

CASE NO.:
Appeal (civil) 6654 of 2005

PETITIONER:
RAJASTHAN TOURISM DEV. CORPN. LTD. & ANR

RESPONDENT:
INTEJAM ALI ZAFRI

DATE OF JUDGMENT: 13/07/2006

BENCH:
Dr.AR.LAKSHMANAN & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

Dr.AR.LAKSHMANAN, J.

Heard Mr.Shrish Kr.Mishra, learned counsel for the appellants and Mr.Indra Makwana, learned counsel for the respondent-workman.

We have perused the records and the order impugned in this appeal. The Labour Court has held that the appellant has worked for 240 days. In our opinion, the finding recorded by the Labour Court is factually incorrect. The appellant has placed material before us and also before the Labour Court that the workman has worked only for 227 days in about four years as per the following description as contained in para 5 of the reply to the statement of claim :-

"December, 1987	4 days
January, 1988	27 days
February, 1988	25 days
March, 1988	27 days
March, 1990	23 days
April, 1990	23 days
May, 1990	20 days
July, 1990	18 days
August, 1990	18 days
December, 1991	14 days
January, 1992	24 days
February, 1992	04 days

Total Days 227 days"

The respondent has not worked for 240 days in one calendar year which is the condition precedent for attracting provisions of Section 25F of the Industrial Disputes Act, 1947. This apart, the workman was a casual house assistant who never worked for 240 days continuously in one calendar year. As per the provisions of Section 25(B) of the Industrial Disputes Act, there should be working of 240 days in one calendar year. Hence, the provisions of Section 25F of the Industrial Disputes Act are not attracted in the instant case for the reason that the respondent worked only for 227 days in about 4 years period from the date of his initial appointment i.e. 28.12.1987 to the date of termination i.e. 07.02.1992. In our opinion, the learned Single Judge as also the learned Judges of the Division Bench of the High Court have committed a mistake of law in ordering reinstatement with back wages etc. This apart, the order passed by the Division Bench is also non-speaking.

As already noticed, it is the settled proposition of law that when the initial appointment itself is void then the provisions of Section 25F of the Industrial Disputes Act are not applicable while terminating the services of the workman. The respondent-workman has also not placed before the Labour Court the relevant documents and not even summoned the records before the Labour Court. It is seen from the records that neither the Labour Court called for the records concerned nor the respondent-workman moved

an application before the Labour Court for summoning the records. The respondent-workman led no cogent and convincing evidence before the Labour Court. Accordingly, the award passed by the Labour Court deserves to be quashed and set aside.

For the aforesaid reasons, we set aside the order of reinstatement and back wages passed by the courts below. The appeal stands allowed accordingly. No costs.

We make it clear that if any payment is made to the respondent during the pendency of appeal in this Court, the same shall not be recovered.

In view of the order now passed, the proceedings before the Labour Court under Section 33C(2) has become infructuous.

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JUDIS