

State of Rajasthan and anr. Vs. Rawat Singh and anr.

State of Rajasthan and anr. Vs. Rawat Singh and anr.

SooperKanoon Citation : sooperkanoon.com/771429

Court : Rajasthan

Decided On : Dec-17-2007

Reported in : [2008(118)FLR152]; (2008)IIILLJ659Raj

Judge : P.B. Majmudar, J.

Appellant : State of Rajasthan and anr.

Respondent : Rawat Singh and anr.

Disposition : Petition allowed

Judgement :

P.B. Majmudar, J.

1. By filing this writ petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the award dated June 6, 2000 passed by the Labour Court, Bharatpur in case No. 224/1993. By the impugned order, the Labour Court allowed the reference and passed the order of reinstatement of the respondent No. 1-workman w.e.f. January 1, 1991 and also ordered that the respondent-workman shall be entitled to one-third of the amount of back-wages from January 1,1991 till the date of the award.

The respondent-workman raised an industrial dispute on the ground that his services were illegally terminated by the department from January 1, 1991 even

though he was regularly recruited by an order dated January 15, 1979 as Cattle Guard in the Forest Department at Karauli. The dispute was referred by the competent authority for adjudication before the Labour Court on the following terms:

Whether the decision of the Deputy Conservator of Forest, Karauli, District Sawaimadhopur dated January 1, 1991 in terminating the services of the petitioner legal and valid? If not, for what relief the workman is entitled for?

2. On the reference of the said issue, the Labour Court adjudicated the same and passed the impugned award of reinstatement w.e.f. January 1, 1991 with one-third back-wages from the said date till the date of the award.

3. Learned Dy. G.A. Mr. Sharma vehemently submitted that the order of the Labour Court is beyond the scope of reference as the issue was referred whether the termination order dated January 1, 1991 is legal and valid and as against that the Labour Court has found that the services of the workman were terminated in 1984 and on that basis the Labour Court passed the award that the petitioner should be reinstated in service w.e.f. January 1, 1991. Mr. Sharma also further pointed out that even otherwise the Department of Forest cannot be said to be an industry, therefore, even the reference could not have been adjudicated. He further pointed out that when the Labour Court has found that the services of the concerned workman were terminated in the year 1984, the reference which was made in the year 1993 is belated one and on that basis no relief should have been granted.

4. Learned Counsel for the respondent No. 1-workman Mahesh Chand Gupta on the other hand submitted that even though the concerned workman was serving upto the year 1991, he was not permitted to sign the muster roll, therefore, it is presumed that he was serving upto the year 1991 and the order of the Labour Court is not required to be interfered with by this Court. Mr. Gupta further submitted that normally the award of the Labour Court is not required to be interfered with unless it is found that it suffers from any perversity, therefore, the impugned award of the Labour Court may be confirmed and the writ petition may be dismissed.

5. I have heard both the learned Counsels at length and also gone through the award of the concerned Labour Court.

6. It is not in dispute that the petitioner was appointed as a Cattle Guard in the Forest Department from January 15, 1979. However, according to the workman, he was not permitted to sign the Muster Roll after November 30, 1984. As against that, the say of the Department is that from November, 1984, the petitioner himself abandoned the duty and never tried to attend the duty thereafter, therefore, there is no question of taking his signature on the Muster Roll. It is submitted by learned Dy G.A. Mr. Sharma that after 1984, even no salary was paid to the respondent-workman nor he made any attempt to report on the duty and suddenly after a considerable time, he raised this industrial dispute in the year 1993. In this connection, the finding of the Labour Court is required to be considered. In this connection, the Labour Court has found in para 7 of its award that the concerned workman received salary upto November 30, 1984 by signing the Muster Roll. In para 8 of the award, the Labour Court has found that the concerned workman worked continuously from January 15, 1979 to November 30, 1984 and for that period he can be said to be continued in service, but for the subsequent period from April 1, 1984 to December 31, 1990, there is nothing on record to show that the workman has worked for that, period without signing the Muster Roll. The Labour Court has found that it is not possible to believe the say of the workman that he continued to work without signing the Muster Roll and that the concerned workman has, served for six years without signing the Muster Roll or without making any complaint in this behalf. The Labour Court also found that the concerned workman has himself stated in his evidence that his name was not in the Muster. Roll after November 30, 1984 and that the workman has falsely tried to make out his case that he was in service upto December 31, 1990. The Labour Court has also found that when the workman himself stated in his evidence that his name is not appearing in the Muster Roll after November 30, 1984, there is no sense in asking the department to produce the Muster Roll for the period from December 1, 1984 to December 31, 1990. The Labour Court accordingly found that it is not proved that the services of the workman were terminated w.e.f. January 1, 1991, but it is found that the same were terminated w.e.f. December 1, 1984. The Labour Court found that the workman has tried to raise the industrial

