
(1991) 05 P&H CK 0095
In the Punjab And Haryana At Chandigarh
Case No : Writ Petition No. 3502 of 1988

Jaswinder Singh Passi and Others

APPELLANT

Vs

Registrar, Co-operative Societies

RESPONDENT

Date of Decision : 16-05-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25H

Citation : (1992) 2 LLJ 177

Hon'ble Judges : Ashok Bhan, J

Bench : Single Bench

Advocate : J.C. Verma and Dinesh Kumar, for the Appellant; Amar Singh, for the Respondent

Judgement

Ashok Bhan, J.—Petitioners were selected for the post of Junior Clerks by the respondents-Banks on February 15, 1980. The appointment was on probation for a period of one year. After about 1 1/2 months, the services of the petitioners were terminated as a result of the decision given by this Court on March 21, 1980. Petitioners were junior -most and as such their services were terminated being surplus. Petitioners were re-employed subsequently after a month or so, but again their services were terminated. Petitioners filed their representation that 4.6 posts of Junior Clerks were lying vacant and the vacancies which were lying vacant, ought to have been offered to them in terms of Section 25H of the Industrial Disputes Act 1947 (hereinafter referred to as the Act) In spite of all that, petitioners were not re-employed and aggrieved against that, petitioners filed a civil suit on July 26, 1983 which was decided on July 30, 1984 by Senior Subordinate Judge, Rup Nagar. The suit was ordered to be dismissed being not maintainable, but while deciding issue No. 1 which was in the following terms:-

(1) Whether the order passed by respondent No. 1 retrenching the plaintiffs is illegal and unlawful for the reasons mentioned in para No. 15 of the plaint? OPP

it was observed by the trial Court in Paras No. 9 & 10 of its judgment as follows: -

"9. The only right of the retrenched workman is re-employment under the provisions of Section 25H of the Act which runs as follows: -

Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such 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.

10. I find force in the contention of the learned counsel for the defendants that the only right of the plaintiff is re-employment, as soon as defendants advertise the posts of the Junior Clerks to fill them on regular basis. At the bar, the learned counsel for the defendants has stated that plaintiffs shall be given preference at the time of filling up the vacancies lying vacant. He has specifically pointed out that new Board of Directors has been constituted and advertisement of the vacant posts is likely to be issued soon. The right of the plaintiffs for a preference for the re-employment must be taken into consideration and with that intention the present correct addresses of the plaintiffs were called for. The provision of Section 25H referred to above clearly indicates that plaintiffs have no right over the vacant posts, only they can be considered for re-employment in preference to other candidates. Under these circumstances, I see no illegality in the order Ex.P1. It cannot be said as illegal, unlawful for any of the reasons given in para No. 15 of the plaint. I decide this issue against the plaintiffs."

2. Petitioners had also represented to the Registrar, Co- operative Societies, Punjab, who had also conveyed his sanction for filling up four posts of the Junior Clerks in the Bank with the direction that the cases of the retrenched employees be considered. Copy of the said communication has been placed on record as Annexure P-2. Yet in another communication (Annexure P- 3) the Registrar, Co-operative Societies had further written to the respondents-Bank to comply with the direction of offering four vacant posts of Junior Clerks to the petitioners. Petitioners have filed the present writ petition on the allegation that in spite of the observation made by the Civil Court in its judgement dated July 30, 1984 under issue No. 1 and the subsequent letter written by the Registrar, Annexures P-2 and P-3 the respondent-Bank has not offered any employment to the petitioners in terms of Section 25H of the Act.

3. Respondent-Bank has filed its written statement but at the time of arguments, this Court directed the respondents to file an additional affidavit clarifying the position as to how many persons had been employed by the bank after the termination of services of the petitioner. In obedience to the directions given by this Court, respondent-Bank has filed an additional affidavit dated May 5, 1991 which is ordered to be placed on record. A perusal of this record would show that the respondents have employed Smt. Sudershan Kaur, Sishpal Singh, Avtar Singh, Paramjit Kaur and Harsvardhan Sarin after termination of services of the petitioners without complying with the directions of Section 25H of the Act. The plea taken by the Bank is that the persons mentioned above were initially

appointed on ad hoc basis/daily wages and later on their services were regularised on various dates. No reasons have been given by the respondent-Bank in its reply for not offering the appointments to the petitioners at the first instance. It has been observed in a Division Bench judgment of this Court reported as *Rajbir Singh v. State of Haryana*, 1983 (1) SLR 38, that a retrenched workman cannot seek reinstatement with back wages, but Section 25H of the Act nevertheless does accord a preferential treatment for re-employment if after retrenchment a vacancy of similar or comparable post occurs. Paragraph 37 of the said report is reproduced below (at Page 52 of 1983 (1) Serv LR):-

"The next question that arises for consideration is, does a validly retrenched workman has any right under the law? Answer is in the affirmative. While a validly retrenched workman in the nature of things cannot as a matter of right seek reinstatement with back wages, Section 25H of the Act nevertheless does accord a preferential treatment to him for re-employment if after the retrenchment of the workman a vacancy of similar or comparable post occurs in the given industrial establishment."

4. In this case similar or comparable posts did occur in the respondent Bank but they have been filled up without following the procedure given u/s 25H of the Act.

5. Learned counsel for the petitioners argued that the respondent-Bank be directed to take the petitioners back in service from the date the persons other than the petitioners were given employment in violation of Section 25H of the Act with full back wages. I do not find any substance in this submission. According to Section 25H of the Act a retrenched employee has to be accorded a preferential treatment for re-employment over other persons but it does not give any right to them to be reinstated with back wages as claimed by the counsel for the petitioners.

6. Learned counsel for the respondent-Bank has given an undertaking that in future as and when any vacancy arises which may be ad hoc/temporary/regular then the same shall be filled up after following the procedure given u/s 25H of the Act and the petitioners shall be given an opportunity for offering themselves for re-employment in the Bank and they would be given preference over other persons in terms of Section 25H of the Act. Persons who have been employed by the Bank without following the procedure given u/s 25H of the Act are not before this Court and no adverse orders against them can be passed by this Court in the present proceedings. It is obligatory and statutory duty of an employer to offer employment to their retrenched employees in the event of vacancy falling vacant and accordingly respondent Bank is directed to fill up the future vacancies of similar or equal in posts from which the petitioners were retrenched after following the procedure laid down u/s 25H of the Act. Since the respondent Bank has given employment to certain persons without following the procedure laid down u/s 25H of the Act in spite of the clear observations made by the Senior Subordinate Judge, Rupnagar in his judgment dated July 30, 1984 under issue No. 1 reproduced in the earlier part of this judgment and the Registrar Co-

operative Societies vide Annexures P-2 and P-3, it is a fit case for imposing heavy costs on the Bank as the petitioners have been driven to this Court unnecessarily. Costs Rs. 5000/- against respondent No. 2 only to be paid equally to the petitioners.

7. This writ petition stands disposed of accordingly, as indicated above.