IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

O R D E R

Babru and others. **VS**. State of Raj. & Ors.

S.B. CIVIL WRIT PETITION NO.5636/92
under Article 226 of the
Constitution of India.

Date of order : 22nd Nov., 2004

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA

Mr. Anil Bhandari for the petitioners.
Mr. B.L. Bhati, Addl. Govt. Advocate.

BY THE COURT:-

This petition is filed by five persons jointly serving in various departments at its work charged establishment. Each of them was working for more than two years as per the following chart:-

"1. Babru

- Working as Beldar from 1.11.87 to 1.8.92
- Seniority at 7,
- Petitioner sent from Banshi to Dy. Director (Forest) But was not taken (Ex.2). This further shows that the petitioner was a temporary employee.

- Wages for June & July, 92 not paid.
- Terminated by verbal order.

2. Shiv Singh

- Working as Labour Mate from 1.9.89 to 1.8.92
- Seniority at 4 (Ex.3),
- Sent to Dy. Director by Ex.2 but was not taken. This fruther shows that he was temporary.
- Wages for June & July, 92 not paid.
- Terminated by verbal order.

3. Prem Singh

- Working as Cattle Guard from 16.11.89 to 1.8.92
- Seniority at 47 (Ex.4),

4. Ganpat Singh

- Working as Cattle Guard from 16.11.89 to 1.8.92
- Wages for July, 92 not paid
- Chart for work done (Ex.5)

5. Mangi Lal

- Working as Cattle Guard from 1.2.90 to 1.8.92
- Chart (Ex.6)"

Their services were terminated by verbal order without following the pre-conditions for retrenchment under Section 25-F of the Industrial Disputes Act, 1947, terminating the services without giving any notice or salary in lieu of notice period and retrenchment compensation. It is further alleged that when they completed two years of service as daily rated on the work charged establishment of the various departments under the Work Charged Employees Service Rules, 1964 they became automatically entitled to the conferment of semi-permanent status and to the benefit

of fixation at the lowest in the pay scale applicable to the respective posts and other benefits made available to the employees on semi-permanent status on work charged establishment. In view thereof, the termination of service of 5 petitioners is challenged to be invalid and claim to benefit flowing from semi-permanent status is also made.

No reply has been submitted by the respondents in spite of giving number of opportunities during the pendency of the writ petition for almost 12 years. In these circumstances, the aforesaid facts mentioned by the petitioner has to be taken to be correct.

The Rules of 1964 which are applicable to the work charged establishment of Public Works Department, Irrigation Department under the Ayurvedic and Forest Department Work Charged Employees Service Rules, 1964 since 18.1.1989 reveals three classes of working employees on work charged establishment, the bottom of which is casual employee; the next stage is of the semi-permanent workmen and finally of permanent status. It reveals that none of the category of workman may lay claim to the service conditions applicable to regular employee under the Rajasthan Service Rules as a matter of right but envisages that

except the employees who have attained permanent status earlier than the workmen who are in service for two years or more continuously shall be entitled to semi-permanent status subject to rendering of satisfactory service. It also provides procedure for declaration of an employee of surplus from one unit and absorption of such employees at vacant post in another unit as well as for retrenchment.

Rule 23 and Rule 24 envisages retrenchment in order of last come first go on the basis of seniority list already published with the notice of one month. It has also been envisaged to keep a list of retrenched employees so that they can be offered job in future on priority basis.

The work charged employees have been defined to mean those who are engaged primarily for maintenance work, construction or survey. This clearly envisages that the work charged employees are workmen within the meaning of Section 25F of the Industrial Disputes Act, 1947 and in view of the provisions of Section 25J the provisions of Chapter VA and VB of the Act of 1947 are applicable to it notwithstanding anything contrary to it in the agreement or any other law to the extent it provides less beneficial conditions of retrenchment. Apparently, the workman

employee discharging such functions at any of the establishment mentioned in Rules of 1964 can neither be considered as employed in discharge of sovereign function of State to be excluded from the purview of operation of Industrial Dispute Act, 1947 as laid down by the Hon'ble Supreme Court in Banglore Water Supply and Sewerage Vs. A. Rajappa and others **(1978)2 SCC 213.**

Apparently, all the facts stated by the petitioner are not disputed by the respondents. Undisputed position is that the termination of services of all the five petitioners, who had served continuously for more than two years in each case, was contrary to the provisions of Industrial Disputes Act as well as to the Rules of 1964 and cannot be sustained.

According to the averments made in the petition, each one of the petitioner has also acquired the status of semi-permanent on completion of 2 years service. There is nothing to suggest that the services of any of the petitioners was not satisfactory during the period before retrenchment. In fact one of the petitioners is serving on the date of termination for more than 7 years, the petitioner Nos.2, 3 and 4 were serving for more than three years

and the last petitioner was serving for more than two years as on the date their services were respectively terminated. The termination order was verbally passed with immediate effect and in some of the cases, the workmen were directed to report to another unit for being offered employment but the incharge of other respondent unit refused to accept him which clearly suggest that the services were otherwise found to be satisfactory and primary consideration was either to declare them surplus and give them appointment in another unit or their termination of services for any other reason other than lack of satisfactory service. In these circumstances, the termination order not only appears to be violative of Rule 23 and 24 of the Rules of 1964 and Section 25F and 25G of the Industrial Disputes Act, 1947, but otherwise appears to be arbitrary and unjust effecting the right to livelihood of the petitioners.

As a result the petition is allowed. The termination of the services of the petitioners in each case is quashed and the respondents are directed to take them back in service and consider their case for giving them appropriate status to which they are entitled as on the date of termination. Since all the petitioners at the time of retrenchment were daily rated workmen but otherwise entitled to be treated as

semi-permanent in terms of Rule 3 of the Rules of 1964, their emoluments may be determined on that premise by the respondents within a period of three months. Since the petitioners were not discharging any function for the intervening period and they were only daily rated workmen, I do not consider just and proper to award the full amount of arrears of wages. Ends of justice would be served if only 25% of arrears / back wages are allowed and it is further ordered that while counting their services to be the continuous, they may be considered for permanent status only on further completion of two years satisfactory service after reinstatement. The petition is accordingly allowed as aforesaid. No orders as to costs.

[RAJESH BALIA], J.

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