

Mohd. Iqbal and ors. Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Oct-31-2002

Reported in : 2003(1)JKJ101

Judge : R.C. Gandhi, J.

Acts : Industrial Dispute Act

Appeal No. : SWP No. 114/02

Appellant : Mohd. Iqbal and ors.

Respondent : State and ors.

Advocate for Pet/Ap. : R.P. Sangra and; S.K. Anand, Advs.

Disposition : Petition dismissed

Judgement :

1. Petitioner seeks a direction to respondents to reinstate him in service as casual laborer as he has put in 240 days in a year in a project. He also seeks regularization of service under SRO 64/94. It is admitted by the petitioner in his representation to the Minister for Forests which has been annexed as annexure- B to this petition that he was worked in social Forestry Department as daily wager from 8.1.1986 to ending 1989. He was disbanded in January 1990. Thereafter the petitioner has not been engaged. On the strength of this evidence, petitioner seeks

re-instatement having work for a period of 240 days in the years 1986 to 1989.

2. Petitioner is not a daily rated worker, therefore, he is not entitled to the relief for regularisation of service under SRO 64/94. He does not satisfy the requirement for Rule - 4 of SRO 64 which mandates that a daily rated worker who has completed seven years as daily rated worker is entitled to seek regularisation.

3. So far as claim of the petitioner for re-instatement having worked for 240 days is concerned, the petitioner has approached the court after about 11 years without explaining the reason, therefore, petitioner would have moved the Industrial Labour Tribunal at an appropriate time and sought redressal of his grievance. Petitioner on that count has no case being belated as laid down by the Supreme Court in case titled Himanshu Kumar v. State of Bihar reported in 1997 (4) SCC 391 hold that:-

'They were appointed in the cooperative Trading Institute, Deoghar by its Principal. They are admittedly daily wage employees. Their services came to be terminated by the Principal. Calling that termination in question, they filed a writ petition in the High Court. The main grievance of the petitioners before us is that termination of their services is in violation of Section 25F of the Industrial Disputes Act, 1947. The question for consideration, therefore, is; whether the petitioners can be said to have been 'retrenched' within the meaning of Section 25F of the Industrial Disputes Act, Every department of the government cannot be treated to be 'industry'. When the appointments are regulated by the statutory rules, the concept of 'industry' to that extent stands excluded. Admittedly, they were not appointed to the posts in accordance with the rules but were engaged on the basis of need of the work. They are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be constructed to be a retrenchment under the Industrial Disputes Act. The concept of 'retrenchment' therefore, cannot be stretched to such an extent as to cover these employees. The learned counsel for the petitioners seeks to contend that in the High Court, the petitioners did not contend that it is a case of retrenchment but termination of their services is arbitrary. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary.'

4. The apex court has reiterated this view in 1997 (5) SCC 434 holdings that:-

'2. The respondent was appointed on daily wages in a project taken by the appellant on 25.7.1986. The respondent was discharged from the work on its closure on 15.1.1989. Thereafter, he approached the Labour Court held that the respondent is entitled to continuity of service with back wages since it amounts dismissal. The order was confirmed by the learned Single Judge of the High Court subject to payment of 50% of the back wages. Writ Appeal No878 of 1996 was dismissed by the Division Bench. Thus, this appeal by special leave.

3. It is now well settled legal position that the Irrigation Department and Telecommunication Department are not an 'industry': within the meaning of definition under the Industrial disputes Act as , held in Union of India Vs Jal Narain 1995 Supp (4) SCC 672 and in state of H.P Vs Suresh Kumar Verma (1996) 7 SCC 562. The function of the public welfare of the state is a sovereign function. It is the constitutional mandate under the Directive Principles, that the government should bring about welfare state by the executive and legislative actions. Under these circumstances, the state is not an 'industry' under the Industrial Disputes Act. Even otherwise, since the project has been closed, the respondent has no right to the post since he had been appointed on daily wages. It is brought to our notice that the respondent has been reinstated. The order of the reinstatement has been placed before us which indicated that at the threat of contempt of court, the order has been enforced. It is stated therein that it is subject to final order of this court in this appeal.'

5. The petitioner is not found entitled to the relief for regularization of service having worked for 240 days as settled by the supreme Court in the aforesaid judgment. The petition is accordingly dismissed.