

(2006) 08 P&H CK 0108
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 19255 of 2005

Dhani Ram

APPELLANT

Vs

Presiding Officer, Labour Court-II and Others

RESPONDENT

Date of Decision : 04-08-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25B, 25F, 25J

Citation : (2006) 144 PLR 406

Hon'ble Judges : J.S. Narang, J;Arvind Kumar, J

Bench : Division Bench

Advocate : R.S. Sihota, for the Appellant; Ajay Chaudhary, DAG for respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

1. All the above-stated writ petitions have been taken up together for hearing.
2. These petitions have been preferred by the petitioners-workmen questioning the legality of awards dated 31.8.2005 passed by respondent No. 1 separately by virtue of which their claims have been dismissed. Since identical questions of law and fact are involved in all these petitions, we propose to dispose of by this common judgment.
3. For the sake of convenience, we are taking facts of CWP No.19255 of 2005 only.
4. According to the petitioner-workman Dhani Ram, his services were engaged by respondents No. 2 and 3-department as Beldar on 9.3.1993. His services were terminated w.e.f. 1.4.1996 without assigning any reason. He raised an industrial dispute. On failure of re-conciliation proceedings, the appropriate Government referred the dispute to the Labour Court. The petitioner-workman filed claim statement before the Labour Court alleging adoption of unfair labour practice while terminating his service by the department. Moreover, it has been claimed by the petitioner that his services were been terminated without issuing

any notice and without affording any opportunity of personal hearing.

5. The claim of the petitioner was contested by the department. Their stand was that the services of the petitioner-workman, who was only a daily wager and whose services were engaged as per requirement of work, can be dispensed with as per Para 1.1 (4) of the PWD Specification, 1990, which provides for dispensation of service of a daily wager without issuing any notice or assigning any reason. Therefore, the workman being a daily wager is not entitled to any retrenchment compensation. Moreover, workman is not entitled to regularization as he did not fulfill any of the conditions contained in Haryana Government's letters dated 7.3.1996 and 18.3.1996. The petitioner filed re-joinder controverting the stand taken by the department in their reply and reiterated the averments made by him in the claim statement.

6. After analyzing the evidence adduced by both the parties as well as material place before it, the Labour Court vide the impugned award dated 31.8.2005 held that it was not the termination of the services of the petitioner-workman as he used to work with the department as per requirement. Further, relying upon the decision of the Hon"ble Supreme Court re: Executive Engineer (State of Karnataka v. K. Somasetty 1997 (3) SCT 277, the Labour Court held that since the petitioner was employed for carrying out the work on specific project, he cannot claim re-instatement with back wages even though he had completed 240 days. Accordingly, as noticed above, the Labour Court dismissed the claim of the petitioner workman.

7. So far as CWP Nos. 19273 and 19276 of 2005 are concerned, they are also containing the similar pleadings and the Labour Court while dismissing their claim returned the similar findings, as has been noticed above in CWP No. 19255 of 2005 Upon notice of the petition, respondents No. 2 and 3 filed their joint written statement. It has been submitted that the services of petitioner were not terminated on 1.4.1996, as alleged rather he worked on various roads up to 15.2.2000. Thereafter, he left the job at his own. Similar stand has been taken by respondents No. 2 and 3 in their written statement filed separately to CWP Nos. 19273 and 19276 of 2005. Thus, dismissal of all the writ petitions has been sought.

8. We have heard learned Counsel for the parties at length and have also gone through the paper book carefully. The very stand of the respondent-department was that the petitioners-workmen had been engaged for doing temporary nature of work, on temporary muster rolls, on daily wages, as per requirement and when work ceased to exist their services were dispensed with. It was further stand of the department that there were Government instructions dated 7.3.1996 and 18.3.1996 to regularize the daily rated employees, who had completed three years" service as on 31.3.1996 and had worked for minimum period of 240 days during each year. The present workmen did not fulfill any of the conditions stipulated in the circular and as such, their services were dispensed with. The Labour Court had also swayed away with the plea of the

respondent-department while holding that they were employed on specific project for specific work and as such, there was no termination of the services of the petitioners-workmen by the department and thus, answered the reference against the workmen. The approach of the Labour Court is not in a right perspective. Retrenchment has been defined in Section 2(oo) of the Industrial Disputes Act, 1947 (hereinafter called as the Act), which reads as under:

2[(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

[(bb) termination of the service of the workman as a result of the non-renewal of the contract or employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health;]

