
(1994) 09 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 14426 of 1993

Kartar Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 05-09-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25(F)

Citation : (1996) 3 LLJ 1099 : (1994) 108 PLR 734

Hon'ble Judges : N.K. Sodhi, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Kanwaljit Singh, for the Appellant; R.K. Handa, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—Petitioner Kartar Singh was appointed as Clerk in the service of the Haryana Urban Development Authority (for short "the HUDA") vide order dated July 13, 1982 (Annexure R-2/1) issued by the Chief Administrator, HUDA. He was placed on probation for a period of two years, vide letter dated July 15, 1983 (Annexure R-2/2), adverse remarks in the annual confidential report for the year 1982-83 (August 5, 1982 to March 31, 1983) were conveyed to the petitioner and he was called upon to improve. Once again, vide letter dated May 29, 1984 (Annexure R-2/4), adverse remarks in the annual confidential report for the year 1983-84 were conveyed to the petitioner. This time again he was called upon to improve. Ultimately, the employer terminated his service vide letter dated September 26, 1984 (Annexure P-3). This action of the employer became the subject matter of an industrial dispute, which was referred for adjudication to the Labour Court, Ambala. After considering the rival cases, the Labour Court passed the award dated August 16, 1993 (Annexure P-1) and held that termination of service of the workman did not amount to retrenchment and he was not entitled to reinstatement etc.

2. The first contention of the learned counsel for the petitioner is that in terms of the order of appointment the employer was under a duty to give one month's

notice to the petitioner before terminating his service and as no such notice was given to the petitioner, the termination of his service is liable to be declared as void. Learned counsel argued that the Labour Court has committed a patent illegality in over-looking condition No. 7 of the letter of appointment issued by the Chief Administrator of HUDA. Learned counsel for respondent No. 2 argued that petitioner's service has been terminated according to the terms and conditions incorporated in the contract of employment, and, therefore, the impugned action of the employer terminating the service of the petitioner does not suffer from any legal error.

3. Condition Nos. 6 and 7 of the letter of appointment of the petitioner read as under:-

"6. You will be on probation for a period of two years which can be extended up to 3, years. During the period of probation your service can be terminated at any time without any notice and without assigning any reason thereof.

7. You will be required to give 90 days notice if confirmed of one month's notice if not confirmed or salary in lieu thereof, as the case may be, in case at any time you intend to resign from service of the Authority. Similarly, if the Authority does not require your services the same are liable to be terminated by giving notice for the same period or salary in lieu thereof, except in case of misconduct when you will be given reasonable opportunity to show cause as to why your service may not be terminated."

4. From the above quoted conditions, it is clear that the petitioner had been appointed on probation for a period of two years and this period of probation could be extended up to three years with a right to the employer to terminate his service at any time without any notice and without assigning any reason. Of course, this right could be exercised by the employer only during the period of probation. If the petitioner wanted to terminate the contract of employment, he could do so by giving 90 days' notice, if it was to be done after confirmation in service. He could terminate his service before confirmation by giving one month's notice or paying salary in lieu thereof; The employer could terminate the service of the petitioner by giving notice for the same period with only one exception, namely that in the case of termination founded on misconduct such notice was not necessary. In our opinion there is no merit in the contention of the counsel for the petitioner that even though the employer has terminated the service of the petitioner during the period of probation it was incumbent upon it to have given one month's notice to the petitioner. A combined reading of conditions Nos. 6 and 7 of the letter of appointment clearly shows that the employer retained the right to terminate the service in three situations. It could do so at any time during the period of probation. In that case no notice was required to be given. Employer; could do so after completion of maximum period of probation of 3 years. If termination was to be brought about after confirmation, the employer was bound to give 90 days notice. Period of such notice would have been one month if termination was to be effected prior to

confirmation. If we were to read requirement of notice as a condition precedent for termination of service even during the initial period of probation, a part of condition No. 6 of the letter of appointment which specifically empowered the employer to; terminate the service without notice and without assigning any reason, will have to be treated as redundant and we are firmly of the opinion that unless it is compulsive to do so the conditions contained in the letter of appointment have to be so interpreted that no part of it is rendered surplus or nugatory. We are further of the view that the conditions incorporated in the letter of appointment of the petitioner did not envisage automatic confirmation and; therefore, condition No. 7 would have become applicable after the expiry of the period of probation. In that event, the employer was required to give 90 days notice for terminating the service after confirmation and one month's notice before the confirmation. However, so far as this case is concerned, that eventuality never arose because the service of the petitioner was terminated much before the expiry of the maximum period of probation. Therefore, the employer was justified invoking condition No. 6 of the appointment letter to terminate the service of the petitioner during the period of probation without any notice and without assigning any reason.

