
(2012) 08 P&H CK 0331
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1045 of 2011

Lachhman Dass

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

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

Citation : (2012) 135 FLR 507

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : J.S. Bedi, for the Appellant; Sanjiv Bansal for the Respondent No. 1 and Pawan Kumar Arya for the Respondents No. 3 and 4, for the Respondent

Judgement

K. Kannan, J.—The petitioner, who is a workman, challenges the award passed by the Labour Court rejecting a reference sought by the petitioner complaining of termination of service as contrary to law. The petitioner's status as workman was itself not in challenge but it was contended that he has been working as Mali on daily wages from 10.2.2005 and worked upto 8.11.2006 but his engagement was not on any permanent basis. The contention of the Management was that being a daily wager his service terminated every day and began with the following day when he was engaged. Consequently, the termination of service did not constitute retrenchment in terms of section 2(oo)(bb) of the ID Act. It was also contended by the Management that the provisions relating to appointment to a public post had not been followed. The Labour Court accepted the contention and, therefore, the writ petition is at the instance of the workman.

The definition of the continuous service, which is required to be protected u/s 25F of the ID Act, comes through a definition of "continuous service" contained in section 25B of the ID Act. A workman who has an uninterrupted service for a period of not less than 240 days shall be a person who shall be treated as being in continuous service for one year and section 25F states that a workman who has been in continuous service for not less than one year shall not be retrenched

except in the procedure laid down under the said section. All that is necessary for a workman to show is that he had secured one year of continuous service to be protected in the manner section 25F provides for. Section 25F is invoked only when a retrenchment takes place and, therefore, the issue is whether the termination of service constitutes retrenchment. The excepted clauses u/s 2(oo) are spelt out in four circumstances, one of which is provided under Clause (bb) brought through an amendment introduced to the ID Act by Act 49 of 1984. Clause (bb) reads as follows:

termination of service of a workman as a result of non-renewal of 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.

The manner of engagement that comes to an end by a contract of employment could be either through on expressed terms in writing or it could be in oral. A person who is a Mali working from morning to evening is not a person who must be taken as having suffered termination every day and secure an employment at the next day. A daily wager is not a person whose service is at all times vulnerable at the whims of the employer. A termination of how the Management seeks to justify, it has no acceptance in the scheme of the Industrial jurisprudence brought through sections 25B and 21F.

The award of the Labour Court is erroneous. Termination without following section 25F of the ID Act was actionable and the workman was entitled to reinstatement with all consequential benefits and full back wages. The finding of the Labour Court that the procedure for appointment had not been followed could not have been countenanced in the absence of any specific procedure that was required to be followed by the respondent-Management through any Statutory provision or bye-laws of the educational institution that established it. As far as I can see, it is only a private Management college and there are no specific provisions relating to the manner of securing engagement of labourers or workmen. The decision of the Labour Court is erroneous on this score as well.

2. The award is set aside and the petitioner is entitled to a direction of reinstatement.