

(2014) 01 P&H CK 0265
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 13887 of 2013 (O and M)

Block Development and Panchayat Officer-cum-Executive
Officer

APPELLANT

Vs

Balbir Singh and Others

RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2(oo) 2(s) 25 25F 25F(a)

Citation : (2014) 141 FLR 528 : (2014) 1 LLJ 628 : (2014) LLR 484

Hon'ble Judges : G.S. Sandhawalia, J

Bench : Single Bench

Advocate : Deepak Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.

CM. No. 16071 of 2013

1. Application for placing on record statement and affidavit of Naval Ram, BD & PO as Annexures P-4 and P-5 is allowed. The said Annexures are taken on record, subject to all just exceptions.

CWP No. 13887 of 2013

Challenge in the present writ petition is to the award dated 08.04.2013 (Annexure P-1) passed by the Industrial Tribunal, Bathinda whereby, respondent No. 1-Balbir Singh has been ordered to be reinstated in the job at the same post on the same terms and conditions on which he was already working with the management. The Industrial Tribunal also gave the relief of continuity of service with 30% back wages from the date of demand notice i.e. 25.11.2002 till his joining.

2. Perusal of the award which has been impugned by the petitioner would go on

to show that the workman was employed as a Sweeper @ Rs. 2,000/- per month in March, 1991 and worked for 18 years before his services were terminated on 01.07.2002 without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (in short "the Act"). The petitioner-management also retained juniors in service and appointed fresh hands. The Tribunal found that the workman was working as Sweeper on temporary basis and getting the salary as per D.C. rate and his services were terminated without notice, charge sheet, inquiry and compensation and disbelieved the defence of the management that workman had stopped coming on the job and that a new Sweeper was engaged on the same terms and conditions. A factual finding of fact was recorded that the petitioner had worked for more than 240 days preceding his termination and there is nothing on record to establish that he had left the job on his own. Admittedly, no notice was given to him to join his duty nor any charge sheet was issued or inquiry was conducted and a new person was engaged in his place. Thus, it was recorded that the respondents did not follow the mandatory procedure before engaging another person in his place. Accordingly, the reference was accepted and reinstatement was ordered, as noticed above.

3. Counsel for the petitioner has vehemently contended that it was a case of abandonment of job and submitted that the petitioner was only part time worker and, therefore, reinstatement was wrong and the workman had not discharged the onus regarding the fact that it was he who had stopped coming to the job.

4. After hearing counsel for the petitioner and perusing the record, this Court is of the opinion that the said submission is not acceptable. Admittedly, the case of the workman was that he was not allowed to join after 30.06.2002. The petitioner-Management has also placed on record a demand notice u/s 2A of the Act wherein, the worker, on 25.11.2002, had brought to the notice of the petitioner-Management that he had been working for the last 18 years and his services had been illegally terminated while retaining the juniors and appointing fresh hands. Admittedly, respondent No. 1 had worked from March, 1991 till 30.06.2002 and, therefore, for him to abandon the job at that stage, as contended by the counsel, is not acceptable. He has raised a demand immediately thereafter and no notice was issued to him to join the duty, as has been noticed by the Labour Court. The statement of Naval Ram-BD & PO has also been placed on record as Annexure P-4 wherein, the management's witness denied that whether the department had ever given the reply to the letter of the Assistant Labour Commissioner, Moga dated 12.12.2002. This fact rather shows that the management did not respond to the reconciliation efforts and now it does not lie in its mouth to say that the workman had abandoned the job.

5. The second submission that he was only a part time worker and not a permanent employee is also without any basis. The Hon'ble Apex Court in Devinder Singh Vs. Municipal Council, Sanaur, held that the definition of the workman also does not make any distinction between full time and part time employee or a person appointed on contract basis and if the mandatory

requirements of the Act are violated, it would amount to retrenchment under the meaning of Section 2(oo) of the Act. The relevant observations read as under:--

12. Section 2(s) contains an exhaustive definition of the term "workman". The definition takes within its ambit any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and it is immaterial that the terms of employment are not reduced into writing. The definition also includes a person, who has been dismissed, discharged or retrenched in connection with an industrial dispute or as a consequence of such dispute or whose dismissal, discharge or retrenchment has led to that dispute. The last segment of the definition specifies certain exclusions. A person to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, is applicable or who is employed in the police service as an officer or other employee of a prison or who is employed mainly in managerial or administrative capacity or who is employed in a supervisory capacity and is drawing specified wages per mensem or exercises mainly managerial functions does not fall within the definition of the term "workman".

