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**(1990) 08 SHI CK 0018**  
**In the High Court Of Himachal Pradesh**  
**Case No : C.W.P. No. 319 of 1987**

Miss Santosh Thakur

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

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**Date of Decision :** 16-08-1990

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 2, 25B, 25F

**Citation :** (1990) 2 ILR HP 479

**Hon'ble Judges :** P.C.B. Menon, C.J.;Davinder Gupta, J

**Bench :** Division Bench

**Advocate :** K.D. Sood, for the Appellant; Chhabil Dass, General and L.S. Panta, D.A.G., for the Respondent

**Final Decision :** Allowed

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## Judgement

P.C. Balakrishna Menon, C.J.—inspite of the decisions of the Supreme Court in Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, ) and Mohan Lal Vs. Management of Bharat Electronics Ltd., and the several decisions of this Court following the same, the authorities concerned have failed to comply with the requirements of Section 25F of the Industrial Disputes Act, 1947 (briefly the Act), in discharging the daily-rated workman from service and in consequence the State has to disburse large amounts by way of wages due to those workmen as the discharge from service in violation of Section 25F of the Act is illegal and the employee concerned is deemed to be continuing in service.

2. In the present case, the Petitioner was appointed as a daily-rated Beldar in March 1984. According to her, she was discharging the duties of Assistant Store Keeper/Out-turn clerk at different periods of time. She was discharged from service on July 31, 1997 without compliance to the requirements of Section 25F of the Act. She has prayed for two relief's in this writ petition, namely,:( 1) for a declaration that her discharge from service is illegal and that she should be deemed to be continuing in service and (2) that she is entitled to pay equal to an

Assistant Store Keeper/Out-turn clerk as she had been discharging the duties of these posts during the period of her engagement.

3. Annexure R-I, statement, produced along with the affidavit-in-reply filed by the Superintending Engineer, 3rd Circle, HP PWD, Solan, shows the number of days that the Petitioner had worked in each month from March 1984 onwards until her discharge on July 31, 1987. The statement shows that during the period of 12 months prior to her discharge she had worked for a total 348 days and hence she is entitled to the benefits of Section 25F of the Act. In the affidavit-in-reply, a preliminary objection is taken that the remedy of the Petitioner is to have recourse to the Industrial Tribunal for appropriate relief thereby admitting that the Petitioner is a workman and the employer is an industry. The Petitioner had been working in the National Highway Division of the HP PWD. The Supreme Court in a recent decision in *Des Raj and Ors Vs. State of Punjab and Ors*, has held that the Irrigation Department of the Government is an industry within the meaning of the Industrial Disputes Act. It should, therefore, be held that the provisions of the Act are applicable to the Petitioner in this case. The Respondents have no case that the discharge of the Petitioner from service was in compliance to the requirements of Section 25F of the Act. The only reply in regard to the Petitioner's case, that her services were terminated without compliance to the requirements of Section 25F, is that the termination was on account of non-availability of funds and that the discharge from service had been on the principle of "last come first go."

4. In the affidavit-in-reply it is also stated that the Petitioner had worked as an Out-turn Clerk from 1-3-1987 to 31-7-1987. Her case that she had been working as Out-turn clerk or as Assistant Store Keeper is not accepted in the affidavit-in-reply but Annexure R-I, statement, filed along with the affidavit of the Superintending Engineer shows that during the period of 12 months prior to her discharge from service on July 31, 1987, she had been working as Assistant Store Keeper or as an Out-turn clerk except for a short period of 26 days in December 1986 as a Beldar. We have already seen from Annexure R-I itself that the Petitioner had worked for 348 days during the aforesaid period of 12 months. We are, therefore, of the view that the Petitioner had been working as an Out-turn Clerk/Assistant Store Keeper during the relevant period.

5. The discharge of the Petitioner amounts to retrenchment within the meaning of Section 2(oo) of the Act and it does not fall within any of the exempted categories mentioned therein. From the facts adverted to, it is clear that the Petitioner had been in continuous service for a period of over one year within the meaning of Section 25B of the Act. She is, therefore, entitled to the benefits of Section 25F which requires one month's notice in writing or one month's salary in lieu thereof and before a workman is discharged from service he should also be paid retrenchment compensation as provided for in Clause (b). Since these requirements have not been complied with, the discharge of the Petitioner from service, which amounts to retrenchment, is illegal and cannot be sustained in law

vide Mohan Lai's case (supra). The Supreme Court in that case at page 1262 states:

But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits.

6. Following this decision of the Supreme Court, we declare that the Petitioner shall be deemed to be continuing in service as a daily-rated workman with all services benefits applicable to her.

7. We have already seen that the Petitioner had been working as an Assistant Store Keeper/Out-turn clerk at least during the period of 12 months prior to her illegal retrenchment on July 31, 1987. On the principle of equal pay for equal work" she is entitled to the minimum pay in the pay scale of regular Assistant Store Keeper/Out-turn clerk in the department vide the decision of the Supreme Court in The The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc., . The Respondents are directed to pay salary and allowances to the Petitioner at the rate equivalent to the minimum in the pay scale applicable to Assistant Store Keeper/Outturn clerk from the date of filing this petition (August 13, 1987).

8. The writ petition is allowed as indicated above. Parties will suffer their respective costs.