dispute after about 9 years from December 1, 1984 and tried to give false coverage is to his plea. This finding is recorded in para 9 of the award. However, the Labour Court came to the conclusion that since there is violation of provisions of Section 25-F of the Industrial Disputes Act, the concerned workman is entitled to be reinstated in service from January 1, 1991 with one-third of the back-wages from that date till the date of the award.

7. Reading the order of the Labour Court, it is absolutely clear that it totally suffers from non-application of mind. On the one hand the Labour Court came to the conclusion that the say of the workman that his services were terminated from January 1, 1991 is not believable and on other hand the Labour Court has said that the workman is entitled to be reinstated in service from January 1, 1991. If the Labour Court was of the opinion that the services of the respondent-workman were terminated illegally from December 1, 1984, the Labour Court should have considered the question of reinstatement from that date, but instead of Labour Court has passed the award that the petitioner should be continued in service from January 1, 1991, Apart from that aspect, the order of the Labour Court is even contrary to the reference made as the Labour Court was required to give decision as per the reference and the reference which was made to the Labour Court was to be effect that 'Whether the decision of the Deputy Conservator of Forest, Karauli, District Sawaimadhopur dated January 1, 1991 in terminating the services of the petitioner legal and valid?' When the Labour Court has found that the services of the respondent-workman were never terminated from January 1, 1991 and it was found that his services were terminated w.e.f December 1, 1984, there is no question now of granting reinstatement w.e.f. January 1, 1991, as the Labour Court itself found that the workman was not even in service after November 30, 1984. The Labour Court has found that the workman has tried to create false case by stating that he was in service upto January 1, 1991. The Labour Court has, therefore, given absolutely contradictory findings and passed an award contrary to the evidence on record and] committed an error on the face of record. It is required to be noted that even as per the say of the workman, he had signed Muster Roll only upto December 1, 1984 and the Labour Court has not believed his say that after December 1, 1984, without signing the Muster Roll, he has continued in service and when it has now been established that the services of the workman

have been terminated from December 1, 1984, the reference on the face of it is very belated one as it was made after 9 years. Apart from the aforesaid aspect, the concerned workman tried to make out a false case that he was in service upto the year 1991 and, therefore, also the reference was required to be rejected. Though it is a well-settled position of law that in a given case, even a belated claim can be considered by the Labour Court, however, in the instant case, the concerned workman tried to make out false case as observed by the Labour Court itself and it has been found that the services of the workman were terminated in the year 1984 and he made the reference in the year 1993, as observed by the Labour Court in para 9 of its award.

8. Considering the aforesaid aspect of the matter, it is clear that the Labour Court has decided the matter beyond the reference made to it and has given contrary findings. Since the concerned workman has slept over for a considerable period of time and now when it is established on facts that his services were terminated as back as in the year 1984, the Labour Court should not have passed the impugned award reinstating the workman in service w.e.f. January 1, 1991 with consequential benefit of one-third of back-wages. Considering the aforesaid aspect, the award of the Labour Court clearly suffers from non-application of mind and the same is passed contrary to the findings given by the Labour Court itself in para 8 of its award. Considering the aforesaid aspect, no relief can be given to the respondent-workman as even otherwise his services were terminated in the year 1984 and he has not given any justifiable reason for approaching the Authority under the Industrial Disputes Act after a considerably long delay of 9 years. Even otherwise, the say of the department that the respondent-workman has abandoned the service in the year 1984 seems to be more probable, otherwise the respondent-workman could have made attempt to join the duty.

9. Considering the aforesaid aspect, the award of the Labour Court is required to be quashed and set aside and the same is accordingly quashed and set aside and the writ petition is allowed with no order as to costs.

10. In view of the decision in the writ petition, no order is required to be passed in both the tagged contempt petitions and the same are disposed of accordingly.

11. Considering the aforesaid aspect, the wider question whether the Forest Department should be considered as an industry or not is not required to be gone into.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com