

(1985) 08 P&H CK 0086
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 82 of 1985

M/s Eicher Goodearth Limited, N.I.T. Faridabad	APPELLANT
Vs	
Industrial Tribunal, Haryana, Faridabad and another	RESPONDENT

Date of Decision : 20-08-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 25, 25B

Citation : (1985) 08 P&H CK 0086

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Advocate : Raj Birbal, for the Appellant; U.S. Sahni, for the Respondent

Final Decision : Allowed

Judgement

M.M. Punchhi, J.—This judgment shall dispose of Civil Writ Petitions Nos. 82 and 1457 of 1985 since the Petitioner is common and the points raised therein too are common.

2. In Civil Writ Petition No 82 of 1985, the Petitioner withheld from Respondent No. 2 on the ostensible premises that the latter being a casual workman need not continuously kept employed. The workman, on the other hand, assumed himself to be a permanent employee and raised an industrial dispute on the stance adopted by the management. The matter was referred to the Industrial Tribunal, Faridabad. When the parties came to grips with each other, the only issue framed was "whether the termination of service of Shri Nand Kumar was justified and in order ? If not, to what relief is he entitled ? The Tribunal vide award dated December 14, 1984, took the view that the workman had rendered 225 days service during the period October 3, 1981 to December 1, 1982, and as such, though strictly not in continuous service entitling him to the benefit of Section 25 of the Industrial Disputes Act, 1947, but was, otherwise, an instance of an unfair labour practice. Support for the view was taken from a judgment of 8 Division Bench of this Court in Kapurthala Central Cooperative Bank Limited, Kapurthala v. The Presiding Officer, Labour Court, Jalandhar, I. L. R. (1984) 2

P&H. 353. The Tribunal took the view that the aforesaid case fully applied to the facts of the case in hand and thus held that the termination of the service of the workman by the management was illegal, as on the basis of notional breaks in service the period was shown less than 240 days.

3. In Civil Writ Petition No 1457 of 1985 likewise the Respondent-workman Satish Chand had worked for 210-1/2 days within a period of 21 months. The claim of the workman here as well was that he was a permanent employee at a fixed monthly salary. Likewise, the Tribunal vide order dated September 14, 1984, relying on Kapurthala Central Cooperative Bank's case (supra), held that the termination of the service of the workman by the management was illegal because on the basis of the notional breaks in service the period was less than 240 days.

4. The view of the Tribunal in both cases is open to challenge, primarily on the ground that the said precedent has totally been misunderstood by the Tribunal, for, in no case have the notional breaks in service been nullified in that case to sum up the period of service to be above 240 days and continuous in terms of Section 25-B of the Industrial Disputes Act, 1947.

5. In Kapurthala Central Cooperative Bank's case (supra), the judgment which I had prepared this Court had nowhere been called upon to interpret Section 25-B of the Industrial Disputes Act, so as to read therein notional breaks of service to be no breaks at all. Nowhere had this Court ever intended to hold, and in fact has not held, that a different standard or method is employable to compute 240 days service, otherwise than the manner in which it is computable u/s 25-B of the Act. Plain language of the section raises a fiction, which starts from ascertaining the date from which it is raisable. The relevant date is the date of termination of service, which is complained of by the workman as retrenchment. When once a date is ascertained, then one has to move backwards to a period of 12 months preceding the date of retrenchment and then ascertain whether within the period of 12 months the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favour of the workman pursuant of the deeming fiction, it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F. Those 240 days need not be continuous ; they may have breaks, but in the preceding 12 months from relevant date total service period should be 240 days actually worked by a workman. In the aforesaid case, the fact that this Court took into account that the breaks in service were notional was only to highlight that notional breaks were kept in order to break continuity of service and despite those breaks when the actual period of service turned out to be 230 days it was an unfair labour practice not to deliberately allow the workman complete 240 days service, which would entitle him to the benefit of Section 25-F of the Act and other benefits. Further in that case, we had held the practice of retrenching a workman, close to this attaining a year's continuous service, is order to forestall his attaining rights

under Chapter 5-A of the Industrial Disputes Act, to be an unfair labour practice and gave it a judicial recognition. Yet in conclusion, this Court had specifically held that how close should be such period towards attaining a year's continuous service and to come within the purview of "unfair labour practice" was a question dependent on the facts and circumstances of each case. No guidelines on that aspect were laid down for the purpose.

6. In the cases in hand the Industrial Tribunal, without appreciating the ratio of Kapurthala Central Cooperative Bank's case (supra) has jumped to the conclusion that on ignoring notional breaks continuous service comes into being and, not recognising it such, was an unfair labour practice. As said before, this is not the ratio of that case. On the misunderstanding and misapplication of that ratio, the award of the Tribunal in either case needs to be set aside, requiring a remittance to the Tribunal for re-determining the question as also the other questions which arise in the case. It hardly need be emphasized that the Tribunal will have to find as a fact that the treatment as meted out to the Respondent-workman was on the facts and circumstances of each case an unfair labour practice before relief to them in the light of the Division Bench judgment can be given. But this aspect of the case is on the supposition as pleaded by the management that the Respondent workmen were casual labourers which is quite opposite to the plea adopted by the workmen that they were permanent employees. Seemingly in the impugned awards, this question has not been discussed as to what was the status of the workmen. The awards proceed on the supposition that they are casual labourers, if the Tribunal comes to a finding that the Respondent-workmen were permanent employees of the management, then there would be no occasion to attract the ratio of Kapurthala Central Cooperative Bank's case (supra). All these matters and such other matters as the parties may choose to take up will have to be gone into afresh by the Tribunal. The award in each respective case, as it stands, does not bear the scrutiny of this Court in these proceedings.

7. For the foregoing reasons, these petitions are allowed, the impugned awards of the Tribunal are set aside and the matter is remitted back to it with the directions and observations afore-made. Parties through their counsel are directed to put in appearance before the Tribunal on September 16, 1985.