

State of Rajasthan and anr. Vs. Shri Amara and anr.

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Court : Rajasthan

Decided On : May-04-2000

Reported in : 2000(3)WLN145

Judge : Rajesh Balia and; Mohd. Yamin, JJ.

Appeal No. : D.B. Civil Special Appeal No. 361 of 2000

Appellant : State of Rajasthan and anr.

Respondent : Shri Amara and anr.

Disposition : Appeal Dismissed

Judgement :

Rajesh Balia, J.

1. Heard learned Counsel for the appellant.

2. The petition filed by the appellant before this Court challenging the award made by the Labour Court, Bhilwara was dismissed by the order under appeal, finding that no case is made out for issuing a writ of certiorari. The respondent-workman has raised an industrial dispute about his alleged termination of service from 16.8.1988 on the ground that he was continuously working with the appellant since 1st August, 1985 until 16.8.1988 when his services were terminated and he has actually worked for more than 240 days in 12 calendar months immediately

preceding the alleged date of termination. His services have been terminated unceremoniously without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947. The retrenchment could not have been brought about without following the procedure prescribed under the said Act. The dispute was referred to the Labour Court by the appropriate Government. The order of reference reads as under-

D;k lgk;d vfHk;Urk lkoZtfud fuekZ.k foHkkx mi[k.M izFke fpRrk SM+x< }kjk Jfed
vejk dks ,d o'kZ es 273 fnu dh Isok iwjh dj ysus ij Hkh Isok Ik`Fkd djuk mfpr gS A
;fn ugh rks Jfed fdl jkgr dks ikus dk vf/kdkjh gSA

From the aforesaid order of reference it is apparent that it is on assumption that workman has worked, for 270 days in 12 calendar months preceding the date of termination. In reply to the claim filed by the workman, the only plea taken by the petitioner-appellant was that no written order was given to the workman and he has not worked for 240 days in twelve months and therefore it was required to give a notice before termination of his services under the provision of Industrial Disputes Act 1947. The provisions of Section 25F do not apply in the aforesaid circumstances. Even in the affidavit of the employer. Assistant Engineer except denying that the workman has not completed 240 days continuous work, he is not entitled to any relief, no other plea was taken. Thus whether the termination amounts to retrenchment, was never disputed. Only issue raised was about actual working of the workman for more than 240 days during last 12 months and non-issuance of any written order.

3. The Labour Court on consideration of material before it found that the workman has completed 270 days in twelve calendar months prior to termination of his services and his services have been terminated in violation of Section 25F of the Industrial Disputes Act. He therefore, ordered reinstatement with back wages excluding the period for which he has been offered employment after his retrenchment. The learned Single Judge has not found any error in the order which can be corrected by issuing a writ of certiorari in exercise of extraordinary jurisdiction.

4. Learned Counsel for the appellant pointing out two assertions made in the writ petition urged that workman being in a specified project and that project having come to an end, provisions of Industrial Dispute Act particularly relating to retrenchment do not apply in the present case in view of provision of Section 2(oo)(bb).

5. The plea of the learned Counsel for the appellant has to be rejected. There is no whispering in the pleadings and contentions before the Tribunal to lay any factual foundation for making suggestion that the appellant-workman was appointed for a fixed term on a particular project whose services were liable to be terminated on expiry of the period of fixed term appointment or completion of project. The totally new facts on the basis of which claim of the workman is said to be denied cannot be permitted to be raised for the first time in writ petition. Moreover the plea now raised is contradictory to plea taken before the Tribunal in reply to claim that no written order was given to the workman. Thus in the very nature of things that workman was appointed as daily rated casual worker, goes against the theory of fixed term appointment on a particular project.

6. Accordingly this appeal fails and is hereby dismissed in limine.