

(2011) 03 P&H CK 0134
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1616 of 2003

Naresh Kumar

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 2, 25F, 25G, 25H

Citation : (2011) 03 P&H CK 0134

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Grover, J.—Petitioner/workman has impugned the award of the Labour Court, Ambala dated 9.5.2000. The Petitioner/workman claimed a reference u/s 10(1)(c) of the Industrial Disputes Act, (hereinafter referred to as the Act).

2. The Petitioner pleaded that he was employed as a Mali in November, 1995 on a salary of 500/- per month and thereafter Rs. 709. He performed his duties regularly as a Mali, but in papers he has been shown on duty as a Part Time Mali. He claimed that he has completed more than 240 days when his services were terminated. The termination of the services of the Petitioner/workman is in violation of the provisions of Sections 25G and 25H of the Act.

3. The Respondent/management took up the plea that the Petitioner was appointed as a Part Time Mali on D.C. rates for four hours a day and the entire wages have been paid to him. His appointment was not against a regular post and he had not completed 240 days.

4. The Tribunal concluded that there was nothing on the file to show that the Petitioner was ever engaged against a regular post and that too, through Employment Exchange or public advertisement. He was engaged as a Part Time Mali on daily wages for four hours a day. He is not entitled to the benefit to be given u/s 25F of the Act since there was no evidence to show that any person

junior to the Petitioner had been retained and the plea of the Petitioner on this count was also negated. The reference was declined.

5. The learned Counsel for the Petitioner contended that the impugned award deserves to be set aside as the action of the Respondents is in violation of the provisions of the Act.

6. The question which has been raised herein is as to whether a part time employee like the Respondent/workman who entitled to the benefits of the Industrial Disputes Act and whether a part time worker who comes within the definition of Section 2(s) of the Act, can also be treated to be a workman within the meaning of the Act, so as to be held entitled to the benefits of the provisions of the Act in particular the provisions of Chapter IIA & V.B thereof.

7. The question which has been raised herein was referred to the Full Bench in C.W.P. No. 4660 of 1999 and in the admission order, the petition was ordered to be listed after the decision of the Full Bench.

8. The Full Bench of this Court has since rendered the decision on 22.5.2008 and it has been concluded as under:

In view of the facts mentioned above, we conclude that a part time worker would fall within the definition of a workman as postulated under Sections 2(s) of the I.D. Act. However, nature of his employment will be that of a contractual employee and employer be at liberty to terminate him and his termination would not entitle him to get any benefit under the provisions of Chapter VA and VB of the I.D. Act. It is further clarified that to enforce rights and obligations arising under contract of employment, may be in writing or oral, the part time worker may invoke the provisions of I.D. Act other than contained in Chapter VA and VB of the Act.

9. In view of the aforesaid, when there is no dispute that the Respondent/workman was working on part time basis and in view of the observations made by the Full Bench as extracted above, I am of the opinion that the writ petition deserves to be dismissed.