

(2011) 04 P&H CK 0196

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6680 of 1990 (O and M)

Ami Lal and Others

APPELLANT

Vs

Haryana State Electricity Board and Others

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 25H

Citation : (2011) 04 P&H CK 0196

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—In both the writ petitions, the Petitioners in the respective cases seek for a direction for reinstatement into service on the alleged preferential right of reinstatement u/s 25H of the Industrial Disputes Act with effect from the date when persons, who had joined subsequently were reinstated into service and in violation of the aforesaid provision. The Petitioners claimed that they had all been appointed as daily wage workers during the years 1980-81. They had all been performing duties in Ambala Circle at Ambala City and at Ambala Cantt. All of them continued in service but were served with notices of retrenchment on 23.04.1984. It appears that all the Petitioners, who had been served with such notices, had earlier challenged the orders of retrenchment successfully before the Labour Court and the Civil Court, Ambala. The grievance of the Petitioners was that even after the retrenchment, the Respondents were making fresh appointments to the post of daily wage workers and cited instances of two persons, namely, Amir Chand and Babu Ram, who had been appointed on 01.08.1984 and 19.11.1986 respectively. The claim of the Petitioners was that if such re-engagement was necessary and service of workmen were required, only persons, who had been already engaged and who had been retrenched, must have been given the preferential right u/s 25H of the Industrial Disputes Act. A further list of 32 persons, who were alleged to have been found suitable, was reported to have been appointed to the post of daily wage workers through a communication of the second Respondent dated 08.08.1988. It further vindicated

the stand of the Petitioners that the Respondents were systematically employing persons in utter disregard of the Petitioners' preferential status. It appears that one Parbhat Kumar had challenged the action of the authorities in not appointing him under the provision of Section 25H of the Industrial Disputes Act. In CWP No. 6407 of 1989, there was a direction by this Court on 20.12.1989 to the Respondents to appoint him and as consequence of which, Parbhat Kumar was issued with an order of appointment on 06.02.1990. When all the Petitioners who were staking the claim for similar treatment, Parbhat Kumar himself was terminated from the services. Parbhat Kumar appears to have challenged his termination and the case went up to the Hon'ble Supreme Court where the Hon'ble Supreme Court directed that he should be offered re-employment. It appears that Parbhat Kumar was subsequently re-employed and also regularized in the services. All the Petitioners claim similar treatment as it was done to Parbhat Kumar.

2. When the case came up for hearing on 06.04.2011, I had directed the Executive Engineer to file an affidavit on the status of employment opportunities for the Petitioners and the particulars of any employment that had been offered for daily wagers from 24.06.1991. An affidavit was filed by Hari Parkash Sharma, the Executive Engineer, (Operation Division), UHBVNL, Ambala Cantt. pointing out to some subsequent changes in the constitution of the electricity boards with particular reference to the fact that Haryana State Electricity Board itself has undergone administrative vivisection through constitution of the four nignams, namely, Haryana Vidyut Parsaran Nigam Limited (HVPNL), Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL) and Haryana Power Generation Corporation Limited (HPGCL). The Executive Engineer has in its affidavit stated that the office at Ambala was flooded with water for about a week and almost all the records were damaged/destroyed. It was found that one Chhedi Lal, a daily wager, son of Shri Maharaj Deen, was ordered to be reinstated by the Labour Court, Ambala, on 27.11.1992 and was taken back on duty on 27.09.1993 and Satish Kumar son of Ramsarup, also a daily wager, was ordered to be reinstated by the Labour Court, Ambala, on 11.09.1992. Only in respect of these persons, there had been re-employment and no other person, who had been a daily wager, had been provided with re-employment subsequently.

