

Supreme Court of India

Union Of India And Others vs Rajendra Kumar Sharma on 23 February, 1993

Equivalent citations: AIR 1993 SC 1317, JT 1993 (4) SC 153, 1993 LabIC 1018, (1993) IILLJ 1041 SC, 1993 (1) SCALE 729, 1993 Supp (2) SCC 366

Bench: K Singh, B J Reddy

ORDER

1. Leave granted. Heard the counsel for the parties.
2. The appeal is preferred against the judgment of the Central Administrative Tribunal, Jaipur allowing the original application No. 229 of 1988 filed by the respondent with certain directions.
3. The respondent was appointed as a casual labour Peon on September 10, 1986, on daily wages, under the Director, Postal Services, Rajasthan, Eastern Region, Jaipur. He continued as such till May 3, 1988 when his services were terminated. He approached the Tribunal for three reliefs viz. (1) he must be paid even for intervening Saturdays, Sundays and Gazetted holidays at the same rate at which he was paid on the working days. Withholding of salary for such off-days is contrary to the decision of this Court and the orders of the P & T Department. (2) The termination of his service without complying with the requirements of Section 25F of the Industrial Disputes Act is void. Therefore, he must be reinstated with full back wages. (3) His service must be regularised in accordance with the scheme directed to be prepared by this Court in Daily Rated Casual Labour Employed under P&T Department v. Union of India .
4. The Tribunal has granted all the three reliefs. The Tribunal recorded the following findings: (1) pursuant to the decision of this Court in Daily Rated Casual Labour the Department has issued instructions on February 10, 1988 in proceedings No. 45/95/87-SPB- I. The said proceedings directs that all the casual labourers engaged on casual basis are to be paid wages calculated on the basis of the minimum pay in the pay scale of regularly employed workers in the corresponding cadre. The proceedings nowhere states that on off-days like Saturdays, Sundays and other Gazetted holidays, wages should not be paid to the casual labourers. If so, the casual labourers are entitled to wages even for such holidays. (2) P&T Department is admittedly an 'industry' - a proposition affirmed by the Ahmedabad Bench of the Tribunal. In this case, the termination of respondent's service was effected without following the requirements of Section 25F. The respondent is, therefore, entitled to reinstatement with full back wages. (3) The respondent should be regularised in accordance with the scheme that has been or that may be prepared in pursuance of the directions issued by this Court in the aforesaid decision.
5. We are of the opinion that the matter should go back to the Tribunal for a decision afresh. Neither the decision of this Court in Daily Rated Casual Labour nor the proceedings of the P&T Department issued on February 10, 1988 say that the casual labourers are entitled to to be paid even on the days they do not work. The approach of the Tribunal that since the aforesaid proceeding of the P&T Department does not provide otherwise, the respondent is entitled to be paid even for the days he did no work (i.e., Saturdays, Sundays and Gazetted Holidays) does not appear to be sound. Whether there is any other basis upon which the respondent is entitled to such payment has not been

examined by the Tribunal. So far as the second aspect is concerned, the Tribunal has observed that the P&T Department is an 'industry' without a full and proper discussion. The Tribunal first refers to the decision of the Ahmedabad Bench of the Tribunal holding the department to be an industry as defined in the Industrial Disputes Act and then says that the counsel for the Department did not contest the said position. We are, however, of the opinion that having regard to the importance of the question and the consequences flowing therefrom, it would have been better if the Tribunal had discussed the said issue on merits. Accordingly, the Tribunal's order has to be and is set aside. The matter is remitted to the Tribunal for a decision on the questions arising in the O.A. afresh, in accordance with law. No costs.

6. If the respondent has already been reinstated in pursuance of the order of the Tribunal, he shall be continued subject to the result of his O.A. but he shall not be paid the back wages for the period he was out of service, unless, of course, he has already been paid. If he has not been reinstated, he shall not be reinstated hereinafter. The Tribunal shall, however, dispose of the matter as expeditiously as possible in the circumstances of the case.