

(2002) 05 P&H CK 0036
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 12595 of 2000

Balihar Singh and Others

APPELLANT

Vs

Punjab University, Chandigarh and Others

RESPONDENT

Date of Decision : 10-05-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2003) 96 FLR 479

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Vikas Behl, for the Appellant; Anu Chatrath, for the Respondent

Final Decision : Allowed

Judgement

R.L. Anand, J.—By this judgment dispose of three Civil Writ Petitions Nos. 12595 of 2002 (Balihar Singh and Ors. v. Panjab University and Ors.), 16075 of 2000 (Nirdosh Kumar and Anr. v. Panjab University and Ors.) and 221 of 2001 (Lal Chand v. Panjab University and Ors.) as in my opinion all the three writ petitions can be disposed of by a common judgment. For the purpose of facts I am taking the same from Civil Writ Petition No. 12595 of 2000.

2. The Petitioners of this writ petition are seeking the directions of this court that as their services have been illegally terminated, therefore, after calling upon the respondents No. 1 to 3 to produce their termination orders, the same may be quashed and directions be also given to the said respondents to reinstate the petitioners in service forthwith and give them all the back wages and consequential benefits of service. It was also prayed by the petitioners that directions be issued to the respondents to regularise their services or frame a policy for regularisation.

3. The case set up by the petitioners is that the respondent-University invited the applications on plain paper for the posts of Helpers/Beldars at the rate of Rs. 1,200/- per month (fixed) for three months in the first instance. The applications

were supposed to be arrived in the office of the Executive Engineer, Panjab University on or before 8.6.1997. The notice inviting the applications was displayed on the notice board in the respondent-University and was also communicated to the various departments. The petitioners after filling the requisite forms submitted their applications. They were invited for interview on 26.7.1997. They were advised to appear before the Selection Committee and after taking into consideration their capacity to work as Helper or Beldar, the Selection Committee recommended the names of 26 persons for appointment as Helpers/Beldars in the fixed salary @ Rs. 1,200/- per month. The petitioners started continuing their duties with utmost sincerity and regularity. They were then appointed against the vacant posts of Painter, Work-Inspector, Glazier-cum-Polisher, Mason, Clerk, Carpenter, etc. It is further the stand of the petitioners that the respondent-University used to issue appointment letters after every three months or such like period after obtaining fresh sanction. By virtue of this practice the petitioners were made to continue as Helpers against the above mentioned posts for a period of more than three years. The last sanction was given on 26.6.2000. The issuance of various appointment letters makes it clear that the appointment of the petitioners was temporary as Helpers against the vacant posts which continued up to 31.8.2000. It is further alleged by the petitioners that their services were not regularised nor they were considered for regularisation in spite of the fact that the posts against which they worked remained lying vacant for the last 374 years. The fact that they have been retained in service and have continued for a period of above 3-172 years in itself proves that there was a need to retain them in the service, but the University did not formulate any policy for regularisation. In order to voice their grievances and to make the University realise its duties towards its workmen, a representation was given by the petitioners on 28.6.2000. The petitioners were workmen within the meaning of the Industrial Disputes Act, 1947 (in short the Act). They have worked for more than 240 days in the 12 months preceding to the date of their termination i.e. from 1.9.1999 to 31.8.2000. In para No, 8 of the writ petition petitioners No. 1 to 5 have given a chart with respect to their working days. The petitioners further allege that the notional breaks in their service occurred on the first of every three months is due to the reasons that there was a delay by the respondent-University in issuing sanctions for further extension and those are not attributable to the petitioners. On 31.8.2000, the petitioners went for their daily work, but they were informed by the authorities that they were no longer required in the University. The University adopted the policy of pick and choose and it allowed to continue the services of respondents No. 4 to 8, though their date of joining was subsequent to the petitioners. The petitioners made a detailed representation clearly stating that since they had been working for the last 3 years and had worked for more than 240 days in the 12 months preceding the date of terminating, therefore, their services could not be terminated without complying the provisions of Section 25-F of the Act. Moreover, the respondent-University has not taken care of the principle of seniority. The representation of the petitioners was not accepted. The University illegally did not allow the

petitioners to join their duties and this action of it, in terminating their services w.e.f. 31.8.2000 is illegal for want of compliance of the provisions of section 25-F. Hence, the present writ petition.

