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**(2003) 03 P&H CK 0017**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No"s. 862 and 863 of 1989

Hari Krishan and Another

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

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**Date of Decision :** 04-03-2003

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 25H

**Citation :** (2003) 134 PLR 809

**Hon'ble Judges :** S.S. Saron, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

S.S. Saron, J.—This order will dispose of two writ petitions, CWP 862 and CWP 863 of 1989 filed by Hari Krishan and Ranjit Singh respectively as they arise out of the same award dated 5.02.1988 (Annexure P-7) passed by the learned Presiding Officer, Labour Court. Rohtak. The petitioners in their respective petitions assail the award dated 5.2.1988 (Annexure P-7) passed by the Presiding Officer, Labour Court, Rohtak, whereby the learned Labour Court answered the reference against the aforesaid petitioners.

2. The facts of the case are that the petitioners Hari Krishan and Ranjit were appointed as Clerks vide order dated 13.6.1979 and 4.6.1979 respectively by the Hisar District Central Cooperative Bank Ltd, Hisar through its Manager respondent No. 2 (hereinafter referred to as the respondent-Bank). As per the appointment letters Annexure P-1 (in each case) of the respective petitioners their appointment was on ad hoc basis for six months or till the regular recruitment was made whichever was earlier subject to the approval of the Board of Directors. It is also recited in the appointment letters that their services were liable to be terminated at any time without any notice. The petitioners services were regularised vide order dated 24.7.1979 (Annexure P-2). Thereafter, the services of the petitioners were terminated and they stood relieved from service vide order dated 10.12.1979 (Annexure P-3) on the ground that the same were

no longer required and hence dispensed with. The petitioners raised an industrial dispute and assailed the said order dated 10.12.1979 (Annexure P-3) before the Labour Court. The Labour Court, as already noticed above, vide its impugned award dated 5.2.1988 (Annexure P-7) answered the reference against the petitioners holding that their termination was justified and in order and they were not liable to be reinstated in service. Hence, the present petitions to assail the award dated 5.2.1988 of the Labour Court.

3. In the written statement filed on behalf of the respondent-Bank, it was submitted that the petitioners were appointed as Clerks by an authority not competent to appoint them under the Haryana State Central Cooperative Bank Staff (Common Cadre) Rules, 1975 (for short the Common Cadre Rules). According to Rule 9.4. of the said Common Cadre Rules, all direct recruitment were to be made after proper advertisement in one daily leading newspaper. Thus the appointments were made against the Rules and Instructions issued by the Registrar, Cooperative Societies, Haryana. It is further averred that in review of the matter, the competent authority i.e. the Board of Directors in the meeting, decided to dispense with the services of the petitioners.

4. I have heard learned counsel for the parties and with their assistance gone through the record of the case.

5. Shri O.P. Sharma, learned counsel appearing for the petitioners contends that the impugned Award is in gross violation of the procedure provided under Sections 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). He contends that many persons junior to the petitioners had been retained in service while their services were dispensed with. Besides, in any case, when the respondent-Bank had decided to re-employ clerks, the petitioner were liable to be informed and given an opportunity to participate in the selection process.

6. On the other hand, learned counsel for the respondent-Bank contends that the appointments of the petitioners was not regular appointments and were in violation of the provisions of the Common Cadre Rules. Besides, the persons, who were junior to the petitioners were re-appointed in the fresh selection process after an advertisement was issued in respect of the posts to be filled. Besides, due opportunity for participation in the selection process was given to all. Therefore, the learned counsel contends that there is no error of jurisdiction in the order dispensing with the services of the petitioners.

7. In order to appreciate the contentions raised by the respective counsel, the provisions of Sections 25-G and 25-H of the Act may be noticed which read as under:-

"25-G. Procedure for retrenchment:- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer

shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25-H Re-employment of retrenched workmen:- Where any workmen are retrenched, and the employer proposes to take into his employee any persons, he shall, in such a manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens, of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."

