
(2013) 10 P&H CK 0333
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 12623 of 1994

Mukhtiar Singh

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2013) 10 P&H CK 0333

Hon'ble Judges : Bharat Bhushan Parsoon, J

Bench : Single Bench

Advocate : Abhinandan Pandhi, for Mr. Sumeet Mahajan, for the Appellant;

Judgement

Bharat Bhushan Parsoon, J.—The petitioner, a Driver with respondent No. 2, i.e. Pepsu Roadways Transport Corporation, Patiala since 25.2.1988, was shown the exit gate by the respondent-management on 8.8.1988 (with effect from 22.7.1988) without any notice, charge-sheet, inquiry or compensation under the Industrial Disputes Act, 1947 (in short, the Act). On failure of conciliation proceedings, an industrial dispute was raised by the petitioner vide a demand notice served upon the respondent-management by him wherein his termination from service was challenged as illegal and demand was raised that he should be taken back into service with full back wages, which was referred by the State to the Labour Court, Patiala u/s 10(2)(c) of the Act for adjudication. Further plea of the petitioner was that his juniors had been retained whereas he alone was targeted.

2. The Tribunal had proceeded to adjudicate the matter so as to answer the reference on the following issues, framed by it:-

1. Whether the reference is bad in law as alleged?
2. Whether the order of termination of services of the workman is justified and in order?
3. Relief.

3. After receiving oral as well as documentary evidence from the parties and providing hearing to them and deciding all the issues against the petitioner, termination of the petitioner was held to be justified. This Award (Annexure P-6) of the Labour Court, Patiala rendered on 1.9.1993 is under challenge by way of this writ petition by the petitioner wherein, while seeking quashing of the Award, reinstatement in service with back wages has been sought.

4. Without even issuing notice to the respondents, this petition was admitted for hearing on 9.9.1994. On intimation by the Registry, respondent No. 2 was represented on 16.8.2013 but neither any written statement was filed nor anyone appeared thereafter.

5. I have heard learned counsel for the petitioner while going through the paper book.

6. Before adjudicating the matter in dispute, it would be appropriate to take stock of the facts.

7. The petitioner was initially appointed as Driver by respondent No. 2 for a period of 89 days vide appointment letter Annexure P-1. Evaluating performance of the petitioner on monthly basis and finding his work and conduct as satisfactory, he was given extension. In the extension order dated 30.5.1988 (Annexure P-2) while analyzing work and conduct report, period of employment was recommended to be extended. However, without assigning any reason, services of the petitioner were terminated on 8.8.1988 (Annexure P-3) though with effect from 22.7.1988. Neither any prior notice, nor charge-sheet, nor inquiry, nor compensation under the Act had preceded termination of the petitioner.

8. A perusal of the impugned Award and of the paper book reveals that one Tejwinder Singh, appointed on 7.7.1988, i.e., much later than the petitioner as Driver, continued in the job. Not only this, even Driver Devinder Singh (No. L-48), appointed on 29.1.1990 and other Drivers bearing No. L-41 to L-47, appointed in between 4.7.1988 to 29.1.1990 had continued. During proceedings before the Tribunal, Manohar Lal Superintendent had entered the witness box and had deposed these facts on oath.

9. Though the petitioner had made reference to the provisions of Sections 25F, 25G and 25H of the Act but Sections 25G and 25H of the Act are relevant. Since the petitioner had not completed 240 days of employment within a period of one year preceding the date of termination, Section 25F of the Act does not apply.

10. It would be seen a little later that it is not a condition precedent that the workman must have completed 240 days of service so far as the provisions of Sections 25G and 25H of the Act are concerned. Sections 25G and 25H of the Act are appended as below:-

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a

particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25H. Re-employment of retrenched workmen.- Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment and such retrenched workman] who offer themselves for re-employment shall have preference over other persons.

11. It would be relevant to mention here that stand of the management before the Tribunal was that the petitioner was relieved on the expiry of contractual period of his employment. At this stage, term "retrenchment" as defined in Section 2(oo) of the Act needs to be understood and the said provision for ready reference is appended as below:-

retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the 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; or

(c) termination of the service of a workman on the ground of continued ill-health;

12. Contention of learned counsel for the petitioner is that the petitioner was not holding term appointment though initially on 25.2.1988, he was appointed as Driver on ad hoc basis for 89 days and was allotted driver No. L-35 and his appointment was subject to verification of character and antecedents by the police authorities. After obtaining his work and conduct report (Annexure P-2), recommendation by the Depot Manager of respondent No. 2 was that his period of employment may be extended. Consequently, his period of employment was extended without any term having been mentioned therein. Abruptly, on 8.8.1988, services of the petitioner were terminated without assigning any reason.

13. It is, thus, evident that the petitioner was in regular employment. It was not terminable on expiry of certain period. It was to continue.

14. The stand of the management that he had completed his term and thus, had gone out of employment is wrong. Impugned order (Annexure P-3) for ready reference, in its relevant portion, is appended as below:-

PEPSU ROAD TRANSPORT CORPORATION, LUDHIANA

No. 616/PRTC/Admn. Dated 8/8/88

"ORDER"

Having served upto 22.7.88 Shri Mukhtiar Singh, driver No. L-35 shall be paid his wages accordingly. His services are no more required.

Sd/- Depot Manager

Endst. No. 2974/PRTC/Admn. Dated 8/8/88

Copy to:-

1. Shri Mukhtiar Singh Driver No. L-35

2. & 3. XXX XXX

Sd/- Depot Manager Pepsu Road Transport Corporation, Ludhiana.

