

(2003) 02 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18127 of 1994

Arjun Lal, Satish Kumar and Gurbachan Singh

APPELLANT

Vs

Presiding Officer, Industrial Tribunal, Punjab State Agricultural
Marketing Board, Market Committee Guru Harsahai and
Inderjit Lal

RESPONDENT

Date of Decision : 05-02-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 226, 227
Industrial Disputes Act, 1947 — Section 2, 25H

Citation : (2003) 02 P&H CK 0045

Hon'ble Judges : Mehtab S. Gill, J

Bench : Single Bench

Advocate : Sumeet Mahajan, for the Appellant; H.S. Riar and G.B.S. Dhillon, for Respondent Nos. 2 and 3 and Baljinder Singh, for the Respondent

Judgement

Mehtab S. Gill, J.—By this common judgment, I shall be disposing of both these Civil Writ Petition Nos. 18127 of 1994 and 1201 of 1995 as the questions of facts and law involved therein are identical in nature. However, for the sake of convenience, the facts are being extracted from Civil Writ Petition No. 1201 of 1995.

2. The petitioners have prayed for the issuance of a writ in the nature of certiorari for quashing award dated September 29, 1994 (Annexure P-8) passed by the Presiding Officer, Industrial Tribunal, Punjab, Chandigarh (respondent No. 1).

3. The petitioners have averred that respondent Nos. 2 to 5 were appointed as Peons/Guards/Sweepers on September 30, 1985 by the Market Committee, Guru Harsahai, district Ferozepur without inviting applications through an advertisement in the Press and without any eligible candidate being called from the Employment Exchange. The Administrator, Market Committee, Guru Harsahai district Ferozepur, after 72 days of the employment of respondent Nos. 2 to 5, on

seeing that, the appointments of these respondents were not according to the rules and regulations framed by the Board, terminated the services of respondent Nos. 2 to 5 vide his order dated December 10, 1985 (Annexure P-1).

4. The Administrator, Market Committee, Guru Harsahai, district Ferozepur, issued an advertisement (Annexure P-2) in the Daily "Charhdi Kalan" newspaper for the recruitment of Peons and Chowkidars. A request was also sent to the Employment Exchange for sponsoring the names of the candidates for the said posts.

5. Respondent Nos. 6, 7 and 8 along with others applied for the job and appeared in the interview held on June 2, 1986. Respondent Nos. 6 to 7 were appointed as Peons on June 2, 1986 and respondent No. 8 as Chowkidar with effect from January 9, 1987. A copy of the appointment letter dated June 2, 1986 in respect of Arjun Lal (respondent No. 6) is annexed with the petition as Annexure P-3.

6. Respondent Nos. 2 to 5 challenged the termination order dated December 10, 1985 and raised an industrial dispute. The Labour Court, Bhatinda vide its award dated March 7, 1988 (Annexure P-4) upheld the termination order issued against respondent Nos. 2 to 5.

7. Respondent Nos. 2 to 5 served another demand notice upon the petitioners on January 3, 1990 on the ground that when respondent Nos. 6 to 8 were appointed, they were not given an opportunity of re-employment and thus, the provisions of Section 25-H of the Industrial Disputes Act, 1947 (hereinafter called as "the Act") were violated. The Industrial Tribunal, Chandigarh (respondent No. 1) vide its ex parte award dated September 1, 1992 gave directions that respondent Nos. 2 to 5 be re-employed on the same posts.

8. Civil Writ Petition No. 16700 of 1992 was filed by the petitioners before this Hon"ble Court. This Court set aside the ex parte award and the case was remanded to the Industrial Tribunal, Chandigarh for fresh adjudication.

9. The Industrial Tribunal, Chandigarh (respondent No. 1) gave a fresh award dated September 29, 1994 (Annexure P-8). Respondent Nos. 2 to 5 were reinstated and the Market Committee, Guru Harsahai (petitioner No. 2) was directed to re-employ respondent Nos. 2 to 5. Industrial Tribunal further directed that respondent Nos. 2 to 5 will be deemed to be in the employment of the petitioners with effect from the date of retrenchment of their service, i.e., December 10, 1985. Further, respondent Nos. 2 to 5 were awarded full back wages.

10. Notice of motion was issued.

11. Written statement were filed.

12. Learned counsel for respondent Nos. 2 to 5 has stated that vide Resolution No. 5 dated October 1, 1985 (Annexure R-1), it was unanimously resolved that

respondent Nos. 2 to 5 be employed as Peons and Chowkidars. Further, in the said resolution, it was resolved that the appointments be made after making local publicity by the Market Committee. Learned counsel has further contended that the local publicity was made and only after that, respondent Nos. 2 to 5 were given appointments.

13. Learned counsel for the petitioners has stated, that as no advertisement was made, nor was any requisition sent to the Employment Exchange, therefore, the appointments of respondent Nos. 2 to 5 were illegal and thus, they could not be kept in service. Learned counsel has further contended that respondent Nos. 2 to 5 have not completed 240 days of their service. The first award dated March 7, 1988 has become final and thus, respondent Nos. 2 to 5 could not have filed their claim statements nor was the Industrial Tribunal, Chandigarh (respondent No. 1), while passing the second award dated September 29, 1994 (Annexure P-8) within its rights to do so.

