

(2013) 03 P&H CK 0151
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 12589 of 2009

Mukesh Kumar

APPELLANT

Vs

Executive Engineer Division No. 2, PWD, Public Health and
Others
 Sunil Kumar Vs Executive Engineer Division
No. 1, Public Health and Others

RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Citation : (2014) 1 SCT 3

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Y.P. Malik, for the Appellant; Tanisha Peshawaria, DAG, Haryana, for the Respondent

Judgement

Rajiv Narain Raina, J.—This order will dispose of CWP No. 12589 of 2009 and CWP No. 12924 of 2009. The facts are taken from CWP No. 12589 of 2009. The workman is before this Court praying for quashing of the Labour Court award dated 22.10.2008 (P-4). Briefly stated, the petitioner was appointed as a Mali-cum-Chowkidar on 01.04.1994 on minimum wages fixed by the District Collector for the region. His services were terminated on 01.03.1995 and had put in about 11 months of service but had completed 240 days within the meaning of Section 25-B of the Industrial Disputes Act, 1947 (for short "the Act"). The petitioner raised an industrial dispute by serving a demand notice dated 05.11.1996 i.e. after 1 year and eight months. Industrial reference was made on 11.07.1997. The Labour Court in the impugned award has held that the workman satisfies the test of 240 days of service in the preceding 12 calendar months reckoned from the date of termination. The Labour Court further held that the present case was covered by exception (bb) of Section 2(oo) of the Act and, therefore, the provisions of Section 25-F were not attracted. The reason given for holding that Section 2(oo)(bb) applied appears to be based on a false notion harboured by the labour court that a casual worker on daily wages would per se fall in the exception clause to retrenchment his employment coming to an end everyday.

That finding in my view does not deserve to stand as it is not based on valid reason. Resultantly, the provisions of Section 25-F get attracted. But looking to the brief period spent in service of less than one year, this Court by interim order dated 04.03.2013 recorded the statement of Ms. Tanisha Peshawaria, learned Deputy Advocate General, Haryana that the matter is covered by the recent judgment of the Supreme Court in Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh, decided on 31.01.2013. On this submission, learned counsel for the petitioner prayed for time to examine the judgment as he had not read it. The matter was adjourned to 12.03.2013.

2. I have heard the learned counsel for the parties and have perused the material on record.

3. There is little doubt that the ratio of law laid down in Gitam Singh case would cover both these matters. Violation of Section 25-F per se would not automatically lead to reinstatement and several factors would enter the decision making process in moulding the relief. It would therefore be appropriate to further examine this matter as to what adequate compensation in lieu of reinstatement can be granted and who should pay for it to serve the ends of justice.

4. This Court is a little surprised to note that the Labour Court has returned a contradictory finding inasmuch as on the one hand it says that the provisions of Section 2(oo)(bb) are attracted to the case and then a little further in the judgment holds that there is no proof of relationship of employer and employee between the parties. The labour Court further noticed that it is not proved that the workman was given any appointment or issued any order of termination. Therefore, the reference itself was not maintainable. On these premises, the award has been answered against the workman and he has got no relief. These findings by the Labour Court are in the considered view of this Court entirely perverse and do not deserve to be allowed to stand.

5. In the written statement filed before this Court by the Sub-Divisional Engineer, Sub-Division No. 2, PWD Public Health, Rewari, there is an admission, just as there was before the Labour Court that there was in existence a relationship of employer and employee but that relationship lasted for only 114 days i.e. from 01.05.1994 to 31.10.1994 and not as projected by the workman from 01.04.1994 to 01.03.1995. This variation in the stands of both the parties could have devastating jurisdictional effect but in the facts of this case is hardly of any material consequence in resolving the controversy at hand arising in exercise of judicial review against the impugned award. That apart, from the bald statement contained in the statement of claim/written statement filed by the State in defence it appears that no pointed or credit worthy evidence was brought on record by it before the Labour Court other than Ex. MW-1/A to Ex. MW-1/9 to establish as a point of fact the period of service actually served.

6. The finding of the Labour Court indicates that the period of service as pleaded

by the workman was accepted by it and that he had completed 240 days of service prior to retrenchment conferring industrial rights. However, in absence of challenge by the State to the impugned awards of the Labour Court, it would not be possible to accept their stand that the workman had served only from 01.05.1994 to 31.10.1994 i.e. for 180 days. I would, therefore, accept the finding of the Labour Court with respect to length of service in absence of any other material shown to hold to the contrary. I have perused the demand notice (P-1) and find an assertion therein that the workman had served from 01.05.1994 to 28.02.1996 whereas in the writ petition, he admits that his services were brought to an end w.e.f. 01.03.1995. Be that as it may, I would not take this either way as justifying reinstatement.

7. The question of what should be adequate compensation is a rather ticklish question to answer and its determination appears to be largely based on gut reactions of Courts tempered with judicial experience and of the total impact of fact situations presented before it in myriad cases while dealing with them from time to time and case to case. There can be no judicial uniformity or strait jacket formula in such exercise. Neither would it be wise to do so.

8. Learned counsel for the petitioner has produced before me a decision of this Court rendered in LPA No. 1235 of 2009 titled *The Karnal Central Cooperative Bank v. State of Haryana and others* decided on 30.07.2010. This case involved the termination of a Clerk appointed on 89 days basis on 18.09.1986 with services being terminated on 20.06.1987. It was, therefore, a case of short and brief service. The learned Single Judge had awarded Rs. 2 lacs as compensation in lieu of reinstatement. In intra Court appeal, the order of the learned Single Judge was upheld. In *Bharat Sanchar Nigam Ltd. Vs. Man Singh*, in a case of two daily wage employees who had served the corporation for about two years and were retrenched in 1986 and had raised demand notice for the first time in 1991 the Supreme Court ordered compensation of Rs 2 lacs to each of the workman as just and adequate compensation in lieu of reinstatement. In *Gitam Singh* case supra, the Supreme Court has awarded Rs. 50,000/- compensation for eight months of service in the case of a daily wager. Cases can be multiplied but would needlessly burden the judgment for no real or further purpose.

9. In the litigation involving labour matters coming up before this Court a common thread runs where the employer is the State Government or its department that the provisions of Sections 25-F 25-G and 25-H are violated with impunity. The time has come to balance out equities between the daily wage workman trying to eke out a living earning micro wages in expensive times and the impact that compensation ordered to be paid by courts may have on the State exchequer cascading down to the tax payer. I feel that where there is violation of the mandatory provisions of Section 25-F with impunity at the hands of Government departments and its public functionaries then liberty ought to be granted to the State Government blind to the actions of its servants to recover amounts awarded by Courts as compensation including interest, if any, for

infractions of the statutory law from erring officers responsible for non-compliance of labour laws but only after fixing responsibility through the process of issuance of charge-sheets and holding fair and proper regular inquiries. This should not become a witch hunt though. However, the amounts of compensation awarded by Courts ought to be discharged as debts without delay in the first instance. Keeping in view these principles, I would tread the middle path and award Rs. 1 lac as adequate compensation in each case and sufficient for a wake up call. Consequently, both the writ petitions are partly allowed. The impugned awards of the Labour Court are set aside. There will be no reinstatement but a direction would go to the respondent to pay Rs. 1 lac as compensation in each case to the petitioners within three months from the date of receipt of a certified copy of this order, failing which interest would run at 12% per annum till realization. The respondent-Department would remain at liberty to fix responsibility of erring officers and recover the amounts from them, if found guilty. In case defaulting public servants are found both guilty and superannuated then within the parameters of service rules cuts in pension may also be considered and so ordered.