
(1998) 02 P&H CK 0115
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 994 of 1991

Jaswinder Singh Passi

APPELLANT

Vs

Registrar, Co-operative Societies, Punjab and others

RESPONDENT

Date of Decision : 24-02-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 25H

Citation : (1999) 2 LLJ 649 : (1998) 119 PLR 240

Hon'ble Judges : S.N. Phukan, J;C.R. Pal, J

Bench : Division Bench

Judgement

Jawahar Lal Gupta, J.—The appellants were appointed as Junior Clerks in the Ropar Central Co-operative Bank Limited on February 15, 1980. After a short while they were retrenched. On July 26, 1983 they filed a suit for declaration that the Bank had illegally terminated their services. Vide judgment dated July 30, 1984 the civil Court dismissed the suit. It was held that the action of the respondent-Bank in retrenching the employees was legal and valid. They had only a right to be re-employed in accordance with the provisions of Sec. 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). Thereafter, the appellants approached this Court through a petition under Art. 226 with a prayer that a writ of mandamus be issued directing the respondents "to re-employ the petitioners by offering them appointments against the posts lying vacant". Vide judgment dated May 16, 1991 the learned single Judge held that "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 under Sec. 25-H of the Act". In pursuance of the directions, the appellants were re-employed on July 3, 1991. They have still filed the appeal. It is claimed that they are entitled to the grant of backwages with effect from the date the Bank had made appointments in violation of Sec. 25-H of the Act. Still further, the appellants claim that they should be declared senior to persons who

were appointed without consideration of their claim.

2. On behalf of the respondent-Bank the claim made by the appellants has been controverted. It has been pointed out that the persons likely to be adversely affected by the acceptance of the claim made in the appeal have not been impleaded as parties. As such, no relief can be granted. Secondly, it has also been contended that the appellants have not pleaded that they had remained unemployed from the date of their retrenchment to the date of their re-employment in July, 1991.

3. Admittedly, the appellants have not made a prayer for the grant of any seniority or backwages. It is also not disputed that various persons like Shri Amar Singh etc. had been appointed to different posts in April, 1987 or thereafter. In spite of that, the appellants have not impleaded any such person as a party in the writ petition. They had not even claimed the benefit of seniority over the said persons. Learned counsel for the appellants also concedes that there is no averment that they had remained unemployed after their retrenchment.

4. Mr. Sarjit Singh, learned counsel for the appellants, contends that the employer is under an obligation to comply with the provisions of Sec. 25-H of the Act. Having failed to comply with the provisions of the Act, the employer must grant the necessary benefits to the employees.

5. It is undoubtedly correct that the employer has to comply with the provisions of Sec. 25-H of the Act. However, it is clear from the record that the appellants had approached this Court only for the issue of a direction to the Bank to re-employ them. This direction was given and has been complied with. The appellants cannot claim a relief beyond what they had sought in the writ petition. This is all the more so in view of the fact that persons who are likely to be adversely affected by the grant of any benefit regarding seniority have not been made parties before this Court. Learned counsel contends on the basis of the decision in (1996) 2 SCR 59 that such persons are not necessary parties. The contention cannot be accepted. It is true that when a pure question of principle is involved, the parties may be irrelevant. In the present case, such is not the position. The appellants are not fighting for a principle. They are wanting a declaration of seniority over the persons who are not parties in this case. They are claiming the right of seniority over the persons who had been appointed prior to the date of filing of the petition. The appellants are virtually claiming that they are deemed to be appointed prior to the date on which Shri Amar Singh had been appointed. Such relief cannot be granted in the absence of the persons who are not made parties in the writ petition.

6. Equally untenable is the claim for the grant of backwages. There is no such prayer in the petition. Besides that, there is no averment that the appellants were not working elsewhere. Still further, it is the established position that the appellants had not performed any duties with the Bank. They were not employed

on any post. No work no wages is now a recognised principle.

7. No other point has been raised.

8. In view of the above, no ground for interference with the judgment is made out. Resultantly, the appeal is dismissed. However, in the circumstances, we make no order as to costs.

9. Mr. Sarjit Singh submits that Civil Miscellaneous Application No. 236 of 1998 had been filed by some of the persons to be transposed as appellants. This application has not been placed before the Bench. However, in view of our decision on merits, the application has been rendered infructuous. It shall be deemed to have been accordingly disposed of.