

State Vs. Harchad

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Court : Rajasthan

Decided On : May-07-2001

Reported in : [2001(90)FLR744]; (2001)IILLJ1593Raj

Judge : S.B. Chauhan, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 25H; Rajasthan Industrial Disputes Rules, 1957 - Rule 77

Appeal No. : W.P. No. 823/2001

Appellant : State

Respondent : Harchad

Advocate for Def. : K.S. Yadav, Adv.

Advocate for Pet/Ap. : A.K. Khatri, Adv.

Disposition : Petition dismissed

Judgement :

B.S. Chauhan, J.

1. The instant writ petition has been filed against the impugned award dated April 4, 2001 (Annexure 4) by which the claim of the respondent workman had been accepted by the Labour Court.

2. The facts and circumstances giving rise to this case are that the respondent workman claimed that he had worked from February 7, 1991 on daily wages and his services stood terminated vide order dated September 30, 1991 in violation of the provisions of the Industrial Disputes Act. The appropriate Government vide order dated September 3, 1993, made the following reference:

'Whether the services of the workman Harchad had been terminated vide order dated September 30, 1991 in accordance with law and if not, to what relief he was entitled.'

3. After considering the entire evidence led by the parties before the Labour Court and hearing their arguments, the Court came to the conclusion that the workman had not completed 240 days in a calendar year counting backward from the date of termination. However, the employer did not maintain any seniority list as mandatorily required under Rule 77 of the Rajasthan Industrial Disputes Rules, 1957. More so, the alleged junior to him had been retained in service and after terminating the respondent workman, certain other persons namely, Hansraj, Avtar Singh etc. had been given appointment. Therefore, there was a flagrant violation of the provisions of Section 25-H of the Industrial Disputes Act also.

4. In view of the above, the Labour Court made the award in favour of the workman quashing the order of termination and further directed to treat the workman in continuous service with 50% of back wages from the date of reference till the date of award.

5. In *Samishta Dubey v. City Board, Etawah*, AIR 1999 SC 1056 : 1999 (3) SCC 14 : 1999-I-LLJ-1012, the Hon'ble Supreme Court has held that even if the provisions of Section 25-F had not been violated and the workman had not completed 240 days in a calendar year counting backward from the date of termination and there is a violation of the provisions of Section 25-F or 25-H, the termination becomes bad. More so, in *Vikramaditya Pandey v. State of U.P.*, 2001-I-LLJ-701 the Apex Court has held that in case the retrenchment/termination is found to be bad, the workman becomes entitled to reinstatement and full back wages with continuity of service unless employer satisfied the Labour Court that he had been gainfully been employed somewhere else. However, in the facts and

circumstances of the case, the Court can award a lesser amount of back wages.

6. In the instant case, as the present petitioner did not make any assertion on the ground of gainful employment of the respondent workman, no fault can be found with the award.

7. The petition is, therefore, devoid of any merit and it is accordingly dismissed. The award may be complied with within a period of three months from today if it had not already been complied with.

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