15. It would be relevant to mention that stand of the respondent-management is not only against record but is absolutely wrong. As is evident from Annexure P-3, this termination order was passed on 8.8.1988 when the petitioner was continuing on the rolls of the respondent-employer. Services of the petitioner were terminated from back date, i.e., 22.7.1988. Concededly, no show cause notice was issued; no inquiry was made; no indictment was there. Employment of the petitioner was suddenly axed. He was on the road.

16. When petitioner Mukhtiar Singh appeared as his own witness before the Tribunal, he minced no words in specifying that drivers junior to him had been retained in service whereas he was terminated. Superintendent Manohar Lal, working with respondent No. 2, left no confusion when from service record (which he had brought with him), had deposed that driver Nos. L-40 to L-47 having been appointed between 4.7.1988 to 31.1.1990 were continuing in job. Thus, it clearly emerges out that the services of the petitioner, appointed much earlier to all these drivers No. L-40 to L-47, were terminated.

17. Finding of the Labour Court that services of the petitioner were terminated after expiry of the term of his employment, has been proved to be wrong on facts. It is also to be noticed that the Tribunal though marginally touched the aspect of juniors of the petitioner having been retained by the management, but did not give any finding on this score though there was clear violation of Section 25G of the Act. Sequelly, termination of the services of the petitioner was wrong and unjustified.

18. Interpreting Section 25G and 25H of the Act, a Division Bench of this Court in

Punjab Water Supply and Sewerage Board Vs. Presiding Officer, Labour Court, Bhatinda has unequivocally mentioned that engagement and termination of services of daily wagers without following principles of "last come first go" amounts to adopting the policy of hire and fire. It was also clarified that for following the principle of "last come first go" as enshrined in Sections 25G and 25H of the Act, it is not a condition precedent that the workman must have completed 240 days of service. In para 7 of the judgment, referring to Baljit Singh Vs. State of Haryana and Another, it has been held as under:-

.... This being the position, it has to be held that respondent No. 2 has violated the rule of "last come first go" incorporated in Section 25H. This rule is reflection of the "equality clause" enshrined in the Constitution and, therefore, breach of the rule of "last come first go" embodied in Section 25G has the effect of violating the "equality clause". In Civil Writ Petition No. 11860 of 1994 decided on 31.8.1994 (Administrator/Chairman, Market Committee v. Presiding Officer, Industrial Tribunal-cum-Labour Court Hissar), this Court has examined the issue of applicability of Section 25G even in a case where the employee has not completed 240 days and it has been held that employer is required to comply with the provisions of Section 25G of the Act even though the employee may not have completed 240 days as to claim benefit of provisions of Section 25F of the Act.

19. To the same effect is the ratio of law in Guru Jambheshwar University, Hissar Vs. Presiding Officer, Industrial Tribunal

20. In Ved Parkash v. Presiding Officer, Labour Court, Panipat, 2000 (4) SCT 1060, a Division Bench of this Court in para 8 thereof has held as under:-

Learned Counsel for the petitioner has further placed reliance upon a decision rendered in Civil Writ Petition No. 5552 of 1997 (Bal Raj v. HUDA, Manimajra, U.T. Chandigarh and others), wherein a Division Bench of this Court has stated that the petitioner has specifically plead that person junior to him had been retained in service and he had supported this plea by oral statement. This itself prima facie was violative of Section 25G of the Act. The relevant portion of the judgment is reproduced as under:-

... the petitioner has specifically pleaded (that persons) junior to him had been retained in service. He supported this plea by oral statement. In this manner he proved that the action of the employer was prima facie violative of Section 25G of the Act. The respondents did not lead evidence to disprove the case set up by the petitioner. However, the Labour Court has not at all dealt with the issue relating to violation of Section 25G of the Act...

21. There is unassailed deposition of workman made before the Tribunal that juniors to him, like driver Ranjit Singh No. L-36 and others, had been retained in service whereas he had been shown the exit gate. Relevant portion of statement of the petitioner is appended as below:-

WW2M S.A.

Mukhtiar Singh, workman aged 32 years r/o Kahangarh.

I joined PRTC as Driver on 25.7.87 and was terminated on 22.7.1988 without any notice, charge sheet, enquiry, compensation. My wages was Rs. 1354/- P.M. Juniors to me namely Ranjit Singh Driver No. L-36 and others were still in service when I was terminated. I searched for work but could not find any. I claim reimbursement with continuity but without back wages.

22. Manohar Lal, Superintendent of respondent No. 2, appearing as WW/M before the Tribunal, had made a categorical statement that driver No. L-28, namely, Devinder Singh was appointed on 29.1.1990, i.e., after termination of services of the petitioner. Even many other drivers had been appointed after termination of services of the petitioner. Driver No. L-41 to L-47 were appointed between 4.7.1988 to 29.1.1990 and these include those who had been appointed after termination of the petitioner. During the course of arguments, contention of Learned Counsel for the petitioner that many drivers were appointed after termination of the petitioner, has not been contested. This is clear violation of provisions of Section 25H of the Act, reference to which has already been made in the earlier part of the judgment.

23. Following the ratio of law laid down in the aforementioned judgments of the Division Benches of this Court and there being clear violation of Sections 25G and 25H of the Act, this petition is allowed and termination order and the impugned award are quashed. Consequently, respondent No. 2 is ordered to reinstate the services of the petitioner.

24. So far as back wages are concerned, keeping in view the facts and circumstances of the case, the petitioner would be paid only 50% of back wages. The petition is allowed to the extent as indicated above.