

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Special Appeal (Writ) No. 478/2009

In

S.B. Civil Writ Petition No.5310/1990

1. The General Manager, Northern Railway, Baroda House, New Delhi
2. The Superintendent, Statistical Branch, Northern Railway, Jodhpur Division

-----Petitioners-Appellants

Versus

1. Railway Casual Labour Union, Near Daga School, Bikaner Through Punam Singh Son Of Mukan Singh Bhati Resident Of Bhagat Ki Kothi, Plot No. 61, New Pali Road, Near Ganda Nala, Jodhpur
2. The Central Industrial Tribunal, Sahadev Marg, C Scheme, Jaipur

-----Respondents

For Appellant(s)	:	Mr. Shailesh Prakash Sharma, Advocate
For Respondent(s)	:	Mr. Shivangshu Naval, Advocate through Video Conferencing for Mr. Vijay Singh, Advocate

**HON'BLE MRS. JUSTICE SABINA
HON'BLE MR. JUSTICE MANOJ KUMAR VYAS**

Order

18/02/2021

Appellant-Railways has filed the appeal challenging the order dated 02.09.2008 passed by the learned Single Judge, whereby, writ petition filed by the appellant, was dismissed.

Learned counsel for the appellants has submitted that the learned Single Judge has erred in dismissing the writ petition filed by the appellants. In fact, the workman had himself left the

job. Hence, workman was not entitled for reinstatement in service with all benefits.

Learned counsel for the respondent-workman has submitted that the workman was working as casual labour on daily wage basis with the appellants from 26.04.1980 to 20.02.1983 (with breaks).

Learned Labour Court after appreciating the evidence led on record held that it was not a case inviting violation of provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as "the Act") as the workman had not worked for 240 days in a calendar year preceding his termination. Learned Labour Court ordered reinstatement of the workman with all consequential benefits on the ground that provisions of Section 25-G of the Act had been violated.

It has been noticed by the learned Single Judge that the appellants were required to maintain a seniority list but they had failed to do so. Mool Singh had been offered appointment on 16.02.1983 for which sanction had been issued by the Head Office. Therefore, the learned Single Judge rightly held that the removal of respondent-workman was in violation of principle of '*first come last go*' as the person who had been subsequently employed by the appellants had been retained in service at the time of termination of service of the respondent-workman. Learned counsel for the appellants has failed to point out any misleading of evidence by the learned Single Judge while arriving at the said finding of the fact.

In this factual background, we are of the opinion that the learned Single Judge had rightly ordered that the respondent-workman was entitled for reinstatement in service. Moreover, in

terms of the order passed by this Court dated 22.10.2010, admittedly, respondent-workman has been allowed to join duty, *w.e.f.*, 31.01.2012.

However, keeping in view the facts and circumstances of the present case, we are of the opinion that the respondent-workman is not entitled to receive back wages for the period he has remained out of service. Accordingly, appeal is partly allowed and it is ordered that the part of award passed by the Labour Court, whereby, respondent-workman was ordered to be reinstated is upheld but the respondent-workman would not be entitled to receive any back-wages.

(MANOJ KUMAR VYAS),J

(SABINA),J

Aks/Hemant/-27