5. Second contention of the learned counsel for the petitioner is that even if right of the employer to terminate the service of the petitioner during the period of probation is upheld by the Court, it was necessary for the employer to have complied with the two mandatory requirements of Section 25F (a) and (b) of the Industrial Disputes Act, 1947 (for short the Act"). Learned counsel argued that termination of service of a person who is appointed on probation amounts to retrenchment within the meaning of Section 2(oo) of the Act and, therefore, the employer was under an obligation to give one month's notice to the petitioner or salary in lieu thereof and at the same time to pay compensation equivalent to 15 days average pay. Learned counsel argued that the Labour Court has committed a serious illegality in holding that the termination of service of the petitioner did not amount to retrenchment. He relied on decisions of the Supreme Court in *Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another*, ; *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*, and *D.K. Yadav v. J.M.A. Industries Ltd.* AIR 1993 SCW 1995, Learned counsel for respondent No. 2 on the other hand, argued that termination of service of probationer does not amount to retrenchment in view of the amendment made in the Act by virtue of Industrial Disputes (Amendment) Act, 1984- Learned counsel argued that termination of service of a probationer is covered by Clause (bb) of Section 2(oo) of the Act,

6. Definition of the term "retrenchment", as contained in the Act before its amendment by the Industrial Disputes (Amendment) Act No, 49 of 1984 which has been made effective from August 18, 1984, did not contain Clause (bb) and as the definition then stood was interpreted by the Supreme Court in *The State Bank of India Vs. Shri N. Sundara Money*, ; *Santosh Gupta Vs. State Bank of*

Patiala, Management of Karnataka State Road Transport Corporation, Bangalore's case (supra); Punjab Land Development and Reclamation Corporation Ltd. Chandigarh's case (supra); D.K. Yadavs case (supra); and some other cases. In all these decisions the Apex Court has held that the definition of the term "retrenchment" is wide enough to cover all types of termination of service except those covered by the exceptions enumerated in Section 2(oo) itself. For the purpose of better appreciation of the point canvassed before us, we may quote Section 2(oo) along with its various sub-clauses. It reads-

"2(oo) "Retrenchment means the termination by the employer of the service of 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 of 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 workman on the ground of continued ill-health;"

7. In Shri N. Sundara Monty's case (supra), the Supreme Court accepted the wider literal meaning of the definition of the term "retrenchment" and held that termination of service by the employer for any reason whatsoever would take within its fold every kind of termination of service, including the termination of service by efflux of time or in accordance with the terms and conditions of the contract of employment. This literal interpretation of Section 2(oo) was followed in a large number of cases decided after Shri N. Sundra Money's case (supra). In Santosh Gupta's case (supra), the Apex 5 Court held that termination of service of a workman by way of discharge simpliciter would also amount to retrenchment. In Management of Karnataka State Road Transport Corporation, Bangalore's case (supra) the Apex Court held in para 13 on page 115.

"As retrenchment as defined in Section 2(oo) covers every case of termination of service except those which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to retrenchment. As such, where while discharging a probationer requirements of Section 25F had not been complied with the same was void."

8. However, in some of the subsequent cases a doubt was expressed about the correctness of the wider literal meaning given to the term "retrenchment" in Shri N. Sundara Money's case (supra), and the matter was referred to a Constitution Bench. In Punjab Land Development and Reclamation Corporation s case (supra), the Court approved the wider literal interpretation of term "retrenchment" given

in Sundara Money's case (supra) and did not accept the plea that an earlier Constitution Bench decision in Hariprasad Shivshanker Shukla v. A.D. Divelkar AIR 1957 SC 121 represented the correct position of law. In D.K. Yadav's case (supra) the Supreme Court held that definition of the term "retrenchment" is comprehensive enough to cover any action of the management to put to an end the employment to employee for any reason whatsoever.

