
(2006) 10 P&H CK 0101
In the Punjab And Haryana At Chandigarh

Municipal Council, Quadin

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 23-10-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo)(bb)

Citation : (2007) 113 FLR 179

Hon'ble Judges : J.S. Narang, J;Arvind Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arvind Kumar, J.—The petitioner-Council is aggrieved by the award dated 8.9.2003 passed by respondent No. 1, thereby ordering re-instatement of respondent No. 2 with continuity of service and 50% back wages.

What emerges out from record is that respondents No. 2 workman raised an industrial dispute thereby questioning the termination of his services by the petitioner. His grievance was that his services were terminated without complying with due procedure as he was neither served with any notice nor any retrenchment compensation was paid to him. On failure of conciliation proceedings before the appropriate Government, the dispute was referred to the Labour Court for adjudication. The stand of the workman before the Labour Court was that he had worked with the petitioner from 26.6.1995 to 31.10.1997 continuously against permanent post of Octroi Clerk. However, on 1.11.1997 his services were terminated without adopting any due procedure and without paying any retrenchment compensation. The claim of the workman was resisted by the petitioner-council on the ground that the case of the workman is covered by Clause (bb) of Section 2(oo) of the Industrial Disputes Act, 1947 (for short the Act), as his appointment was contractual for a specific work. It was also averred that the workman served the petitioner from August 1996 to October 1997 intermittently and thereafter his services were dispensed with in the light of the instructions dated 12.6.1997 of the State Government, which provides for

replacement of employees appointed on ad hoc/89 days basis/temporary/work charge/daily wages by regular selected candidate. It is also pleaded that since there was no vacancy of Octroi Clerk, therefore, no further appointment was made in place of the workman either on regular or ad hoc basis. Upon the pleadings of the parties, the issues were settled by the Labour Court. Both the parties led their respective evidence in support of their pleas.

2. The Labour Court, on the basis of evidence adduced before it, held that the workman had served the petitioner from 26.6.1995 to 31.10.1997 and that his services were terminated in violation of provisions of Section 25-F of the Act. Accordingly, the Labour Court set aside the termination of the services of the workman and as said above ordered his re-instatement with continuity of service and 50% back wages.

3. Feeling dissatisfied with the same, the petitioner has approached this Court challenging the impugned award dated 8.9.2003.

4. Upon notice, respondent No. 2 filed the written statement thereby controverted the averments made in the petition. It is denied that the workman was employed for specific work for a specific period. The workman was paid salary by the petitioner, therefore, there exist relationship of employer-employee between the parties. Justifying the award of the Labour Court, dismissal of the instant petition has been sought.

5. We have heard learned Counsel for the parties at length and have also gone through the paper book carefully.

6. The issue to be examined is whether the action of the management in terminating the services of petitioner-workman, can be treated as "retrenchment from the employment" within the meaning of the provisions of the Act or not? Retrenchment has been defined in Section 2(oo) of the Act, which reads as under:

2[oo] "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 or 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;]

7. A bare perusal of the said definition shows that the termination of a workman "for any reason whatsoever" would constitute retrenchment except in cases excepted in the above-said section itself. The burden lies on the employer and not upon the employee-workman to prove that the case falls within one of the excepted clauses and thus, is not retrenchment. In the instant case, there is absolutely no evidence led by the petitioner-department to prove if the case of the respondent-workman falls in any of the excepted categories. It is the case of the petitioner that the services of the workman, which were contractual, to carry out a specific work and for a specific period, were retrenched in view of the above said instructions dated 12.6.1997 issued by the State Government. It has also come in evidence that the work was still existed when the services of workman were terminated, as one Sushma Rani was appointed on the said post, which fact is admitted by MW-1 Subhash Chander. But the services of workman were terminated only on the basis of Government instructions dated 12.6.1997, referred to above, Therefore, the action of the petitioner does not fall in any of the exceptions mentioned above. Though in the appointment letter Annexure P-I the work " contract basis" has been mentioned but it does not stipulate the period of contract and nature of work whether fixed or temporary. Therefore, this case falls within the term termination of the services "for any reason whatsoever". It would, thus, be retrenchment within the meaning of Section 2(oo) of the Act, referred to above.

8. Further, on the strength of admission made by petitioner's own witness i.e. Sub-hash Chander (MW-1) of paying salary to the workman, the Labour Court has rightly concluded that there exists employer-employee relationship between the parties.

9. The Labour Court has categorically and rightly held that the services of the workman, who had served the petitioner from 26.6.1995 to 31.10.1997 were terminated in violation of provisions of Section 25-F of the Act.

10. Additionally, the cause of action had accrued to the petitioner-workman to approach this Court in March 2003 when the impugned award was passed by respondent No. 1. However, they slept over the matter and filed the instant writ petition after a delay of more than one and a half years. There is absolutely no explanation for such a delay. The Supreme Court in the case of P.S. Sadasivaswamy Vs. State of Tamil Nadu, had clearly held that an aggrieved party has to move the Court within a period of six months or at best within one year of the date when cause of action accrued.

In view of the discussion above, this petition fails and the same is accordingly dismissed, leaving the parties to bear their own costs.