13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act.

14. It is apposite to observe that the definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

15. Whenever an employer challenges the maintainability of industrial dispute on the ground that the employee is not a workman within the meaning of Section 2(s) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of "workman".

16. In *Shri Birdhichand Sharma Vs. First Civil Judge Nagpur and Others*, this Court considered the question whether bidi rollers were workmen within the meaning of the term used in the Factories Act, 1948. The factual matrix of the case reveals that the workers who used to roll the bidis had to work at the factory and were not at liberty to work at their houses. Their attendance was noted in the factory and they had to work within the factory, though there was freedom of doing work for particular hours. They could be removed from service

on the ground of absence for eight days. The wages were paid on piece-rate basis. After considering these facts, the Court held that the bidi rollers were workmen. The Court observed that when the operation was of a simple nature and did not require supervision, the control could be exercised at the end of the day by the method of rejecting bidis which did not meet the required standard and such supervision was sufficient to establish the employer employee relationship.

17. In *Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another*, the three Judge Bench held that the tailors employed in a tailoring shop, who were paid according to their skill and work and the quality of whose work was regularly checked were employees covered by the Andhra Pradesh (Tilengana Area) Shops and Establishments Act, 1951.

18. In *L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another*, the Court held that even a daily rated worker would be entitled to protection of Section 25F of the Act if he had continuously worked for a period of one year or more.

19. Section 25 couched in negative form. It imposes a restriction on the employer's right to retrench a workman and lays down that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched until he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or he has been paid wages for the period of notice and he has also been paid, at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months and notice in the prescribed manner has been served upon the appropriate Government or the authority as may be specified by the appropriate Government by notification in the Official Gazette.

20. This Court has repeatedly held that the provisions contained in Section 25F(a) and (b) are mandatory and termination of the service of a workman, which amounts to retrenchment within the meaning of Section 2(oo) without giving one month's notice or pay in lieu thereof and retrenchment compensation is null and void/illegal/inoperative *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, *Santosh Gupta Vs. State Bank of Patiala*, , *Mohan Lal Vs. Management of Bharat Electronics Ltd.*, *Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another*, *Gammon India Limited Vs. Niranjana Dass*, , *Gurmail Singh and Others Vs. State of Punjab and Others*, and *Pramod Jha and Others Vs. State of Bihar and Others*, 1 In *Anoop Sharma v. Executive Engineer, Public Health Division, Haryana (supra)*, the Court considered the effect of violation of Section 25F, referred to various precedents on the subject and held the termination of service of a workman without complying with the mandatory provisions contained in Section 25F(a) and (b) should ordinarily result in his reinstatement.

22. We may now advert to the impugned order. A careful analysis thereof reveals that the High Court neither found any jurisdictional infirmity in the award of the Labour Court nor it came to the conclusion that the same was vitiated by an error of law apparent on the face of the record. Notwithstanding this, the High Court set aside the direction given by the Labour Court for reinstatement of the appellant by assuming that his initial appointment/engagement was contrary to law and that it would not be in public interest to approve the award of reinstatement after long lapse of time. In our view, the approach adopted by the High Court in dealing with the award of the Labour Court was *ex facie* erroneous and contrary to the law laid down in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, *Sawarn Singh and Another Vs. State of Punjab and Others*, *P.G.I. of M.E. and Research, Chandigarh Vs. Raj Kumar*, *Surya Dev Rai Vs. Ram Chander Rai and Others*, and *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*,

6. Keeping in view the principles that the Writ Court, while exercising powers of certiorari jurisdiction under Article 226 of the Constitution of India, cannot act as an Appellate Court and only an error of law which is apparent on the face of the record can be corrected or an order without jurisdiction where there existed none or in excess of jurisdiction and where the Tribunal acts in flagrant disregard of the law, this Court would interfere. No such illegality or irregularity can be found in the order under challenge. Accordingly, finding no merit in the present petition, the same is dismissed in limine.