

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH JAIPUR

ORDER

S.B.CIVIL WRIT PETITION NO.10793/2009

Smt.Kameri

Versus

Judge, Labour Court, Bharatpur & another

DATE OF ORDER --- December 24, 2010

PRESENT

HON'BLE MR.JUSTICE PREM SHANKER ASOPA

Mr.Jitendra Pandey, for the petitioner

BY THE COURT

- (1) Heard learned counsel for the petitioner.
- (2) By this writ petition, the petitioner has challenged the Award dated 30.9.2005 (Anx.3) passed by the Judge, Labour Court, Bharatpur whereby claim of the petitioner-workman has been dismissed on the ground that the Forest Department is not an 'industry' in terms of Sec. 2(j) of the Industrial Disputes Act, 1947 (in short 'the Act of 1947').
- (3) Counsel submits that in the present case, in their reply to the statement of claim, the respondents have not taken the objection as to whether the Forest Department is an industry or not. Counsel further submits that the oral objection whether the Forest Department is an industry or not, has been decided by this Court vide common order dated 25.1.2006 in CWP No.9132/2005 and (8) others in identical cases, whereby the finding arrived at by the Labour Court holding the Department of Forest being not an 'industry' has been set aside. In the aforesaid case, this Court inter alia observed as under:

"It is true that if the dispute has been raised as to whether a particular establishment or part whereof the recruitment has been made is an 'industry' or not ? primarily it is for the person concerned who claims protection under the Act, to give positive facts for coming up to the conclusion that the establishment where he had worked is an 'industry' u/s 2(j) of the Act of 1947 and such duties undertaken are not sovereign

function of the State. But, in the present case, undisputedly no objection was raised by the respondents in their written statement. In the absence of which there was no opportunity available to the workmen to provide and place material for establishing the fact that nature of work undertaken is not sovereign function of the State and it is an industry within the meaning of Section 2(j) of the Act of 1947 and the learned Labour Court has committed an error in proceeding to examine the issue without there being factual material on record and merely on the basis of oral submissions made by the parties.”

(4) Similar issue came before this Court in Rameshwar Dayal V Judge, Labour Court Bharatpur and two others (2008 WLC (Raj.) UC 681) and after considering the aforesaid judgment dated 25.1.2006 in Babu Lal V. Labour Court, Bharatpur, the case was remanded.

(5) Having considered the aforesaid judgments of this Court, I am of the view that the case deserves to be remanded back to the Labour Court.

(6) Consequently, this writ petition under Article 227 of the Constitution of India is allowed, the Award dated 30.9.2005 (Anx.3) passed by the Labour Court is set aside and the matter is remanded back to the Labour Court, Bharatpur for adjudicating the dispute on merits after affording opportunity of hearing to the parties to dispute.

(Prem Shanker Asopa) J.

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