

(2010) 10 P&H CK 0367
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 357 of 2010 (O and M)

Krishan Lal

APPELLANT

Vs

General Manager Haryana Roadways and Another

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Constitution of India, 1950 — Article 38, 39, 43, 43(A)
Industrial Disputes Act, 1947 — Section 2, 25(F)

Citation : (2011) 128 FLR 752 : (2011) 3 LLJ 301 : (2011) LLR 359 : (2011) 161 PLR 240

Hon'ble Judges : Ritu Bahri, J;M.M. Kumar, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—The instant appeal filed under Clause X of the Letters Patent is directed against judgment dated 21.7.2009 rendered by the learned Single Judge allowing the writ petition of the management-Respondent Haryana Roadways. Accordingly, the award dated 18.3.1992 (P-4) passed by the Labour Court has been set aside. It is appropriate to mention that the Labour Court in its award has held that the workman-Appellant remained in service of the Haryana Roadways- Respondent from 8.10.1985 to 30.9.1986 with certain breaks. The total period of working days was calculated, which came to 218 days and, therefore, the management was not required to comply with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for brevity, "the Act"). However, the Labour Court by placing reliance on a judgment of this Court rendered in the case of The Gurdaspur Central Cooperative Bank Limited v. The Presiding Officer Labour Court, Gurdaspur 1991 (1) RSJ 76, has held that the termination of the workman-Appellant was illegal and amounted to unfair labour practice. Answering the reference in favour of the workman-Appellant, he was ordered to be reinstated with all service benefits.

2. Learned Single Judge has found that in the absence of completion of 240 days, no inference of unfair labour practice could be drawn. The view of the learned Single Judge is discernible from paras 5 and 6, which reads thus:

5. If the workman had not completed 240 days and when the inference of unfair labour practice cannot be made, in the given set of facts there was no scope for complaint of termination of service especially when he was a daily wager. He was not entitled to the benefits of Section 25-F of the Industrial Disputes Act.

6. It has again come by authoritative pronouncements of the Hon'ble Supreme Court and the High Court that in the manner of public appointments, there cannot be regularization or reinstatement of daily-rated workers and the Labour Court was, therefore, not justified in directing reinstatement to such daily-rated worker who had no right to the post under any Service Rules or Regulations.

3. Mr. Deepak Sonak, learned Counsel for the workman-Appellant has argued that the findings of the Labour Court with regard to unfair labour practice could not have been set aside by the learned Single Judge on the premise that the workman-Appellant did not complete 240 days. According to the learned Counsel there are categorical findings recorded by the Labour Court that the workman-Appellant was employed from 13.5.1984 to 8.11.1984, 9.11.1984 to 31.1.1985 and from 18.5.1985 to 30.9.1986. According to the learned Counsel, during the earlier period in 1984 to 1985 the workman Appellant had rendered service for more than 240 days but after a gap of 31/2 months he was re-employed and on completion of 218 days, his services were again dispensed with, which has to be regarded as unfair labour practice. In support of his submission learned Counsel has placed reliance on the judgment of this Court rendered in the case of Gurdaspur Central Cooperative Bank Limited (supra), which has in fact been relied upon by the Labour Court. He has further submitted that in the case of Harjinder Singh Vs. Punjab State Warehousing Corporation, , it has been reiterated that the social welfare legislation like the Industrial Disputes Act, are required to be interpreted keeping in view the goal set out in the preamble of the Constitution and provisions contained in Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure social order for promotion of welfare of the people ensuring equality between men and women and equitable distribution of material resources of the community to sub-serve the common good.

4. Ms. Mamta Singhal Talwar, AAG, Haryana, has, however, argued that once the workman-Appellant has not completed 240 days preceding the date of his termination then there is no obligation to comply with Section 25-F of the Act and that the conduct of the workman-Appellant is reprehensible because he came to the workplace under influence of liquor and a report in that regard was furnished to the General Manager for information. The workman-Appellant was also sent to the police station for appropriate action. A report dated 29.9.1986 (P-3) has been placed on record. There are further allegations that on 29.9.1986, under the influence of liquor he had abused the officials and, therefore, in any case he does not deserve the relief of reinstatement.

5. It is well established that if a workman has been employed and reemployed revealing the design that his services were terminated before permitting him

completion of 240 days then in the facts and circumstances of the case it may amount to unfair labour practice. In accordance with the provisions of Section 2(ra) of the Act, "unfair labour practice" has been defined to mean "any of the practices specified in the Fifth Schedule" of the Act, which contains a list of unfair labour practices. The list has classified the unfair labour practice under two heads - (I) on the part of employers and trade unions of employers; and (II) on the part of workmen and trade unions of workmen. In Item No. 10 of Part-I of the list it has been spelled out that "to employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen", is an unfair labour practice.

6. The aforesaid provision came up for consideration of Hon'ble the Supreme Court in the case of Regional Manager, State Bank of India v. Raja Ram (2004) 8 SCC 164 and in para 9 the following observations have been made:

9. ...before an action can be termed as an unfair labour practice it would be necessary for the Labour Court to come to a conclusion that the badlis, casuals and temporary workmen had been continued for years as badlis, casuals or temporary workmen, with the object of depriving them of the status and privileges of permanent workmen. To this has been added the judicial gloss that artificial breaks in the service of such workmen would not allow the employer to avoid a charge of unfair labour practice. However, it is the continuity of service of workmen over a period of years which is frowned upon. Besides, it needs to be emphasized that for the practice to amount to unfair labour practice it must be found that the workman had been retained on a casual or temporary basis with the object of depriving the workman of the status and privileges of a permanent workman. There is no such finding in this case. Therefore, Item 10 in List I of the Fifth Schedule to the Act cannot be said to apply at all to the Respondent's case and the Labour Court erred in coming to the conclusion that the Respondent was in the circumstances, likely to acquire the status of a permanent employee. Furthermore, both the High Court and the Labour Court appeared to have proceeded on the basis that the appointment of Ram Kumar after the employment of the Respondent ceased, also on casual basis, was an unfair labour practice. If this view is to be upheld the Respondent's appointment in place of Sooraj would equally be an unfair labour practice and therefore unsustainable.

7. A perusal of the aforesaid observation would show that the Labour Court has reached a firm conclusion that the workman-Appellant was subjected to unfair labour practice and his services were illegally terminated. When the facts of the present case are examined in the light of the aforesaid principles no doubt is left that the learned Single Judge has reversed the findings of the Labour Court without any justifiable reasons. There is no principle of law that unfair labour practice would not come into being without completing a period of 240 days - the premise which the learned Single Judge has adopted. Therefore, we have no

hesitation in reversing the findings recorded by the learned Single Judge. Accordingly, we restore the findings of the Labour Court that the services of the workman-Appellant were terminated illegally by resorting to unfair labour practice.

8. We are further of the view that the concept of regularisation of a workman is unknown to the industrial law. The Labour Court or the Industrial Tribunal are not entitled to order regularisation of the workman, as has been held by a Division Bench of this Court in the case of Food Corporation of India v. Presiding Officer 1985(2) SLR 428.

9. The question then is whether the workman-Appellant would be entitled to reinstatement. In the peculiar facts and circumstances of this Case and keeping in view the conduct of the workman-Appellant we are of the view that the ends of justice would be met if he is awarded a sum of Rs. 20,000/-.

10. The appeal stands disposed of in the above terms.