

(2009) 07 P&H CK 0110
In the Punjab And Haryana At Chandigarh

Gurcharan Singh and Another

APPELLANT

Vs

The Punjab State Cooperative Supply and Marketing
Federation Limited

RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Industrial Disputes Act, 1947 — Section 17B, 25F

Citation : (2009) 07 P&H CK 0110

Hon'ble Judges : Daya Chaudhary, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—Delay condoned. Heard on merits.

2. This appeal has been preferred against judgment of the learned Single Judge setting aside the award of the Labour Court for reinstatement and continuity of service and directing payment of Rs. 25,000/-to appellant No. 2 and Rs. 50,000/-to appellant No. 1 as compensation in addition to the wages already paid u/s 17-B of the Industrial Disputes Act, 1947 (for short, "the Act") from November 1991 to 2008.

3. The appellants raised an industrial dispute claiming that they were employed by respondent No. 1 and their services were terminated in violation of provisions of Section 25-F of the Act. Appellant No. 1 had rendered 8 years of service while appellant No. 2 had rendered 2 years.

4. The dispute was referred for adjudication to the Labour Court. The Labour Court vide award dated 6.11.1990 had held that the termination was invalid and the workmen were entitled reinstatement with continuity of service and back-wages. The claim of the workmen was based on oral appointment and though Management denied the relationship of master and servant, it failed to produce any record from which an inference was drawn that the workman had worked for

more than 240 days.

5. Learned Single Judge held that the workman was not entitled to reinstatement even if it was assumed that there was violation of provisions of Section 25-F of the Act, having regard to the nature of appointment. There was no appointment letter and the appointment being to a public post governed by rules and regulations, itself was contrary to the requirement of law as held in *Mahboob Deepak Vs. Nagar Panchayat Gajraula and Another*, wherein it was inter alia observed as under:

7. The factors which are relevant for determining the same, inter alia are:

(i) whether in making the appointment, the statutory rules, if any, had been completed with;

(ii) the period he had worked;

(iii) whether there existed any vacancy; and

(iv) whether he obtained some other employment on the date of termination in passing of the award.

8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee can not claim any right to be permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized.

10. Applying the legal principles, as noticed hereinbefore, the relief granted in favour of the appellant by the Labour Court is wholly unsustainable. The same also appears to be somewhat unintelligible.

11. The High Court, on the other hand, did not consider the effect of non-compliance of the provisions of Section 6N of the U.P. Industrial Disputes Act, 1947. Appellant was entitled to compensation notice and notice pay.

12. It is now well settled by a catena of decisions of this Court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workman should be granted adequate money compensation. (See *Madhya Pradesh Administration Vs. Tribhuban*, .

6. We have heard learned Counsel for the parties.

7. Learned Counsel for the appellants contended that the learned Single Judge could not go into question of nature of employment as the question referred to the Labour Court was only whether termination of service was justified. Reliance has been placed on the judgments of Hon"ble Supreme Court in State Bank of Bikaner and Jaipur v. Om Parkash Sharma 2006(3) SCT 104 and Pottery Mazdoor Panchayat v. The Perfect Pottery Co. Ltd. and Anr. 1979 LAB. I.C. 827 : 1979 SC 1356 and judgment of Rajasthan High Court in Kailash Chand v. Judge, Labour Court No. 1, Jaipur and Ors. 2009(2) SCT 383 in support of his contention.

8. We do not find any merit in the submission. While discussing the question of validity of termination of service, the Labour Court was required to go into the question of nature of appointment as observed in the judgment of the Hon"ble Supreme Court in Mehboob Deepak's case (supra). The appointment to a public post could not be made without following the rules and regulations and if so made, reinstatement could not be granted, merely because the workman had worked for more than 240 days.

9. The view taken by the learned Single Judge is not liable to be interfered with.

10. The appeal is dismissed.