

CASE NO.:
Appeal (civil) 8124 of 2004

PETITIONER:
ASSISTANT ENGINEER, RAJASTHAN

RESPONDENT:
RAM CHARAN

DATE OF JUDGMENT: 19/05/2006

BENCH:
DR. AR. LAKSHMANAN & LOKESHWAR SINGH PANTA

JUDGMENT:
JUDGMENT

DR. AR. LAKSHMANAN, J. :

Heard Ms. Madhurima Tatia, learned counsel appearing on behalf of the appellant and Mr. Ajay Choudhary, learned counsel for the respondent.

This appeal is directed against the judgment and final order dated 28.1.2004 passed by the High Court of Rajasthan at Jaipur in D.B. Civil Special Appeal (Writ) No. 85/2004, dismissing the appeal filed by the appellant herein.

The respondent was appointed initially on muster roll as a Pump Driver, on temporary basis, with the appellant. According to the appellant, the respondent had worked upto 12.12.1984 from his initial date of employment and also worked in the month of May and June, 1985 for 21 days and 26 days respectively, under the appellant. The respondent left the service from 1.11.1985 without informing the appellant. As such the respondent has rendered a total number of 197 day of service under the appellant as per the muster roll produced before the Labour Court.

The respondent filed an application dated 29.6.1986 before the Conciliation Officer alleging that he was terminated from service w.e.f. 1.11.1985 without any notice. The appellant filed a reply to the said application controverting the said allegation by producing the muster roll of the respondent which established the respondent having rendered only 197 days of service with the appellant. The Conciliation Officer vide order dated 29.5.1986 rejected the application of the respondent on the basis of muster roll, produced by the appellant, from July to December, 1984 and May and June, 1985, establishing total number of 197 days of work by the respondent.

The respondent challenged the said order of the Conciliation Officer before the High Court, in Writ Petition No. 2988 of 1988, seeking his reinstatement in service with the appellant. The High Court vide its order dated 21.1.1992 dismissed the said writ petition of the respondent. Thereafter, the respondent again moved an application before the Conciliation Officer whereupon the Conciliation Officer submitted a failure report of conciliation to the Government of Rajasthan, which lead to reference of industrial dispute to the Labour Court for adjudication. The reference made to the Labour Court is reproduced herein :

"Whether service of the Claimant Ram Charan as a Pump Driver terminated from 1.11.1985 by the Asstt. Engineer, PHED, Sub-Division, Mahua, Sawai Madhopur, is legal and justified? If no, what relief the Claimant is entitled for?"

Thereafter, in pursuance of the notice by the Labour Court, Bharatpur, the respondent filed a Statement of Claim alleging that he had worked under the

appellant from 14.7.1984 to 1.11.1985, however, his service was terminated from 1.11.1985 without giving one month's notice or salary in lieu of notice, compensation in violation of Section 25(F) of the Industrial Disputes Act, 1947 ("the Act" for short). The respondent also alleged violation of Sections 25(G) and (H) of the Act thereby terminating his services on the basis of having rendered service for more than 240 days in a year.

The appellant filed a reply to the Statement of Claim of the respondent denying the said allegations and pointing out the rejection of the application by the Conciliation Officer, vide order dated 19.5.1988, on the basis of false assertion of the respondent of having worked for more than 240 days in year contrary to the actual 197 days of work rendered by him.

The Labour Court vide its order dated 16.12.1999 made an award in favour of the respondent and against the appellant, finding that there was violation of Section 25(F) of the Act and declaring the termination of the respondent as illegal and unjustified and that the respondent was entitled for reinstatement with continuity in service, with 25% back-wages. The Labour Court, however, did not find violation of Sections 25(G) and 25(H) of the Act.

Aggrieved by the Award dated 16.12.1999 of the Labour Court, the appellant filed writ petition, being Civil Writ Petition No. 261/2001, before the High Court of Rajasthan on the ground that the presumption made by the Labour Court regarding 240 days of work rendered by the respondent was contrary to the material on record establishing 197 days work rendered by the respondent. More so, when the respondent did not produce the termination order, his writ petition was dismissed by this Court vide order dated 21.11.1992. Hence, it was argued that there was no violation of Section 25(F) and as such the Award dated 16.12.1999 was liable to be set aside.

The learned Single Judge of the High Court by order dated 20.3.2003, dismissed the writ petition finding no merit therein. The High Court while rejecting the writ petition held that the presumption made by the Labour Court in respect of 240 days work rendered by the respondent was correct on the basis of the evidence adduced before the said Court. Aggrieved by the dissatisfied with the judgment and order passed by the learned Single Judge, the appellant filed a writ petition, being D.B. Special Civil Appeal No. 85/2004, before the Division Bench of the High Court, along with an application under Section 5 of the Limitation Act seeking condonation of delay of 321 days.

The Division Bench of the High Court vide impugned judgment dated 28.1.2004 dismissed the said Special Civil Appeal No. 85/2004 on the ground of delay, being barred by 321 days. The High Court also observed that there was no merit in the said Special Civil Appeal and held that the Labour Court was right in directing reinstatement of the respondent with 25% back-wages. We have heard the arguments of the counsel appearing on either sides and also perused the orders passed by the learned Single Judge as also the Division Bench of the High Court.

The learned Judges of the Division Bench dismissed the appeal on the ground of laches in approaching the High Court by 321 days. However, the High Court also dismissed the appeal on the ground that there was no merit therein. A perusal of the order passed by the Division Bench of the High Court, goes to show that there is absolutely no discussion about the merit of the rival contentions made by the parties. The Division Bench, in our view, is not justified in dismissing the appeal on merit without having discussed the merits of the rival claims. The order passed by the Division Bench, in our view, is not sustainable as it is not a speaking order. The High Court also dismissed the appeal by holding that the Labour Court was right in directing the reinstatement to the respondent in service with 25% back-wages, without even advertng to the grounds raised in the appeal

challenging the said direction. Likewise, the Division Bench is also not correct in affirming the presumption made by the Labour Court regarding 240 days of service rendered by the respondent, without advertng to the material placed before it by the parties.

On 11.20.2004, this Court after issuing notice to the respondent, stayed the operation of the Award until further orders. On 13.12.2004, this Court while granting leave, passed a further order by way of modification of its order dated 11.10.2004, and directed that the appellant may reinstate the respondent but the recovery of back-wages pursuant to the impugned Award shall remain stayed during the hearing of the appeal. Since the order of the Division Bench is not a speaking one, we set aside the same and remit the matter to the Division Bench of the High Court for fresh disposal and passing a speaking order after hearing the respective parties. We, therefore, restore the D.B. Special Civil Appeal No. 85 to the file of the High Court and request the Division Bench to dispose of the same afresh on merit and in accordance with law, without being influenced by any of the observation made by us in this judgment.

Till the disposal of the D.B. Special Civil Appeal No. 85, 2004 by the High Court, the interim order dated 13.12.2004 passed by this Court, ordering reinstatement of the respondent and staying the recovery o the back-wages shall remain in force.

The original record, if any, received from the High Court shall be sent back to it along with a copy of this order.

The appeal is allowed. No costs.