

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

S.B. Civil Writ Petition No.594/1998

Divisional Forest Officer

Versus

Ram Gopal

DATE OF ORDER : 30/04/2013

HON'BLE MR. JUSTICE M.N. BHANDARI

Dr. M.S. Kachhawaha, Addl. Govt. Counsel, for petitioner
Mr. D.K. Swami, for respondent

By this petition, a challenge is made to the dated 05.01.1996 whereby an application under Section 33C(2) of Industrial Disputes Act, 1947 was allowed.

Learned counsel for petitioner submits that prior to the application, award was passed by the Labour Court, Kota on 12.03.1987. Therein, no direction was given to allow semi-permanent status or any similar benefit other than benefit of promotion, if given to the junior employee. The respondent-workman filed an application without alleging promotion of junior person. The computation of wages, treating respondent-workman to be semi-permanent employee is contrary to the award as application under Section 33C(2) of the Act was moved for compliance of the award. In view of the above, the court below travelled beyond its jurisdiction to compute benefits which are not coming out from the award. Accordingly, it may be set aside.

Learned counsel for respondent, on the other hand, submits that on completion of two years period, the respondent-workman became entitled for semi-permanent status thus benefits computed are flowing from the award dated 12.03.1987.

I have considered the submissions made and perused the record.

It is not in dispute that on 12.03.1987 award was passed in favour of the respondent-workman holding his termination to be illegal. Para 3 of the said award, containing direction is quoted hereasunder for ready reference:

“नियोजक ने यह तो स्वीकार किया है कि वह दिनांक 3/7/83 तक इस श्रमिक ने 240 दिवस कार्य कर लिया था। इन परिस्थितियों में औद्योगिक विवाद अधिनियम 1947 की धारा 25-एफ(ए)(बी) की पालना किये बिना उसे सेवा से पृथक करना उचित नहीं था। अतः दिनांक 3/7/83 का सेवा से पृथक करने का आदेश निरस्त किया जाता है और इस निर्देश का अधिनिर्णय इस प्रकार किया जाता है कि श्रमिक रामगोपाल केटलगार्ड को नियोजक मंडल वन अधिकारी, बारां (डी.एफ.ओ.) द्वारा सेवा से मुक्त करना उचित एवं वैध नहीं है और यह श्रमिक उक्त पद पर दिनांक 3/7/83 से ही नियोजित रहने का अधिकारी है। नियोजक कि तरफ से श्री शिवदयाल शर्मा रेंजर को सूचित किया गया कि वे इस श्रमिक को दिनांक 17.3.87 से पुनः केटलगार्ड के पद पर लेंगे तथा यदि इससे कनिष्ठ श्रमिक को पदोन्नति आदि का कोई लाभ दिया गया हो तो वे सभी लाभ इस श्रमिक को भी दिए जायेंगे, परन्तु यह श्रमिक दिनांक 3/7/83 से दिनांक 16/3/87 तक की अवधि के

वेतन का अधिकारी नहीं होगा तथा उक्त अवधि इसकी सेवा अवधि में शामिल मानी जावेगी।”

Perusal of para quoted above reveals an order for reinstatement and benefit of promotion, if person junior has been given promotion. He was denied wages since 03.07.1983 till 16.03.1987. The impugned award does not allow semi-permanent status to the workman. If impugned order for computation of benefit arising out of award is looked into, the court below held that on completion of period of two years, the respondent employee became entitled to the semi-permanent status and accordingly, benefits were computed. It was in ignorance of the fact that semi-permanent status cannot be claimed automatically with completion of two years period, rather it is subject to Rule 3(iii)(iv) of Workcharged Rules, 1964. In any case, when application under Section 33C(2) was moved for computation of benefit arising out of award, the court below was under an obligation to restrict benefit to the extent of award dated 12.03.1987. The benefit so computed does not flow from the award. It is however stated that wages for period of four months were not granted as employee not reinstated on 17.03.1987. I deem it appropriate to set aside the impugned order and remit the case to the Labour Court to decide the application afresh after considering all the aspects and

calculate the benefits strictly as per award dated 12.03.1987.

The writ petition is allowed with the aforesaid.

[M.N.BHANDARI], J.

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Certificate:

“All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.”

FATEH RAJ BOHRA, P.A.