4. Notice of the writ petition was given to the respondents. A joint written statement was filed on behalf of respondents No. 1 to 3 and it is the stand of these respondents that the petitioners were engaged on contractual temporary basis against the leave vacancies in the office of the Executive Engineer, Panjab University. Initially they were engaged for a period of three months and their term was extended from time to time after giving them one day break each and they were allowed to continue to work up to 31.8.2000. As per budget estimates for the year 2000-2001, there was no provision for filling up the sanctioned vacant posts. Keeping in view the financial crunch in the University, the petitioners were not allowed to continue to work after 31.8.2000. Relying upon the provisions of section 2(o)(bb) of the Act, the respondent-University took the stand that the services of the petitioners have been terminated as a result of non-renewal of the contract of employment and thus the case of the petitioners is covered u/s 2(o)(bb) of the Act. Hence, there is no merit in the writ petition.

5. A re-jointer was filed by the petitioners to the joint written statement of respondents No. 1 to 3 in which they reiterated the averments of the writ petition while denying those of the written statement.

6. I have heard Mr. Vikas Behl, Advocate on behalf of the petitioners, Ms. Anu Chatrath, Advocate on behalf of respondents No. 1 to 3 and with their assistance have gone through the record of the case.

7. It is the common case of the parties that earlier the petitioners were engaged on a fixed salary for a period of three months at the first instance. Thereafter they were allowed to work with notional breaks and they continued working up to 31.8.2000. It is the stand of the respondents that on account of non-sanction of the budget, the petitioners were asked not to report for duty. It is also the stand of the respondents that since the services of the petitioners were contractual and were extended from time to time by new contracts, therefore, their services were liable to be terminated on the expiry of the period of contract and as such by virtue of the provisions of Section 2(o)(bb) of the Act it does not amount to retrenchment.

8. After considering the rival contentions of the parties in this case, I am of the considered opinion that the contentions/defence raised by the learned counsel for the respondent-University has no legs to stand. In *Mohan Lgl v. Director, North Zone Cultural Centre, Patiala etc.* C.W.P. No. 18202 of 1994, decided by the Hon'ble Division Bench of this Court, after interpreting the provisions of Section 2(o)(bb) held that the termination of the services of a workman on account of non-renewal of the contract of employment covers the contingency if there is one time contract which stood expired with its expiry, but where there is a renewal of the service conditions under the garb of contractual employment and thereafter

the management does not choose to extend the terms of appointment irrespective of the fact that job was in existence, such action would definitely come within the mischief of retrenchment and in that eventuality the provisions of Section 25-F of the Act are liable to be complied with. The Court can always lift the veil. It is the case of the respondent-University that against the vacant posts the petitioners were adjusted. It is also the common case of the parties that the petitioners were allowed to work for more than 2-1/2 years against the posts. The contract of employment was extended from time to time by giving notional breaks. In such a situation, calling upon the petitioners not to resume the work on a particular date i.e. 1.9.2000 without complying with the provisions of section 25-F of the Act will be considered as an act of retrenchment within the meaning of Section 2(oo), which defines retrenchment and it means the termination by the employer of the service of a workman for any reason whatsoever. If the management fails to bring its case with any of the provisos of Section 2(oo), in such a situation it has to be inferred reasonably that the dispensation of the service of the workman is covered by the patent wording which means the termination by the employer of the service of a workman for any reason whatsoever. Section 25-F is mandatory in character and if at the time of termination of the services of the petitioners retrenchment compensation has not been given, such action will be considered bad in the eyes of law not only on account of non-complying of the provisions of Section 25-F but also on account of unfair labour practice on the part of the management. In *The Haryana State Cooperative Supply and Marketing Federation v. The State of Haryana and Ors.* 1995(4) RSJ 369 it was held that when successive appointments were given by the management with notional breaks, such action on its part amounts to unfair labour practice. In *C.W.P. No. 5504 of 1995 Rattan Lal v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar and Anr.* This High Court observed that the provisions of Section 2(oo)(bb) are to be read along with the provisions of Section 25-F of the Act and where the management had allowed the workman to continue on the service with notional breaks after the workman put in 240 days in twelve months preceding the date of his termination, in such circumstances it amounts to unfair labour practice. Similar view was also taken in *Randhir Singh v. State of Punjab and Ors.* 1993(3) RSJ 212 and *Haryana State Federation of Consumer's Co-op. v. Presiding Officer, Labour Court, Chandigarh* 1992(1) SCT 697.