3. In response to these contentions, the learned Counsel for the Petitioners refers to the fact that when the claims of several daily wagers for re-employment were pressed in several litigations and when the matter was pending consideration before the Hon'ble Supreme Court in a batch of SL Ps filed by Haryana State Electricity Board in SLP No. 15207-10, 15277-15329/90, the Board had informed the Hon'ble Supreme Court that it had framed a scheme under which 25% of persons, who had been retrenched, would be called back to work. It appears that the Hon'ble Supreme Court had suggested, which the Board had agreed that instead of spreading over the re-employment scheme over a period of time from 30.06.1991 to 31.12.1992, 1/3rd of the retrenched

employees could be called back within 6 months and all the retrenched employees would be put back to work by 30.06.1992. This call back to duty would be on the basis of seniority. In another batch of writ petitions which was disposed of in CWP No. 4950 of 1990 and others, some 37 persons, who like the Petitioners had been making claims for consideration for re-employment, this Court had held the daily wagers, who had particularly completed more than 240 days of service in any preceding year, would not be retrenched till the authority gave its decision or order that retrenchment was an absolute necessity. The Court had merely observed that if the employees were still aggrieved by any act of retrenchment, they would have remedy before a competent authority for reappraisal.

4. It is a strange situation where an obvious right which is created under statute is required to be restated. So long as Section 25H is in statute if there is any violation of such provision by any persons juniors to the Petitioners, who had been re-employed, such among the Petitioners, who were seniors to the persons, who were provided with employment, were entitled to be considered for re-employment to the exclusion of juniors. If the Petitioners' grievances themselves had been that there have been violation of Section 25H, it would be possible for a Court to give a direction to displace the persons, who had been juniors and who had entered the organization subsequently by a preferential right of re-employment to be given to persons, who were retrenched earlier. Unfortunately, none of the persons, who were said to have been juniors and who were said to have been re-employed are brought before the Court as parties. It may not be possible for this Court to give any direction for displacing persons, who had been offered employment subsequent to the dates of retrenchment to the Petitioners without providing for notices to those persons, who could be aggrieved by any action directing re-employment to the Petitioners. The Petitioners have not been able to show any single instance of violation of Section 25H of a re-employment being offered to any person otherwise than through directions secured through the orders of this Court or the Hon'ble Supreme Court or the Labour Court. Although all the writ Petitioners have approached the Court even in the year 1990, unfortunately for them, the case has stood on this long for stating an obvious proposition that in the manner of retrenchment of daily rated workers, the persons, who were the "first to come in" would be the "last to go" and the persons that came last would be the "first to go". There have been re-constitution of the Boards now and it will be futile for me to give any direction against the party cited as Respondents. When I pointed out to this lapse to the counsel for the Petitioners, he merely argued that any direction that is given to the Haryana State Electricity Board will bind their successors as well. If the Electricity Board has now been divided into four different organizations it is most likely that the seniority is maintained in the various posts in each Board. It is not possible for me to give a direction in favour of the Petitioners without eliciting who are the persons who have displaced them and who have been subsequently regularised. It requires factual consideration of who had been subsequently

employed, without addressing the claims of the Petitioners u/s 25H of the Industrial Disputes Act. The problem is confounded further by the fact that the Respondents claim that the records have been lost in the floods. It is unfortunate that a public authority pleads inability to source information correctly and place it before the Court. Muster rolls or seniority lists cannot be lost in floods, they are required to be archived periodically so that when any information is sought, the public authority is in position to disclose the same. This was all the more relevant in cases where there are litigations pending and it requires greater circumspection for authorities to protect records and make them available for rendering appropriate adjudication.

5. In the absence of clear details of persons, who had been employed subsequently and by the non-impalement of persons, who are bound to be effected by any direction for re-employment without impleading them, I allow the Petitioners no relief in these writ petitions. I would, however, re-affirm the principle enunciated in Section 25H of the Industrial Disputes Act and direct that the successor in office relating to the unit at Ambala to prepare a list of all daily rated workers wherever rules permit to have the particular cadre of employees as daily rated workers and if any occasion falls for providing such employment to such class of persons, the Petitioners shall be considered in the order of priority as per the date when they were retrenched. The seniority list among daily rated workers shall be prepared within 8 weeks and displayed in the notice board and a copy made available to any of the Petitioners on demand, so that they protect their rights and obtain redressals suitably.

6. The writ petitions are disposed of on the above directions.