9, Had there been no amendment in the definition of the term "retrenchment", we would have declared the impugned award as erroneous and quashed the termination of service of the petitioner on the ground of non-compliance of Section 25F of the Act. However, a vital change has been brought about by virtue of addition of Clause (bb) in the definition of the term "retrenchment". With effect from August 18, 1984 a particular category of termination of service has been taken out from the definition of "retrenchment". This category embodies within itself termination of service of a workman as a result of the non - renewal of the contract of employment or termination of the contract of employment under the stipulation in that behalf contained in the contract itself. Therefore after August 18, 1984 termination of service of a workman brought about in accordance with the conditions specified in the contract for employment will not be treated as retrenchment within the meaning of Section 2(oo) of the Act. We may hasten to add that if termination of service is brought about as a measure of unfair labour practice or victimisation, the Court may still strike it down. The contract of employment may vary from case to case and in order to determine as to whether termination of service of a workman is in accordance with the contract of employment, the Court will have to scrutinise the same in its totality. This conclusion of ours is fully supported by a decision of the Apex Court in M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another, . Though in that case the Apex Court was concerned with the interpretation of regulation 14 of the LIC (Staff) Regulations, 1960 and the alleged conflict between these regulations and the Industrial Disputes Act, the Supreme Court examined the scope of Clause (bb) of the Act and held (in para 9 on pages 600-601) :

"Regulation 14 aforesaid has to be read as a statutory term of the contract of employment between the Corporation and the appellant. The order of appointment had fixed a target in respect of the performance of the appellant, which admittedly, the appellant failed to achieve within the period of probation which was extended up to two years. As such the Corporation was entitled not to confirm the appellant in terms of the order of appointment and to terminate his service during the period of probation without any notice in term of Regulation 14(4) aforesaid Clauses 10 and 11 of the order of appointment along with Regulation 14 shall be deemed to be stipulations of the contract of employment, under which the service of the appellant has been terminated. Any such termination, even if the provisions of the Industrial Disputes Act were applicable in the case of the appellant, shall not be deemed to be "retrenchment" within the meaning of Section 2(oo), having been covered by exception (bb). Before the

introduction of Clause (bb) in Section 2(oo), there were only three exceptions so far termination of the service of the workman was concerned, which had been excluded from the ambit of retrenchment:-

(a) voluntary retirement;

(b) retirement on reaching age of superannuation; and

(c) on ground of continued ill-health. This Court from time-to-time held that the definition of "retrenchment" being very wide and comprehensive in nature shall cover, within its ambit termination of service in any manner and for any reason, otherwise than as a punishment inflicted by way of disciplinary action. The result was that even discharge simpliciter, was held to fall within purview of the definition of "retrenchment" *State Bank of India v. N. Sundra Money* (supra); *Santosh Gupta v. State Bank of Patiala*, (supra). Now with introduction of one more exception to Section 2(oo), under Clause (bb) the Legislature has excluded from the purview of the "retrenchment" (i) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry; (ii) such contract being terminated under a stipulation in that behalf contained in contract of employment. It need not be impressed that if in the contract of employment no such stipulation is provided or prescribed, then such contract shall not be covered by Clause (bb) of Section 2(oo)."

10. In the case of the petitioner, the conditions incorporated in the letter of appointment, which can appropriately be termed as a contract of employment between him and respondent No. 2, clearly provide for termination of service during the period of probation without any notice and without any reason. It is therefore, clear to us that in bringing about an end to the employment of the petitioner during the period of probation the employer was not required to give any notice or pay compensation to the petitioner in terms of Section 25F of the Act. Termination of service of the petitioner is covered by Clause (bb) of Section 2(oo) of the Act, therefore, it cannot be declared as invalid on the ground of alleged violation of Section 25F of the Act.

11. We are of the considered view that the Labour Court has not committed any illegality in rejecting the claim made by the petitioner. Consequently, the petition fails and it is hereby dismissed.