9. Assuming for the sake of argument that the services of the petitioners were terminated on account of non-sanctioning of the budget by the University against the vacant posts, still the action of the respondent-University cannot be justified as the petitioners had worked more than 240 days in the preceding 12 months of their termination and in that eventuality the respondent-University was required to comply the provisions of Section 25-F of the act. Thus the ratio of the judgment of the Hon"ble Division Bench passed in *C.W.P. No. 18101 of 1994* will apply to the facts in hand.

10. In *Ramkishan Vs. Samrat Ashok Technical Institute, the Madhya Pradesh*

High Court held that a restricted meaning should be given to the provisions of Section 2(oo)(bb) and once an employee completes 240 days of work, the termination of his services amounts to retrenchment even though last letter of appointment roughly provides for automatic termination of his service. In *Madhya Pradesh Bank Karamchari Sangh (M.P.) v. Syndicate Bank and Anr.* 1996 L. I.C. 1161 again the Madhya Pradesh High Court held that while construing the provisions of Section 2(oo)(bb), the Courts should not interpret these provisions in a manner which may stifle the main provision. Rather, these provisions should be construed benevolently in favour of the workman. It was also observed that if the workman had been initially appointed for a fixed period like the facts of the present case and the service of such workman had been extended thereafter from time to time, in such situation the non-extension of service of the workman should be considered as mala fide if the management fails to convince the Court that work had ended. The Hon'ble Supreme Court in *Secretary, Haryana State Electricity Board v. Suresh* 1999(2) SCT 600 held that the Court can lift the veil in order to find out under what circumstances the services of the workman are going to be dispensed with. In the present case, this Court is of the opinion that the contract system was merely a camouflage and farce. The University had the work. It allowed the petitioners to continue as long for a period of three years. The moment the petitioners came but with their genuine demand, the University took the excuse that as the funds were not sanctioned for the vacant posts, therefore, the services of the petitioners were dispensed with. This action of the University, in my opinion, does not save it from complying the provisions of Section 25-F of the Act.

11. As a dying argument the learned counsel for the respondent-University then submitted that the status of the petitioners was that of workmen and if their services had been terminated, it was open to each one of them to raise industrial issue and approach the Labour Court for redressal of their grievances, if any. In my opinion, this argument just has been raised to add the miseries of the petitioner who are petty employees like Beldards/Helpers. When the facts are not in dispute why the petitioners should be relegated to the effective alternative remedy. The respondent-University is not disputing on facts. It is admitted stand of the University that the petitioners had worked for more than 240 days in 12 months preceding the date of their termination. The University is coming with a small defence that since the budget was not sanctioned for the vacant posts against which the petitioners had been working, therefore, their services had been terminated by virtue of provisions of Section 2(oo)(bb). Their defence has already been rejected. The admitted position is that the petitioners had worked for more than 240 days. Since there is no dispute on facts, no useful purpose is going to be served to relegate the petitioners to the Labour Court, especially keeping in view the fact that the present writ petitions are pending in the High Court for the last two years and that the petitioners are expecting for their justice on account of the fact that they are on the road side. For this I draw strength from the judgment reported as *Amrik Singh v. The Superintending*

Engineer and Ors. 1995 (3) RSJ 595.

12. Before I part with this judgment, I may also make a mention that Shri Nirdosh Kumar and Suresh Kumar were respondents in C.W.P.No. 12595 of 2000. The petitioners had given challenge against them on the ground of alleged juniority. The University even made the hammer fall upon said Nirdosh Kumar and Suresh Kumar and they were also treated in the same manner as that of petitioners Balthar Singh and others giving rise to another C.W.P.No. 16075 of 2000. which is also being disposed of by the present judgment. Shri Lal Chand was added as respondent No. 2 in the said writ petition. His services too were terminated by the University, as a result of which he had to file C.W.P.No. 221 of 2001.

13. As this Court is convinced that all the petitioners had worked for 3 years or more with the University, their services had been illegally terminated, the renewal of contract was just to show notional breaks and this act amounts to unfair labour practice. Consequently all the three writ petitions are allowed. Directions are given to the respondent-University to consider the case of the petitioners for regularisation as per its policy or the policy, if any, issued by the State of Punjab and adopted by the University subject to their eligibility as per the policy and necessary action shall be taken by the University within four months from the receipt of the copy of the order. The petitioners shall be entitled to continuity of service but, of course, they shall not be entitled to back wages as they had not performed duties. There shall be no order as to costs in these writ petitions.