

State and ors Vs. Hari Prasad and ors

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Court : Rajasthan Jodhpur

Decided On : Dec-15-2012

Appellant : State and ors

Respondent : Hari Prasad and ors

Judgement :

(1) IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
ORDER S.B. CIVIL WRIT PETITION NO.3254/2000 State of Rajasthan & Anr.
Versus Hari Prasad & Anr. Date of Order :

15. 12.2012 PRESENT HON'BLE MR. JUSTICE GOVIND MATHUR Mr. Vimal Mathur for the petitioners Mr. Chaitanya Gahlot for the respondent No.1 BY THE COURT : This matter came up for orders on an application preferred by the respondent-workman to get early hearing of the writ petition. With the consent of the parties, the writ petition is heard today itself. In brief, the facts of the case are that the appropriate government under a notification dated 31.07.1995 referred an industrial dispute for its adjudication to the Labour Court, Bikaner in the terms that Whether termination of workman Shri Hari Prasad S/o Shri Purnachand by employer the Assistant Engineer, Public Health Engineering Department, Gharsana, (2) District Sriganganagar with effect from 15.10.1992 is valid and proper If not, then for what relief the workman is entitled On the basis of the reference made by the appropriate government, the Labour Court Bikaner registered an industrial dispute and on creation of Labour Court, Sriganganagar, the case was transferred to it. Before the Labour Court, Sriganganagar, the

workman submitted a statement of claim stating therein that he remained in continuous employment of the employer with effect from 01.10.1990 to 15.10.1992 and subsequent thereto he was discontinued from service by an oral order. Alleging non-compliance of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act of 1947'), the workman claimed to declare his retrenchment from service illegal and also a direction for reinstatement in service with all consequential benefits. A written statement was filed by the employer with an affidavit sworn in by Mr. Mahesh Kumar Bhati, Assistant Engineer, with assertion that the workman was not in continuous employment of the employer. To substantiate the contention, the muster roll for the month of October 1992 was also placed on record. Certain other muster rolls for the period from the month of October 1990 to 16.10.1991 were also filed. Learned Labour Court after considering the entire (3) material available on record arrived at the conclusion that the workman was in continuous employment of the employer as defined under Section 25-B of the Act of 1947 and his termination from service was nothing but retrenchment as defined under Section 2(oo) of the Act of 1947. The retrenchment being made in violation of the provisions of Section 25-F of the Act of 1947 was declared bad with a direction to reinstate the workman in service with 50% of back wages. Suffice to mention here that while giving the finding regarding continuous service of the workman, the Labour Court drew an adverse inference against the employer for not producing the muster rolls pertaining to the period commencing from 16.10.1991 to 30.09.1992. The submission of the learned counsel for the petitioner-employer while challenging the award impugned is that the Labour Court failed to appreciate that the workman, as a matter of fact, abandoned the service. It is also stated that no material was available on record to arrive at the conclusion that the workman was in continuous service as per the provisions of Section 25-B of the Act of 1947. Heard learned counsel for the parties and examined the record. From perusal of the award impugned, it reveals that (4) the factum of the respondent-workman's employment with the petitioners is not at all in dispute. Admittedly, the respondent-workman was in employment of the petitioner-employer from 01.10.1990. Admittedly, he remained in employment of the employer upto 15.10.1991. He was also in employment of the employer in the month of October 1992. The petitioner-

employer failed to produce the muster rolls for the period commencing from 16.10.1991 to 30.09.1992, which was the period relevant to determine continuous service of the petitioner. Due to non-production of the relevant record and looking to the evidence adduced by the workman, the Labour Court was having no alternative but to draw inference about the continuous employment of the respondent-workman during the period referred above. I do not find any wrong with the finding given by the Labour Court regarding continuous service on the basis of drawing adverse inference against the petitioner- employer. So far as the argument of the learned counsel for the petitioner about abandonment of service is concerned, suffice to mention here that this aspect was not at all pressed into service by the petitioner-employer before the Labour Court and therefore, that is not required to be examined by this court while exercising powers under Article 226 and 227 of the Constitution of India. (5) For the reasons given above, I do not find any just reason to interfere with the award impugned while exercising powers under Article 226 and 227 of the Constitution of India. The writ petition, therefore, is dismissed. [GOVIND MATHUR],J.

Pramod

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