8. Section 25-G of the Act provides that where any workman is retrenched and belongs to a particular category of workmen in the establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer will ordinarily retrench the workman who was the last person to be employed in that category. The contention of the learned counsel for the petitioner is that nine workman junior to the petitioners are continuing and, therefore, the principle of "last come first go" has not been followed which is in violation of Section 25-G of the Act. This, however, is not the correct position. The learned Labour Court considered this aspect of the matter and relied upon the statement of MW-2 Surjit Singh, Managing Director of the Respondent-Bank, In his cross-examination he stated that twelve clerks including the petitioners were appointed by one Ram Singh, the then Managing Director of the respondent-Bank and nine out of them were still working with the employer-Bank. He further stated that the said nine out of twelve persons had been selected later on regular basis and thereafter, they joined their duties. The labour court has reached this finding on an appreciation of the evidence on record and it is not for this Court in exercise of its supervisory jurisdiction under Article 226 of the Constitution of India to re-appreciate the evidence on record. Therefore, this contention of the learned counsel for the petitioners is without any substance and is accordingly rejected.

9. The next contention of the petitioners is that no opportunity of participation for selection was given to the petitioners which is in violation of Section 25-H of the Act in pursuance of which retrenched workmen like the petitioners were to be given an opportunity to offer themselves for employment and they were To be given preference over the others. The stand taken in the written statement is that the advertisement for regular appointment was made but the petitioners never applied for the posts that were advertised. Therefore, there was no question of their being selected against the regular posts. The learned counsel for the petitioners, however, contends that the petitioners were liable to be personally informed so as to enable them to participate in the selection process. I am unable to agree with the contention of the learned counsel for the petitioners. The provisions of Section 25-H of the Act, as reproduced above, enjoin that when any workman is retrenched and the employer proposes to take into his employment any person, then he shall, in such a manner, "as may be

prescribed", give an opportunity to the retrenched workmen to offer themselves for re-employment. Therefore, the mode of informing the retrenched employee would be in the manner "as may be prescribed". The learned counsel for the petitioners has not shown any manner prescribed which requires personal service to the retrenched workmen. The posts were advertised in accordance with the provisions of Rule 9.4 of the Common Cadre Rules so as to provide equal opportunity for participation in the selection process to all. The petitioners ought to have applied for the same and participate in the selection process so as to get employment. On account of their failure to apply, it cannot be said that the respondent-Bank ought to have personally informed them. Thus, therefore, in my view there has been no infraction of the provisions of Section 25-H of the Act.

10. The learned Labour Court in its Award has also rightly observed that from the statements of MW-2 Surjit Singh, besides WW-1 Hari Krishan one of the petitioners, it stands proved that one of the workman namely Mahavir Singh was working as Sub-Inspector (audit) in the Cooperative Society, Bhiwani, Besides, the petitioners, were engaged, in agriculture and their lands were under self-cultivation which meant that they were happily placed. In this view of the matter it was held that this fact went a long way to negate their claim for re-employment with the respondent-Bank at the cost of other deserving persons. It may be noticed that the initial appointment of the petitioners was in violation of the Common Cadre Rules of the Bank and therefore their services were dispensed with indicating it to be no longer required. Rule 9.4 of the Common Cadre Rules, which was violated at the time of initial appointment of the petitioners, reads as under:-

9.4 Appointment by direct recruitment:- Except in the case of ad hoc appointments where the period shall not exceed 6 months and where the number of such appointments shall not exceed 5 per cent of the sanctioned strength of that category of the post:

(i) All direct appointments shall be made after proper advertisement in at least one leading daily newspaper mentioning the qualifications required and the grade of the pay and other allowances of the post and/or notifying to the Employment Exchange.

(ii) Appointment of part-time sweeper, typist on daily wages can be made without any advertisement in Newspaper or calling persons from Employment Exchange by the Manager.

(iii) The appointing authority may prepare a waiting list upto 25 per cent of the sanctioned strength which will be valid upto 6 months from the date of selection.

(iv) 20 per cent posts shall be reserved for scheduled castes/scheduled tribes and 2 per cent posts for candidates belonging to Backward classes in all categories of appointments.

11. Rule 9.4 (i) is quite clear that all direct appointments are to be made after

proper advertisement in at least one leading daily newspaper mentioning the qualifications required and the grade of the pay and other allowances of the post and/or notifying to the Employment Exchange. It is not the case of the petitioners that at the time of their initial appointments, the posts were properly advertised and opportunity of participation in the selection process was given to all eligible candidates. It is for this reason that the services of the petitioners were dispensed with being no longer required.

12. The posts were then again advertised for which the petitioners did not apply, The persons who were junior to the petitioners were re-employed after regular selection through advertisement by giving opportunity of participation in the selection process. The petitioners did not apply for being considered for re-employment.

13. For the reasons afore-noticed, I find no merit in both the writ petitions and the same are accordingly dismissed. However, there shall be no order as to costs.