bad actually worked under respondent No. 2 for a period of more than 240 days during the period of 12 calender months preceding the date 10 10-1988 on which his services were terminated by order Ex. 10 and that the provisions of Section 25F of the Act were not complied with are not in dispute. These facts, therefore, should not be touched.

5. The question which arise for deliberation and decisions are:

(1) Whether, the Department of Women Child and Nutrition should or should not be taken to be an industry as defined in the Act and

(2) If the said department is an industry, whether the petitioner was a workman there in ?

6. We have beard the learned Counsel for the petitioner and the learned Addl. Govt. Advocate at length,

7. We shall take the first question to start with. Learned Counsel for both the parties made available to us the entire literature relating with the activities, functions achievements etc. of the Department of Women Child and Nutrition, Govt. of Rajasthan published by this department itself. We have carefully gone through the literature and we have no hesitation to arrive at the conclusion that the department of Women Child and Nutrition is an industry. The activities of the department as mentioned in the pamphlets 'Women Power Struggle and Success' issued by the department include the economic programmes such as loan facilities to urban, women for setting up industries, sitting up small or cottage industries and providing loans for them such as loan for domesticating buffaloes and loan for looms for weaving cloth etc The activities also include the steps to be taken to improve the nutritional and health status of children below the age of six years, to lay the foundation for the social development of the child, to reduce the incidence of mortality, morbidity, malnutrition and school drop out etc as mentioned in the Manual on Integrated Child Development Services issued by the national institute of Public Cooperation and Child Development, New Delhi. The activities and functions of the Women Child and Nutrition department are for the amelioration of the child and women by providing all possible help to them including that of seeking or providing employment to the women All there activities and functions in our opinion are sufficient to make the department of Women Child and Nutrition an industry as defined in the Act.

8. No doubt the department of Women Child and Nutrition is a Govt. department. But on that account only, it does not cease to be an industry. The functions of the State today are not confined only to what are generally known as sovereign or regal or Government functions such as enactment of laws, administration of law and justice, maintaining law and order etc. The functions of State today include not only the aforesaid activities but also welfare activities such as irrigation, education, medical, transport etc. In the well known case of Banglore Water Supply (1978 (2) SCC 213) as to what is on industry was dealt with at length It was observed:

Sovereign functions strictly understood alone qualify for exemption, not the welfare activities on economic adventures undertaken by Government or statutory bodies.

Even in departments discharging sovereign functions if there are units which are industries and they are substantially severable then they can be considered to come within sec 2(j);

Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered there by.

9. The above observations were reiterated and affirmed alter on by the Supreme Court in the Des Raj's case (1988) 2 SCC 537).

10. Thus sovereign functions alone qualify for exemption from the comprehensive definition of industry given in the Act. Only the regal and sovereign activities are outside the scope of Section 2(j) of the Act.

11. The problem which commonly comes for judicial scrutiny is as to what activities of the State are regal or sovereign and which are not One of the tests which is generally adopted to find out whether the activity operated by the Government is or is not an industry is 'can such activity be carried on a private individual or group of individuals' Vide Hospital Mazdoor Sabha's case (1961 L L..1, 251). If the answer is in 'yes', such an activity comes within ambit of 'industry' as defined in the Act.

12. Here in the instant case in our hand, we have discussed above that the activities of the Women Child and Nutrition department relate to the development and welfare of the child and women. There are the welfare activities carried on by the Government These activities can be easily carried on by an individual or group of individuals. These activities, therefore, bring the department of Women Child and Nutrition within the ambit of industry as defined in the Act.

13. Coming to the next question as to whether the petitioner should or should not be a workman, it was argued by the learned Counsel for the petitioner that the petitioner was employed as a Chowkidar on daily wages basis. The definition of 'Workman' given in the Act is wife and comprehensive. He should, therefore, be

taken to be a workman under the Act.

14. The contention of the learned Addl. Govt. Advocate on the other band is that the petitioner is governed by the Rajasthan Service Rules (R S.R.) and as such as should not be taken to be a workman as defined in the Act. We have given our thoughtful consideration to the rival submissions.

15. It is true that the petitioner is governed by the Rajasthan Service Rules. These rules have been framed under Article 309 of the Constitution. The Proviso of Article 309 of the Constitution. The Proviso of Article 309 enables the Government of State to frame rules which become the condition of service

16. The clinching issue how ever, is whether a Government servant who is governed by the Rajasthan Service Rules ceased to be a workman simply because he is governed by these Rules. We have a few decisions of our own High Court on the point.

17. In State of Rajasthan v. Kailash Chandra Jain and Ors. 1972 WLN 533, a Division Bench of this Court took the view that if one was a civil servant governed by the Rajasthan Service Rules and also a workman as defined in the Act, he does not cease to be a workman under the Act simply because he is a civil servant.

18. In State of Rajasthan v. Gopal Lal 1981 Lab. I.C. 744, the view taken was that if one was a workman as defined in the Act, he does not cease to be so simply because he is governed by Rules framed under Article 309 of the Constitution.

19. In Jaswant Singh v. Union of India : (1979)IILLJ371SC , the workman were the work-charged employees in Beas Control Board or Beas Construction Board or Beas Construction Board governed by the Central Civil Servants (temporary service) Rules, 1965. They were thus employees of the Centra Government. A question arose whether such employees can be treated to be workman under the Act. It was held:

Even Government servants entitled to protection of Article 311 and in respect of whom rules are framed under Articles 309 and 310 governing their conditions of

service, would be entitled to the protection of the Act if they are workman and are employed in the activity which answers the definition of industry.

In the instant case, the petitioner was appointed as a Chowkidar. Though he is governed by the Rajasthan Service Rules, he does not cease to be a workman under the Act. He is entitled to the benefits and the prosecution Under Section 25F of the Act.

20. In the result, we allow the petition, quash the impugned order Ex. 10 dated 10-10-1988 and direct the respondents to forthwith reinstate the petitioner with full back wages.

21. No order as to costs.