
(1989) 05 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 5535 of 1989

Bir Singh

APPELLANT

Vs

The State of Haryana and others

RESPONDENT

Date of Decision : 19-05-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 25P

Citation : (1989) 05 P&H CK 0010

Hon'ble Judges : Amrit Lal Bahri, J

Bench : Single Bench

Advocate : C.B. Goel, for the Appellant;

Final Decision : Allowed

Judgement

A.L. Bahri, J.—Bir Singh Petitioner was appointed as the Officer Incharge Barrier, by the Administrator, Kaithal Municipality, Kaithal vide order dated July 21, 1979, annexure PI. He was appointed purely on temporary basis. He could resign after serving one month's notice. His service were terminated vide order annexure P--2 dated September 9, 1980 on receipt of instructions from the Government contained in letter No. 282, dated September 9, 1980. Bir Singh challenged this order by making a reference under the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). The Presiding Officer, Labour Court, Faridabad vide his award dated August 1982. Annexure P. 3 held the termination of services of Bir Singh as justified. The Petitioner has challenged this award of the Labour Court as well as the order of terminating his services (annexure P. 2) in this writ petition, on different grounds inter-alia" alleging that he had completed 240 days in the year preceding the order of his termination and he was not paid any retrenchment compensation as required u/s 25-P of the Act. Some juniors were retained whereas services of the Petitioner were terminated. This amounted to unfair labour practice.

2. On the other hand, the stand of the Respondents State of Haryana as well as Municipality, Kaithal is that Municipal Committees were required to recruit

employees through the Employment Exchange. The provisions of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 were violated while appointing the Petitioner and on that ground the State of Haryana, advised the Administrator of the Municipality, Kaithal to terminate the services of such employees who were not recruited through the Employment Exchange and it was on that basis that order annexure P. 2 terminating the services of the Petitioner was passed.

3. After hearing the learned Counsel for the Petitioner, I find that the award of the Labour Court cannot be sustained in law. Section 25-F of the Act, reads as under:

25-F. Conditions Precedent to retrenchment of workman--No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until.

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette

In paragraph 7(a) of the writ petition, it has been alleged by the Petitioner that he had completed more than 240 days in the year and was thus, a permanent employee of the Municipality. In sub-paragraph (b) it is stated that the provisions of Section 25-F of the Act were not complied with and the order terminating his services is in violation of the said provisions.

4. Two written statements were filed, one on behalf of the State of Haryana and the other on behalf of the Administrator, Municipality, Kaithal. The plea of the Petitioner was not specifically denied in the corresponding paragraphs in this regard. Thus, it is taken that the Petitioner had completed more than 240 days of service during twelve months prior to the order terminating his services was passed. Thus he was in continuous service as defined u/s 25-B of the Act. Admittedly, no notice or retrenchment compensation was paid to the Petitioner at the time of passing of the order of terminating his services. Removal of a workman in contravention of the provisions of Section 25-F of the Act amounts to termination. On that ground the order terminating the services of the Petitioner as well as the award of the Presiding Officer, Labour Court, Faridabad. are liable to be quashed.

5. The plea taken up in the written statement that the provisions of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959, were

not complied with at the time of recruitment of the Petitioner and his appointment was in violation of this Act, in the circumstances of the present case, cannot be accepted. The Petitioner was allowed to work for more than 240 days in the year and his service continues. If the order of terminating his services had been passed before expiry of 240 days the above argument would have been available. After completion of 240 days a right is vested in the workman and his services can be terminated only in accordance with law.

6. For the reasons recorded above, this writ petition is allowed with costs. Counsel's fee Rs. 500/-. The order terminating the services of the Petitioner annexure P. 2 and the award of the Labour Court annexure P. 3 are quashed with the direction to the Respondents to reinstate the Petitioner with continuity of service with full back wages.