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Chief Engineer, State of Rajasthan and anr. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Oct-30-2001

Reported in : [2002(93)FLR782]; (2002)IILLJ971Raj

Judge : Rajesh Balia and; Harbans Lal, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 25F

Appeal No. : D.B.C. S.A. No. 23/1996

Appellant : Chief Engineer, State of Rajasthan and anr.

Respondent : State of Rajasthan and ors.

Advocate for Def. : K.R. Choudhary, Adv.

Advocate for Pet/Ap. : Rajesh Joshi, Adv.

Disposition : Appeal dismissed

Judgement :

Rajesh Balia, J.

1. Mr. K.R. Choudhary appears for respondent No. 3. Thus, the service is complete.

2. Heard learned counsel for the parties.

3. Mr. Rajesh Joshi, counsel appearing for the appellants has contended that the order passed by the learned single Judge dismissing, the writ petition is erroneous because it has not taken into consideration the fact that an officer was not supposed to know the identity of the person, only for the purpose of putting his signature on the document alleged to be forged and not issued by the Department.

4. The appeal has arisen in the circumstance that respondent No. 3 was employed by the appellants between June 4, 1985 to November 11, 1987. Thereafter his services were terminated by an innocuous order. The order was subjected to adjudication by way of industrial dispute before the Labour Court, Jodhpur.

5. The contention of the respondent-workman was that his services have been terminated without giving any notice and compensation and without affording him an opportunity of hearing. He has been in continuous employment under the appellants for more than two years and the termination has not been effected in accordance with the provisions of Chapter V-A of the [Industrial Disputes Act, 1947](#). More specifically, it was urged, that no compliance were made of Section 25F of the Act of 1947. The present appellants took the plea that no appointment order was ever issued to the respondent-workman by the Department and, he was discharging duties under a forged appointment letter issued to him. It was also the case of the present appellants that since no employer-employee relationship existed, it was neither required of them to hold an enquiry before terminating the services nor to comply with the other provisions of the Act of 1947. In support of their claim that no appointment order was issued by the office of the Chief Engineer they had produced one of their officials as witness.

6. The Labour Court finding that the said witness had referred to a previously instituted enquiry by the Chief Engineer in which, the appointment order of the workman was found to be forged but neither the Chief Engineer was produced as witness nor the said Enquiry Report was produced before the Court. The order of appointment was issued on the official docket under the signatures of Superintendent Engineer. It was not proved by the witness as to who was the Superintending Engineer on the date of issue of appointment order and that the order did not bear the signatures of the officer with whose signatures he was

aware nor the concerned officer who is purported to have issued the appointment order was produced to prove that the order is not issued by him. In those circumstances, it cannot be said that the Labour Court has erred in any manner in reaching its conclusion in negating the plea of appointment through forged appointment order.

7. In that view of the matter, the statement of Shri Dinesh Govil was not sufficient to uphold the plea that the appointment order was a forged document. It was also not in dispute that the respondent-workman has actually discharged the work under the appellants for more than two years during the period aforesaid and no compliance of the provisions of the Industrial Disputes Act relating to retrenchment has been made. In view of these findings of the Labour Court held the termination order to be invalid and awarded back wages with effect from the date of reference. Moreover, there is no dispute that for the period claimed by the workmen for which payment of wages have been made. Thus, relationship of employer-employee was duly proved by the fact that the respondent No. 3 had discharged the duty for the appellants under its control and supervision, for remuneration. In these circumstances, termination of service could have taken place either by way of retrenchment simpliciter or by finding in an appropriate enquiry that he has gained employment by dubious method.

8. This award dated September 21, 1995 was not interfered with by the learned single Judge by agreeing with the conclusions reached at by the Labour Court.

9. For retrenchment compliance of the provisions of Industrial Disputes Act was necessary which has not been done, about which there is no dispute. The aforesaid circumstances speaks by itself that so far as the appellant's plea about employment through forged document was concerned, the same was negated on appreciation of evidence by the Labour Court which could not be said to be perverse and is liable to be interfered with in writ of certiorari. There being non-compliance of the provisions of Industrial Disputes Act, the termination order could not be held to be a valid retrenchment also.

10. In these circumstances no case is made out for interference. The appeal fails and is hereby dismissed.

11. No order as to costs.

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