
(1991) 04 P&H CK 0121
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 57 of 1986

Municipal Committee

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 05-04-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1992) 2 LLJ 815

Hon'ble Judges : J.L. Gupta, J

Bench : Single Bench

Advocate : T.S. Doabia, for the Appellant; P.S. Kang, for the Respondent

Final Decision : Dismissed

Judgement

J.L. Gupta, J.—The petitioner is aggrieved by the award of the Labour Court, a copy of which is placed at Annexure P-4 with the writ petition. By this award, the Labour Court has held that the workman (respondent No. 2) had put in more than one year and seven months of service. Her services were terminated without giving her one month's notice or retrenchment compensation and as such the order of termination was violative of provisions of Section 25F of the Industrial Disputes Act, 1947 (for short "the Act"). Accordingly, respondent No. 2 was ordered to be reinstated with continuity of service. It was further held that the workman was entitled to full back wages.

2. The facts of the case lie within a very narrow compass. Respondent No. 2 was appointed as a clerk against the leave vacancy of Smt. Savitri Sharma. This appointment was originally made by an order issued on 3rd February, 1981, for a period of one month. After the expiry of first appointment, respondent No. 2 was appointed against the vacancy caused by the suspension of Smt. Savitri Sharma on 23rd July, 1981. It is averred in the petition that Smt. Savitri Sharma approached the civil court and obtained an order in her favour. She, accordingly, reported back for duty on March 9, 1983. As a result, respondent No. 2 is stated to have been relieved of her duties. The petitioner further claims that respondent

No. 2 was again appointed on daily wages on June 27, 1983, and that she had abandoned the job of her own accord on June 30, 1983. Respondent No. 2's appeal before the Director, Local Government, having failed, she sought a reference u/s 10 of the Act which was made to the Labour Court on June 25, 1984 . The proceedings before the Labour Court culminated in the award in favour of the workman. This award has been impugned in this writ petition.

3. In response to the notice of the writ petition, the respondent workman has filed a written statement. In paragraph 3, it has been stated that the appointment of respondent was duly confirmed, vide resolution No. 254 dated August 31, 1981. It has been further averred that Sarvshri Darshan Ram and Jaswant Singh were appointed as clerks with effect from March 25, 1983, and one Shri Rajinder Kumar was promoted from the post of peon. At that time, it is alleged that no offer was made to the respondent. The averments in the petition have been controverted and it has been averred that the respondent had been appointed on a vacant post and later on her appointment was confirmed. It has been further averred that on the date of termination, viz., March 9, 1983, four posts of clerks were lying vacant against which Sarvshri Darshan Ram, Jaswant Singh and Rajinder Kumar were appointed with effect from March 25, 1983. In the back ground of this factual position, it is claimed that the termination of services of respondent No. 2 was wholly illegal and that the award given by the learned Labour Court is unassailable.

4. Mr. T.S. Doabia, learned counsel for the petitioner, has primarily contended that respondent No. 2 could not claim relief of reinstatement when she had been appointed against a vacancy caused by the suspension of a clerk which (suspension) had been set aside by the civil court and the employee had reported back for duty. Termination of services in such a situation did not amount to retrenchment so as to attract the provisions of Section 25F of the Act. He has further contended that the respondent having voluntarily abandoned the job, was not entitled to claim reinstatement. Mr. P.S. Kang, on the other hand, appearing for respondent No. 2 contends that she had completed more than a year of service on March 9, 1983, when her services were terminated. It was incumbent upon the petitioner to comply with the provisions of Section 25F as the termination amounted to retrenchment. These provisions having not been complied with, the termination/retrenchment of the workman was vitiated and the award of the Labour Court was perfectly justified. He has further pointed out that respondent No. 2 had been confirmed, vide resolution No. 254 passed by the Committee on August 31, 1981, and that four posts of clerks having become available, prior to the termination, against which certain other persons had been appointed, the retrenchment was totally illegal.

5. I have considered the respective arguments of learned counsel for the parties. The Apex Court in the case reported as *State Bank of India v. N. Sundaram* (1976 LLJ 478) has, inter alia, observed as under (at pages 482-483):

"A break-down of Section 2(o) unmistakably expands the semantics of

retrenchment. "Terminationfor any reason whatsoever" are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely that act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices circumventing the armour of Section 25F and Section 2(oo). Without speculating on possibilities, we may agree that "retrenchment" is no longer terra incognita, but area covered by an expansive definition. It means "to end, conclude, cease". In the present case, the employment ceased, concluded, ended on the expiration of nine days-automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Section 25F(b) is inferable from the proviso to Section 25F(a). True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25F and automatic extinguishment of service by effluxion of time cannot be sufficient. An English case, *Res v. Secretary of State* (1973) 2 All ER 103, was relied on, where Lord Denning, M.R., observed:

"I think that the work "terminate" or "termination" is by itself ambiguous. It can refer to either of two things-either to termination by notice or to termination by effluxion of time. It is often used in that dual sense in landlord and tenant and in master and servant cases. But there are several indications in this paragraph to show that it refers here only to termination by notice."

Buckley, L.J., concurred and said :

"In my judgment the words are not capable of bearing that meaning. As counsel for the Secretary of State has pointed out, the verb "terminate" can be used either transitively or intransitively. A contract may be said to terminate when it comes to an end by effluxion of time, or it may be said to be terminated when it is determined at notice or otherwise by some act of one of the parties. Here in my judgment the work "terminated" is used in this passage in paragraph 190 in the transitive sense, and it postulates some act by somebody which is to bring the appointment to an end, and is not applicable to a case in which the appointment comes to an end merely by effluxion of time."

Words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened, we hold that the transitive and intransitive senses are covered in the current context.

Moreover, an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite order, one giving

employment and the other ending or limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A pre-emptive provision to terminate is struck by the same vice as the post-appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision.

6. According to their Lordships of the Supreme Court, retrenchment embraces not only the termination by the employer but the fact of termination howsoever produced. In a case where the workman had completed 240 days of service, the provisions of Section 25F have to be complied with. In the present case, the workman had admittedly completed 240 days of service and provisions of 25-F had admittedly not been complied with. This being the situation, the award of the Labour Court cannot be said to suffer from any legal infirmity. In view of this finding it is not necessary to go into the ancillary contentions raised on behalf of the petitioner. This is all the more so because the contention raised on behalf of the petitioner that the workman had abandoned the job after service for three days had been denied by the workman. The writ petition is accordingly without any merit and is dismissed. The parties are, however, left to bear their own costs.