
(2008) 09 P&H CK 0175
In the Punjab And Haryana At Chandigarh

Baljit Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F

Citation : (2009) 120 FLR 1138 : (2009) 153 PLR 28

Hon'ble Judges : Sd/ Jcra Singh, J;M.M. Kumar, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The prayer made in the instant petition filed under Article 226 of the Constitution is that order dated 17.12.2007 (P-8) passed by the Deputy Commissioner, Fatehabad-respondent No. 4, rejecting the claim of the petitioner for grant of minimum of regular pay scale with allowances like D.A. etc. be set aside. A further direction has been sought for grant of minimum of the regular pay scale and DA to the petitioner w.e.f. 29.1.1996 when the petitioner was appointed on the post of Peon along with interest @ 18%.

2. The petitioner was appointed as Peon in the office of the Municipal Committee, Ratia-respondent No. 3 on 29.1.1996 and continued as such upto 10.1.1997 when his services were terminated. He challenged his termination by approaching the Industrial Tribunal-cum-Labour Court, Hissar (for brevity, "the Tribunal") by filing reference No. 24 of 1998. The Tribunal answered the reference on 25.1.2002 in favour of the petitioner holding that his termination was illegal. It also directed to reinstate the petitioner with continuity of service with all consequential benefits with 25% back wages from the date of the demand raised (P-1). On 4.7.2002, he was reinstated on the post of Peon on daily wage basis (P-2). The petitioner made various representations for grant of minimum of regular pay scale w.e.f. the date of his appointment. His case was also recommended by the Secretary, Municipal Committee, Ratia-respondent No.

3 to the Deputy Commissioner, Fatehbad-respondent No. 4. Then he filed C.W.P. No. 13637 of 2007, which was disposed of on 31.8.2007 (P-7) by directing the respondents to take notice of the representation made by the petitioner and decide the same in accordance with law. The decision has now been given by the Deputy Commissioner vide order dated 17.12.2007 (P-8) rejecting the claim made. The primary reliance has been made by the Deputy Commissioner on the Division Bench judgment of this Court rendered in the case of Rajinder Kumar Vs. State of Haryana and Others, , of which one of us (M.M. Kumar, J.) was a member, wherein the Division Bench has considered in detail the effect of the judgment rendered by the Constitution Bench of Hon'ble the Supreme Court in the case of the Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

3. Mr. Jagbir Malik, learned Counsel for the petitioner has placed primary reliance on the case of Smt. Bhagwan Devi who has been granted minimum of the regular pay scale by the Deputy Commissioner-respondent No. 4, vide order dated 16.1.2003 (P-5). He has also placed reliance on a Full Bench judgment of this Court in the case of Vijay Kumar v. State of Haryana (2002)130 P.L.R. 387 and argued that if a daily wager fulfills various conditions culled out by the Full Bench then he is entitled to the minimum of the regular pay scale on the principle of "equal pay for equal work" along with DA.

4. Having heard learned Counsel at a considerable length we are of the considered view that the instant petition lacks merit and is, thus, liable to be dismissed. A daily wage employee cannot seek parity in the matter of payment of wages with a regular employee because the employment of a daily wager commences every day in the morning and comes to an end in the evening. He cannot be proceeded against for absence of duty if he does not report on the next day, whereas a regular employee is subjected to the discipline of office hours and conduct worthy of a public servant. He is governed invariably by Punishment and Appeal Rules and Conduct Rules of the Department. Therefore, no parity in the matter of pay scale and other allowances could be claimed by a daily wager with a regular employee. Moreover, a daily wager is employed without going into details of his antecedents and even qualification. As and when opportunity of regular employment comes such daily wager could always apply and screen through the test laid by the employer. It is also well settled that employer can terminate the services of a daily wager as long as it comply with the principles laid down by Section 25-F of the Industrial Disputes Act, 1947. In the present case, the petitioner has already gone to the Tribunal which has allowed only 25% of the back wages from the date of demand notice. The prayer which is now being made before this Court could have easily been made by the petitioner before the Tribunal and the 25% amount of the back wages, which has been paid from the date of termination i.e. 10.1.1997 to the date of his reinstatement i.e. 4.7.2002 also shows that similar relief is being sought in the instant petition. It is, thus, obvious that such a relief cannot be granted once the adjudication has been undertaken by the Tribunal in respect of the same period

and the plea was available to the petitioner. In so far as the Full Bench judgment in Vijay Kumar's case (supra) is concerned,-we do not wish to enter into any detailed discussion because the petitioner does not have requisite qualification of Matric for the post of Peon and in any case the Full Bench judgment will not apply once the matter has been adjudicated by the Tribunal. Even otherwise, the law laid down by the Constitution Bench of Hon''ble the Supreme Court in Umadevi's case (supra) would affect the view taken by the Full Bench in Vijay Kumar's case (supra).

5. There is, thus, no merit in the instant petition, which does not warrant admission.

6. Accordingly, the same is dismissed.

Sd/ Jcra Singh, J.