
(2012) 09 P&H CK 0253

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 18350 of 2010 (O and M) and 2524 of 2011 (O and M)

Paramjit Singh and Raj Pal

APPELLANT

Vs

The Labour Court, Patiala and Others

RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo), 2(oo)(bb), 25F, 25F(a)

Citation : (2012) 135 FLR 844 : (2013) 1 LLJ 497 : (2012) LLR 1152 : (2012) 4 PLR 524

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Vikas Singh, for the Appellant; Satish Bhanot, Additional Advocate General, Punjab for Respondent No. 1 and Mr. Sandeep Bhardwaj, Advocate in CWP No. 2524/2011 for Respondent Nos. 2 to 5, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Bindal, J.—This order will dispose of two writ petitions bearing CWP Nos. 18350 of 2010 and 2524 of 2011, as common questions of law and facts are involved therein. The petitioner joined the service as Beldar with the respondent/management on 15.6.2000 on daily wages. He worked continuously upto 25.6.2001. His services were terminated on 26.6.2001. The petitioner raised an industrial dispute by issuing demand notice dated 4.9.2001. The matter was referred for adjudication to the Labour Court, Patiala. Vide its award dated 8.1.2009, the Labour Court rejected the plea raised by the management that it was a case of non-renewal of contract and that termination-falls within the exception as contained in Section 2(oo)(bb) of the Industrial Disputes Act, 1947 (for short "the Act"). The learned Labour Court granted the relief of compensation of Rs. 10,000 in lieu of the reinstatement in service.

2. The petitioner joined the service with the respondent-Board on 17.11.1997 as daily wage worker. He worked continuously upto 25.9.1998. His services were terminated on 26.9.1998. He raised an industrial dispute by issuing demand

notice dated 16.8.2000. The matter was referred to the learned Labour Court, Patiala. Vide its award dated 2.2.2010, the Labour court has held that the termination of services of the petitioner was in violation of the Section 25F of the Act. Further it held that the petitioner had completed more than 240 days of services immediately before 26.9.1998. However, while granting relief, compensation of Rs. 20,000 has been awarded in lieu of reinstatement.

3. Learned counsel for the petitioners submitted that the petitioners joined service as daily wager. Their services were illegally terminated without issuing any notice or paying any retrenchment compensation. No enquiry was held prior to their termination. Aggrieved by their termination orders, they raised industrial dispute. The matter was referred to the Labour Court. The Labour Court held that their services were illegally terminated in violation of Section 25F of the Act. He further submitted that the Labour Court has given its findings that workmen had completed 240 days of service prior to their termination and the management has failed to show as to how the reference was not maintainable and bad in law, but they have been granted only monetary compensation instead of reinstatement with continuity in service and full back-wages. Hence, the awards of the Labour Court are liable to set aside and the petitioners be reinstated with continuity in service with full back-wages.

4. In support of their claim, learned counsel for the petitioners referred to judgments of Hon''ble the Supreme Court in Ramesh Kumar v. State of Haryana, 2010 (1) SCT 675; Harjinder Singh Vs. Punjab State Warehousing Corporation, Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana), and Devinder Singh Vs. Municipal Council, Sanaur,

5. On the other hand, learned counsel for respondent Nos. 2 to 5, submitted that the petitioners-workmen themselves had abandoned the job at their own accord and never reported for duty. The workmen have been paid wages for the days, they actually worked. Since no appointment letter was ever issued to the petitioners, the question of giving notice does not arise. He further submitted that their services were taken as per the requirement of the work and they left the job for the reasons best known to them. The prayer is for dismissal of the writ petitions with costs.

6. Heard learned counsel for the parties and perused the paper book.

7. Hon''ble the Supreme Court in Ramesh Kumar's case (supra), held that if sufficient material is shown that workman has completed 240 days of service, his service cannot be terminated without giving notice or payment of compensation in lieu thereof in terms of Section 25F of the Act.

8. In Harjinder Singh's case (supra), Hon''ble the Supreme Court has held as under:-

30. Of late, there has been a visible shift in the courts'' approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive

mantras of globalisation and liberalisation are fast becoming the *raison d'être* of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood.

31. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer - public or private.

9. Hon'ble the Supreme Court in Devinder Singh's case (supra) held that provisions of Section 25F, (a), (b) are mandatory and termination of service of a workman which amounts to retrenchment within the meaning of Section 2(oo) of the Act without giving one month's notice or pay in lieu thereof and retrenchment compensation is null and void. Further it has held that the appellant shall be entitled to reinstatement with continuity in service and wages for the period between the date of award and the date of actual reinstatement. The relevant paragraphs of the aforesaid judgment are reproduced hereunder:-

20. This Court has repeatedly held that the provisions contained in Section 25F(a) and (b) are mandatory and termination of the service of a workman which amounts to retrenchment within the meaning of Section 2(oo) without giving one month's notice or pay in lieu thereof and retrenchment compensation is null and void/illegal/inoperative.

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28. In the result, the appeal is allowed. The impugned order is set aside and the award passed by the Labour Court for reinstatement of the appellant is restored. If the respondent shall reinstate the appellant within a period of four weeks from today, the appellant shall also be entitled to wages for the period between the date of award and the date of actual reinstatement. The respondent shall pay the arrears to the appellant within period of three months from the date of receipt/

production of the copy of this order.

10. On due consideration of the matter, I am not inclined to accept the contentions raised by the learned counsel for respondent Nos. 2 to 5. The petitioners were appointed as daily wager by the respondent-management. They completed 240 days in service. Their services were terminated in violation of Section 25F of the Act. No retrenchment compensation was paid to them by the respondent-management. The Labour Court merely granted compensation instead of reinstatement inspite of the fact that the petitioners had completed 240 days. It is not disputed by the learned counsel for the respondent-management that the respondent management has not challenged the awards of the Labour Court.

11. An employer cannot be permitted to exploit a human being, violate the law and show the workman exit door without just cause or legal justification. Such workman must have the protection of his life, liberty and right to exists in some comfort by securing adequate means of livelihood protected under article 21 of the Constitution of India. For the reasons recorded above, the present writ petitions are allowed. The impugned awards dated 8.1.2009 and 2.2.2010, respectively are set aside. The respondent-management is directed to reinstate the petitioners with continuity of service and back-wages for the period between the date of award and the date of actual reinstatement.