Rajasthan State Ganganagar S. Mills Ltd vs State Of Rajasthan & Anr on 13 September, 2004

Equivalent citations: AIR 2005 SUPREME COURT 4065, 2004 (8) SCC 161, 2005 AIR SCW 3160, (2005) 3 ALLMR 779 (SC), 2004 (9) SRJ 271, 2005 (1) SERVLJ 100 SC, 2005 (3) ALL MR 779, 2004 (5) SLT 686, 2004 (7) SCALE 624, (2005) 1 JLJR 7, (2004) 1 JCR 458 (JHA), (2004) 4 LAB LN 845, (2005) 1 PAT LJR 150, (2004) 4 RAJ LW 565, (2004) 4 SCT 214, (2004) 6 SERVLR 198, (2004) 6 SUPREME 504, (2004) 7 SCALE 624, (2004) 4 ALL WC 2854, (2004) 107 FJR 264, (2004) 103 FACLR 192, (2004) 23 INDLD 117, 2004 SCC (L&S) 1055

Author: Arijit Pasayat

Bench: Arijit Pasayat, C.K. Thakker

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           CASE NO.:
Appeal (civil)  5969 of 2004

PETITIONER:
Rajasthan State Ganganagar S. Mills Ltd.

RESPONDENT:
State of Rajasthan & Anr.

DATE OF JUDGMENT: 13/09/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
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J U D G M E N T (Arising out of SLP (C) No.11658/2003) ARIJIT PASAYAT, J.

Leave granted.

The respondent No.2 Bhagwan Das (hereinafter referred to as the 'workman') raised a dispute which was referred by the Government of Rajasthan to the Labour Court, Sri Ganga Nagar, Rajasthan. The dispute of the workman, inter alia, was to the effect that though he was appointed as a daily- wages employee on 1st March, 1990 and continued up to 15th July, 1992 without break. His services were terminated by oral order. It was pleaded that the dispensation of service amounted to retrenchment and since the provisions of Section 25 (F), (G) and (H) of the Industrial Disputes Act, 1947 (in short the 'Act') were violated he was entitled to the reinstatement and consequential benefits. The present appellant (hereinafter referred to as the 'employer') refuted the allegations. It was specifically stated that the workman had not really worked continuously from 01.03.1990 to

15.7.1992 as pleaded. On the contrary, the workman was engaged whenever there was work which was of casual nature. His total period of engagement during the years 1990, 1991 and 1992 was 56= days, 64 days and 122= days respectively. He had worked for a total period of 138 days during the preceding 12 months. Whenever there was an additional work, the engagement was done. Keeping in view the scope for additional engagement persons were engaged and there was no violation of any provision of the Act. The Labour Court came to hold that the total period during which the workman rendered work was more than 240 days. Though specific direction was given to the employer to produce the muster roll for the period from 17.6.1991 to 12.11.1991, the same was not produced. Accordingly it was held that the sanctioned days and the days covered by the muster roll, which was not produced, taken together indicated that the workman had worked for more than 240 days. Accordingly direction was given to reinstate the workman and for paying 30% of the back wages.

The order was challenged before the Rajasthan High Court by filing a Civil Writ Application bearing No. 2730/2002. A learned Single Judge at the first instance dismissed the Writ Petition on the ground that muster roll for a particular period was not produced. It was held that no interference was called for considering the limited jurisdiction under Articles 226 and 227 of the Constitution of India, 1950 (in short the 'Constitution'), more particularly when only 30% of the back wages had been awarded. A Civil Special Appeal was filed which was also dismissed by the Division Bench holding that since the retrenchment was found to be invalid on appreciation of evidence and for non production of relevant document; no interference is called for.

In support of the appeal learned counsel for the appellant submitted that both the Labour Court and the High Court fell into error by placing burden on the employer to prove that the concerned workman has not worked for more than 240 days. The Labour Court failed to notice that even if the period for which the muster roll was not produced is reckoned; then also the requirement of 240 days work during twelve months preceding alleged date of termination is not established.

Per contra, learned counsel for the respondent-workman submitted that as the Labour Court has taken into account all relevant factors, no interference is called for. According to him the workman has clearly established that he worked for more than 240 days during the relevant period.

It was the case of the workman that he had worked for more than 240 days in the concerned year. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked up to 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25). No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed. Even if that period is taken into account with the period as stated in the affidavit filed by the employer the requirement prima facie does not appear to be fulfilled. The following period of engagement which was accepted was 6 days in July 1991, 15 = days in November 1991, 15= days in January 1992, 24 days in February 1992, 20= days in March 1992, 25 days in April 1992, 25 days in May 1992, 7= days in June 1992 and 5=

days in July 1992. The Labour Court demanded production of muster roll for a period of 17.6.1991 to 12.11.1991. It included this period for which the muster roll was not produced and come to the conclusion that the workman had worked for more than 240 days without indicating as to the period to which period these 240 days were referable.

In our view the Labour Court and the High Court have failed to consider the statutory requirements in their proper perspective. One of the stands taken by the employer was that the engagement was made keeping in view the temporary needs and it was seasonal in character. No definite finding was recorded by the Labour Court or the High Court in that regard.

We, therefore, remit the matter to the Labour Court to consider the evidence and come to a definite conclusion as to whether the workman had worked for 240 days during the period claimed. While considering the matter afresh, the aspect of need of engagement shall also be examined. If the engagement is found to be not for 240 days during the relevant period, then this aspect may not be considered. In case the Labour Court comes to a finding in the affirmative its original order shall be maintained subject to consideration of the seasonal need aspect. If its answer is in negative the Labour Court shall pass appropriate orders.

The Appeal is accordingly disposed of. No costs.