SUPREME COURT OF INDIA

Rajasthan Tourism Dev. Corpn. Ltd.

Vs.

Intejam Ali Zafri

C.A.No.6654 of 2005

(Dr.A.R.Lakshmanan and Lokeshwar Singh Panta JJ.)

13.07.2006

JUDGMENT

Dr.AR.LAKSHMANAN,J.

Heard Mr.Shrish Kr.Mishra, learned counsel for the appellants and Mr.Indra Makwana, learned counsel for the respondent-workman. We have perused the records and the order impugned in this appeal. The Labour Court has held that the appellant has worked for 240 days. In our opinion, the finding recorded by the Labour Court is factually incorrect. The appellant has placed material before us and also before the Labour Court that the workman has worked only for 227 days in about four years as per the following description as contained in para 5 of the reply to the statement of claim :-

"December, 1987 4 days

January, 1988 27 days

February, 1988 25 days

March, 1988 27 days

March, 1990 23 days

April, 1990 23 days

May, 1990 20 days

July, 1990 18 days

August, 1990 18 days

December, 1991 14 days

January, 1992 24 days

February, 1992 04 days

Total Days 227 days"

The respondent has not worked for 240 days in one calendar year which is the condition precedent for attracting provisions of Section 25F of the Industrial Disputes Act, 1947. This apart, the workman was a causal house assistant who never worked for 240 days continuously in one calendar year. As per the provisions of Section 25(B) of the Industrial Disputes Act, there should be working of 240 days in one calendar year. Hence, the provisions of Section 25F of the Industrial Disputes Act are not attracted in the instant case for the reason that the respondent worked only for 227 days in about 4 years period from the date of his initial appointment i.e. 28.12.1987 to the date of termination i.e. 07.02.1992. In our opinion, the learned Single Judge as also the learned Judges of the Division Bench of the High Court have committed a mistake of law in ordering reinstatement with back wages etc. This apart, the order passed by the Division Bench is also non-speaking. As already noticed, it is the settled proposition of law that when the initial appointment itself is void then the provisions of Section 25F of the Industrial Disputes Act are not applicable while terminating the services of the workman. The respondent-workman has also not placed before the Labour Court the relevant documents and not even summoned the records before the Labour Court. It is seen from the records that neither the Labour Court called for the records concerned nor the respondent-workman moved an application before the Labour Court for summoning the records. The respondent-workman led no cogent and convincing evidence before the Labour Court. Accordingly, the award passed by the Labour Court deserves to be quashed and set aside.

For the aforesaid reasons, we set aside the order of reinstatement and back wages passed by the courts below. The appeal stands allowed accordingly. No costs.

We make it clear that if any payment is made to the respondent during the pendency of appeal in this Court, the same shall not be recovered. In view of the order now passed, the proceedings before the Labour Court under Section 33C(2) has become infructuous.