

D. B. CIVIL SPECIAL APPEAL(W)NO. 749/2006

General Manager (Telephones) Telephone department, Jai pur
and another
Vs.
Rameshwar Yadav and another

DATE OF JUDGMENT :: 30-03-2007

HON'BLE THE CHIEF JUSTICE SHRI S. N. JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Inderjeet Singh, for the appellant.
Shri Faisal Baig, for the respondent.

This appeal has been taken up for final disposal with the consent of counsel for the parties.

The appeal is directed against the order of the Learned Single Judge dismissing the writ petition of the appellant. The appellant had filed the writ petition challenging the award of the Central Industrial Tribunal, Jai pur dated 16. 4. 2001 in case (CIT) no. 35/95 holding that termination of services of the respondent, Rameshwar Dayal, was illegal and he was entitled to reinstatement and 30% of back-wages, also continuity of service.

The award was made on reference – "whether the action of the S. D. O. (Telephones), Bharatpur in terminating services of Shri Rameshwar Dayal with effect from 1. 8. 1988 is proper, legal and justified? If not, to what relief the workman concerned is entitled?" On consideration of the evidence, the Tribunal came to the conclusion that the respondent had worked for more than

240 days and termination of service was violative of Section 25F of the Industrial Disputes Act. Sections 25 G and 25 H were also found to have been violated.

Shri Inderjeet Singh, appearing for the appellants firstly submitted that the finding of the Tribunal that respondent had worked for 240 days is not in accordance with law. According to him the work done by the respondent in other divisions of the Telecommunication Department could not be counted and so counted, the period of service was less than 240 days. Counsel submitted that burden lies on the workman to prove that he had worked for 240 days.

No doubt, in view of recent decisions of the Supreme Court, the burden is on the workman to prove that he had worked for 240 days. However, in the instant case it is difficult to accept the case of the appellants that the period of service was less than 240 days. As indicated above, the main defence of the appellants was that the service rendered by the respondent in other divisions could not be counted. The appellants admit that respondent had worked for 132 days in Bharatpur division and they do not deny that he had worked in other divisions too. According to respondent, he had worked in different divisions from July 1987 to July 1988 and the total service came to more than 240 days. In the facts and circumstances, we do not find any error in the finding of the Tribunal on the point of period of service of the respondent. The reference was against the

Department of Telecommunications represented by General Manager (Telephones) Jaipur and S. D. O. (Phones) Bharatpur, and the service rendered in other divisions of the Department could not be ignored.

Counsel for the appellants then submitted that the Tribunal committed error in directing reinstatement of the respondent. Counsel submitted that the recent trend is to allow monetary compensation in lieu of reinstatement. It was pointed out in this connection that the respondent had worked as a casual labour on daily wage basis for only one year and there was no justification to direct his reinstatement.

On behalf of the respondent, it was submitted that where the termination is found to be illegal, the reinstatement should follow as a matter of course. In this regard, reliance was placed on a decision of the Supreme Court in Hindustan Tin Works Pvt. Ltd. Vs. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. at page 652 of the compilation titled 'Supreme Court Labour Judgments 1950-83' Vol. 3.

On behalf of the appellants, reliance was placed on Sain Steel Products Vs. Nai pal Singh and others, 2003(4) SCC 628. In the aforesaid case, the workman was employed for a period of 11 months on probation. After 11 months his services were terminated. Challenging the termination, he raised industrial dispute. The Labour Court found that the termination of services was without complying the provisions of Section

25F of the Act and was illegal, and directed his reinstatement with wages. The Supreme Court found that the respondent had not been in employment for over a quarter of a century and took the view it was not appropriate to put back him in service. Instead, it would be appropriate that some reasonable compensation is paid in lieu of back-wages and reinstatement. In the circumstances of the case, the workman was allowed compensation of Rs. 50,000/-.

Considering the nature of employment of the respondent, the period of service and the gap of time, we are of the opinion that compensation of Rs. 50,000/- in this case too will meet the ends of justice. We accordingly modify the award of the Tribunal to the extent the respondent was held entitled to reinstatement and 30% back-wages; instead, we direct the respondent be paid sum of Rs. 50,000/- as compensation within two months. The order of the Learned Single Judge would accordingly stand set aside.

The appeal is allowed in part in the manner as indicated above.

[MOHAMMAD RAFIQ], J.

[S. N. JHA], CJ.

Praveen