14. Learned counsel, Shri Sumeet Mahajan, appearing for respondent Nos. 6, 7 and 8 has stated that as respondent Nos. 6, 7 and 8 were appointed regularly and have been serving the department for the last 17 years, now terminating their services, would be a violation of these rights under Article 16(1) of the Constitution of India. I have heard the learned counsel for the petitioners and the learned counsel for the respondents.

15. The services of respondent Nos. 2 to 5 were terminated on December 10, 1985 by an order of the Labour Court; respondent Nos. 6 to 8 were appointed on June 2, 1986 and January 9, 1987. Demand notice, for seeking re-employment u/s 25-H of the Act, put forward by respondent Nos. 2 to 5, was served upon the petitioners on January 3, 1990. Respondent Nos. 2 to 5 could not take any advantage of the provisions of Section 25-H of the Act because at the time when they raised their first demand and issued notice, respondent Nos. 6, 7 and 8 were not in the services of petitioner No. 2 and 8. It is only after respondent Nos. 6, 7 and 8 were given service on June 2, 1986 and January 9, 1987 did the cause arise for respondent Nos. 2 to 5 to serve demand notice u/s 25-H of the Act.

16. Going through resolution No. 5 dated October" 1, 1985 (Annexure R-1), it comes out that it is only after due publicity that respondent Nos. 2 to 5 were given appointments.

17. The Management witness, namely, Shri Manjit Singh, Secretary, who came into the witness box as MW1, whose statement is annexed as Annexure R-3, has stated that when fresh appointments of respondent Nos. 6 to 8 were made, no registered letters were sent to respondent Nos. 2 to 5. He has further stated that this was not done because it was not required.

18. Going through the statement of this witness, one can come to the conclusion that his reply has been evasive.

19. Appointment letters (Annexure P-1), P-3 and R-5) were issued to respondent Nos. 2 to 5. Appointment letter Annexure R-5 is signed by the Chairman, Market Committee, Guru Har Sahai and appointments to the posts are on regular basis. This is one of the appointment letters (Annexure R-5), which was sent to Harish Kumar, respondent No. 3 and other appointment letters, which were sent to respondent Nos. 2, 4 and 5, are of similar nature.

20. No fraud was committed on behalf of respondent Nos. 2 to 5 to get employment. If there was any laxity, it was on the part of the authorities for which respondent Nos. 2 to 5 cannot be penalised. The provisions of Section 25-H are reproduced as under:-

"25-H. Re-employment of retrenched workmen.- Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity (to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen) who offer themselves for re-employment shall have preference over other persons."

21. The provisions of Section 25-H of the Act, as quoted above, clearly envisage that respondent Nos. 2 to 5 should have been given due notice whether they went to get employment or not. Respondent Nos. 2 to 5 have been wrongly and illegally retrenched from service under the provisions of Section 2(o)(bb) of the Act.

22. Learned counsel for respondent Nos. 6 to 8 has drawn my attention to a judgment of this Court rendered in the case of Karnal Central Co-operation Bank Ltd. (through its Managing Director), Karnal v. Industrial Tribunal-cum-Labour Court, Rohtak and Ors., 1994 (1) L.L.N. 233, wherein the reference was declined on the ground of delay. Subsequently, another reference was made. It was held that the reference is bad. This judgment does not apply to the case in hand. In the instant case, the provisions of Section 25-H of the Act could not have been agitated by respondent Nos. 2 to 5 at the time when the first reference was made because at that time respondent Nos. 6 to 8 had not been given employment by the petitioners.

23. Learned counsel for the respondents has drawn my attention to a Division Bench Judgment of this Court rendered in the case of Satnam Singh v. Presiding Officer, Labour Court, Gurdaspur and Ors., 2001 (3) R.S.J. 90, wherein full back wages were not granted to the workman and they were awarded from the date of the demand notice.

24. Learned counsel for the respondents has further drawn my attention to a judgment of the Hon'ble Supreme Court rendered in the case of Himanshu Kumar Vidyarthi and Ors. v. State of Bihar and Ors., 1997 (3) R.S.J. 298. The facts of the case, as cited above, were that the services of the petitioners were terminated as they were not appointed according to the rules. The petitioners were engaged on the basis of need of work on daily wages. This judgment can be

distinguished on facts as, in the case in hand, respondent Nos. 2 to 5 were appointed permanently and were not on daily wages.

25. Learned counsel for respondent Nos. 2 to 5 has stated that respondent Nos. 2 to 5 are ready to forego 50% of the back wages from the date of demand notice.

26. The petitioners are directed to reinstate respondent Nos. 2 to 5 with 50% back wages from the date of demand notice. The petitioners are further directed to give employment to respondent Nos. 2 to 5 where suitably required. As respondent Nos. 6 to 8 have served the petitioners for the last 17 years, now terminating their services would be a very harsh step. The petitioners are further directed to keep respondent Nos. 6 to 8 in employment and adjust them on a post wherever they feel, it is suitable.

27. I do not find any infirmity in the award dated September 29, 1994 (Annexure P-8) passed by the Presiding Officer, Industrial Tribunal, Punjab, Chandigarh. Award is modified to the extent that employment to respondent Nos. 6, 7 and 8 shall not be disturbed.

28. Both these writ petitions are disposed of in the manner indicated above.