9. A bare perusal of the said definition shows that the termination of a workman "for any reason whatsoever" would constitute retrenchment except in cases excepted in the above-said Section itself. The burden lies on the employer and not upon the employee-workman to prove that the case falls within one of the excepted clauses and thus, is not retrenchment. In the instant case, there is absolutely no evidence led by the respondent-department to prove if the case of the petitioner-workmen falls in any of the excepted categories. Therefore, this case falls within the term termination of the services "for any reason whatsoever". It would, thus, be retrenchment within the meaning of Section 2(oo) of the Act, referred to above. It is the case of the respondent-department itself that the services of the petitioner-workmen were dispensed with as they did not qualify the conditions laid down in the instructions issued by the Government dated 7.3.1996 and 18.3.1996. Therefore, from their own showing the termination did take place in March 1996 on the receipt of the said instructions of the Haryana Government.

10. Section 25B of the Act contemplates procedure for calculating 240 days which has to be evaluated during twelve calendar months preceding to the date of termination. In order to invoke the fiction enacted in Section 25B of the Act, it is necessary to determine first the relevant date, i.e., the date of termination of service which is complained of as retrenchment. After ascertaining the date, move backward to a period of twelve months just preceding the date of termination and then ascertain whether within a period of 12 months, the

workman has rendered service for a period of 240 days. These facts, if answered affirmatively in favour of the workman, it will have to be assumed that the workman is in continuous service for a period of one year. Thus, he would be taken to have satisfied the eligibility qualifications enacted in Section 25F of the Act. Once these principles are applied in the present case, we are afraid that the finding arrived at by the Labour Court is totally divergent. The respondent-department has tendered the details of the working days put in by the petitioner-workmen as Annexure R-1 in each case wherein they have also shown to have worked upto year 2000. The Labour Court has grossly misconstrued in taking into account the period of service rendered by the petitioner-workmen subsequent to the date of termination. The present reference is of the year 1997 alleging illegal termination having taken place in the year 1996. Therefore, the service rendered subsequently to the date of termination is inconsequential in determining the continuous service.

11. Thus, it takes us to the question whether the petitioner workmen had completed 240 days in 12 calendar months preceding the date of his termination, in order to qualify themselves to sustain their claim to the benefit of Section 25F of the Act *ibid*. As observed earlier, the details of the working days so tendered by the respondent-department (annexure R-1) is suggestive of the fact that preceding 12 months from the date of termination, the petitioner-workmen had completed 240 days of service. Striking of the name of the workmen from the rolls by an employer amounts to "retrenchment of service" and as such, termination is retrenchment within the meaning of Section 2(oo) of the Act *ibid*. The case in hand is thus one of retrenchment and, therefore, provisions of Section 25F of the Act were to be complied with. Admittedly, there was non-compliance of mandatory provisions of Section 25F of the Act. Thus, we have no hesitation to say that the termination of workmen due to non-compliance of Section 25F of the Act is illegal.

12. The Government instructions so referred by the learned Deputy Advocate General are of no help to the department. The said instructions, inconsistent with the substantive provision of law i.e. Section 25F of the Act *ibid*, cannot have any force in law. In fact u/s 25J of the Act, the provisions of chapter V-A of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law. Therefore, whatever are the instructions, the services of an employee who has completed continuous service of 240 days preceding 12 calendar months could not be terminated without complying with the provisions of Section 25F of the Act.

13. For the foregoing reasons, the impugned awards dated 31.8.2005 passed separately by the Labour Court against the petitioner workmen Dhani Ram, Ramesh Chand and Bijender are quashed.

14. Accordingly, the petitioners-workmen are re-instated with continuity of service. The question, however, remains with regard to their back wages. A bare perusal of the statements of the petitioners recorded before the Labour Court,

reveals that the petitioners, in equivocal terms had stated that they remained unemployed. However, in the details of their working, so tendered as Annexure R-1, by the department-management, the petitioner-workmen have been shown to have re-engaged after their termination and they continued to work upto February 2000 intermittently. This falsify the statement made by the petitioner-workmen of having remained unemployed, as indicated above. Keeping in view the length of services rendered by the petitioner-workmen, we deem it appropriate to grant 50% back wages to the workman from the date of their termination till their re-instatement. However, they shall not be entitled to any wages for the period they remained under the employment of respondent-department, be that after the year 2000.

15. The instant petition is allowed in the manner indicated above. No costs.