

RAJASTHAN TOURISM DEVELOPMENT  
CORPORATION LTD . AND ANR .

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INTEJAM ALI ZAFRI

JULY 13 , 2006

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[ DR . AR . LAKSHMANAN AND LOKESHWAR SINGH PANTA , JJ . ]

Labour Laws :

Industrial Disputes Act , 1947 ; Ss . 25 ( B ) , 25 ( F ) and 33C ( 2 )

Casual worker - Retrenchment - Labour Court passing an award  
Affirmed by the Single Judge and also by Division Bench of the High Court  
On appeal , Held : Since the worker in question worked only for 227 days in  
about 4 years period and not for 240 days in a calendar year , provision of  
Section 25 ( F ) not attracted - Hence , the award passed by the Labour Cou<sup>D</sup>  
quashed - However , payment in lieu of award , if made , shall not be recove<sup>D</sup>  
from the workman .

The question which arose for determination before this Court in this  
appeal was as to whether in respect of a workman who claims to have complete<sup>D</sup>  
240 days of continuous service but allegedly completed only 227 days of servi<sup>D</sup>  
and whose services were terminated , provisions of Section 25 ( F ) of the  
Industrial Disputes Act would be attracted .

Allowing the appeal , the Court

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HELD : 1 . The Labour Court has held that the workman has worked for  
240 days . However , the finding recorded by the Labour Court is factually  
incorrect . The employer has placed material before this Court and also before  
the Labour Court that the workman has worked only for 227 days in about  
four years . Since the respondent has not worked for 240 days in a calendar  
year , the provisions of Section 25F of the Industrial Disputes Act are not G  
attracted . The Single Judge as also 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 of the High Court is  
also non - speaking . It is the settled proposition of law that when the initial

534 SUPREME COURT REPORTS [ 2006 ] SUPP . 3 S.C.R. appointment itself is void then  
JURISDICTION : Civil Appeal No. 6654 of 2005 . From the Judgment and Order dated 3.6  
appeal . The Labour Court has held that the appellant has worked for 240 days . In ou  
August , 1990 18 days December , 1991 14 days

January , 1992	24 days	A
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 casual house B 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 .

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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<sup>E</sup> 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 .

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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 . G

In view of the order now passed , the proceedings before the Labour Court under Section 33C ( 2 ) has become infructuous .

S.K.S.

Appeal allowed .

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