

(2009) 02 P&H CK 0160
In the Punjab And Haryana At Chandigarh

Assistant Provident Fund Commissioner	APPELLANT
Vs	
P.O., Central Government Industrial Tribunal-cum-Labour Court-II and Another	RESPONDENT

Date of Decision : 02-02-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B, 25F

Citation : (2009) 2 LLJ 661 : (2009) 3 RCR(Civil) 115 : (2009) 2 SLR 600

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Augustine George Masih, J.—The present writ petition has been preferred By the petitioner challenging the award dated November 28, 2007 (Annexure-P-8), passed by the Central Government Industrial Tribunal-cum-Labour Court-II, Rajendra Bhawan, Rajendra Place, New Delhi. On reference being made by the Central Government, the Labour Court has proceeded to decide the reference in favour of the workman holding him entitled to reinstatement with 25% back wages.

2. Counsel for the petitioner contends that the finding recorded by the Labour Court that the workman has completed 240 days and therefore, would be entitled to the protection of provisions of Section 25-F of the Industrial Disputes Act pertains to the period May, 1999 to March, 2000. The workman was appointed from May, 1999 to July, 1999, thereafter, from September, 1999 to May, 2000, and thereafter, w.e.f. August 10, 2000 till April 30, 2003, the workman worked with Rana Security Services, Rohtak, which was granted the contract by the petitioner to provide casual labour. He resigned from the services of Rana Security Services, Rohtak, and thereafter, submitted a form for withdrawal of the Provident Fund and pensionary benefits on September 19, 2003 and the same was processed. After his resignation from Rana Security Services on April 30, 2003, the workman was again employed with the petitioner

firm from June, 2003 to July, 2003 as a Water Carrier as those were summer days and it was for that specified period that his appointment was made. Thereafter, no further; appointment was given to the workman on completion of his tenure. The workman raised a dispute before the authorities and the matter was thereafter referred to the Labour Court for adjudication. He contends that the reference pertains to the period June, 2003 to July, 2003, when his services were terminated. The period therefore relevant for taking into consideration continuous service would be 12 months preceding the date of his termination. As per the allegations of the workman, his services were terminated in July, 2003, and therefore, the relevant period would be from August, 2002 to July, 2003. No finding with regard to the said period has been recorded by the Labour Court; that the workman has completed more than 240 days in this period. What has been decided by the Labour Court is that the workman has completed 240 days of service during the period May, 1999 to March, 2000. This he contends is totally in violation of the provisions of Section 25-B of the Industrial Disputes Act.

3. On the other hand, counsel for the respondent contends that the jurisdiction of this Court would be barred as the award passed in favour of the workman was by the Central Government Industrial Tribunal-cum- Labour Court-II, New Delhi, and therefore, High Court of Delhi would have the jurisdiction to entertain the present writ petition. He further submits that the workman had all through been working with the petitioner. He admits that he had worked with the petitioner and thereafter with Rana Security Services till his resignation on April 30, 2003. He contends that the workman would be the employee of principal employer as he had no option but to join Rana Security Services when the contract of supply of casual labour was assigned to the said agency. He further contends that a finding has been recorded by the Labour Court that the workman has worked from May, 1999 to March, 2000 with the petitioner and thereafter for four years with Rana Security Services. He contends that therefore the award passed by the Labour Court needs to be upheld.

4. I have, with the able assistance of counsel for the parties gone through the records of the case as well as award passed by the Labour Court and am of the considered view that the said award cannot be sustained but before proceeding to decide the case on merit, the objection which has been raised by counsel for the respondent No. 2 needs to be considered. It is contended by counsel for the respondent No. 2 that this Court would not have the jurisdiction to entertain the present writ petition on the ground that the award which is under challenge passed by a Court at Delhi and therefore, the challenge, if any, to the said award would only be maintainable before the High Court of Delhi. This contention of counsel for the respondent No. 2, cannot be accepted.

5. It is an admitted position on records that the workman has performed his duties in the Sub Regional Office of the Employees' Provident Fund Organisation at Rohtak. All through, the workman has performed his duties at Rohtak. His termination was also from Rohtak, and therefore, the cause of action which arose

to the workman would fall within the jurisdiction of this Court. That being so, this Court would have the jurisdiction to entertain the present writ petition for cause of action which has arisen within its jurisdiction.

6. Reliance on the judgment of Hon"ble Supreme Court in Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, can be made wherein Hon"ble Supreme Court in para No. 27 thereof has held as follows:

27. When an order, however, is passed by a Court or Tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority.

In the light of the above judgment, the objection as raised by counsel for the respondent No. 2 cannot be sustained and is hereby rejected.

7. A perusal of the record would show that the finding which has been recorded with regard to period of 240 days which has been found to be in the year, 1999 to March, 2000 pertains to the year, 2000, whereas the termination of workman is on July, 2003. The requirement of law is that the continuous service has to be taken into consideration from the date of his termination twelve months prior thereto. The workman has miserably failed to prove that he had worked for 240 days in 12 calendar months prior to his date of termination. That being so, the relief which has been granted to the workman could not have been granted under the Industrial Disputes Act. The award passed by the Labour Court, therefore, cannot be sustained and is hereby set aside.

The present writ petition stands allowed in above terms.