
(2014) 08 P&H CK 0261

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 12830, 12835 and 12909 of 1991 (O & M)

Pawan Kumar Garg

APPELLANT

Vs

The Haryana Dairy Development Cooperative Federation
Limited
 Ram Chander Vs State of Haryana

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 18, 18(1), 25F, 25FF, 25H

Citation : (2014) 143 FLR 985 : (2015) 3 SCT 11

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Ram Kumar Malik, Senior Advocate, Mandeep Singh, I.D. Singla and Abhimanyu Sharma, Advocate for the Appellant; Shivendra Swaroop, AAG, Pardeep Solath, K.K. Gupta and Vivek Sharma, Advocate for the Respondent

Judgement

K. Kannan, J.—All the three writ petitions are at the instance of the workmen in the Milk Union at Bhiwani (hereinafter called, "the Milk Union"), who had been relieved from their respective duties when the union at Bhiwani was wound up under the provisions of the Cooperative Societies Act. The challenge was brought at the instance of the respective petitioners in their writ petitions complaining (i) that they were all employed originally by the Haryana Dairy Development Cooperative Federation Limited and their seniority positions were to be assigned from the respective duties of their entry in the federation. The retrenchment from the Milk Union could have been carried out only by applying the principle of "last come, first go" and the respective petitioners could not have been terminated from the service from the Milk Union when their juniors continued in other Milk Unions; (ii) there had been a dialogue between the Milk Union employees and the federation through its Management about the conditions of service of several of the workers, who had been transferred to different Milk Unions controlled by the Cooperative federation and any retrenchment, if it were to take place at the Milk Union, it would be made only at the State level and not at the level of the Milk Union and consequently, retrenchment could not have

been made by any orders of the Milk Union even when particular Milk Union was closed or wound up; and (iii) there had been a gross discrimination practised in allowing for employees of certain of the Milk Unions to be served with orders of termination though their service conditions compelled them to join any Milk Union under the control of the federation and there was no manner that they could object to such transfers. Any circumstance that culminated in winding up of the Milk Union could not result in loss of service to persons who were transferred to such Milk Unions that closed, while employees of other Milk Unions who are even juniors to the respective employees in the Milk Unions continued in service that had not closed.

2. The petitioners' case was rested on the conditions of service of the federation at the time when appointment orders were issued which directed under clause 4 that an employee under the Milk Union was liable to serve in any place in the State of Haryana or outside, as may be required by the federation. Clause 7 specified that the services will be liable to be transferred to any other entity connected directly or indirectly with federation including the Milk Unions. The reference to this condition was in the context of the Haryana Dairy Cooperative's Staff Service Rules, 1988 that provided, inter alia, under clause 36.4 as follows:-

"In case of retrenchment as contained in rule 36.3 above, the employee who was the last person to be employed in that category, shall be the first to be retrenched or reverted provided in case of employees appointed on ad hoc basis, the first person to be employed in that category shall be the first to be retrenched or reverted. The federation or a Union as the case may be, may however, request the Government to absorb the retrenched employees in Govt. or other institutional jobs."

The petitioners would refer to the fact that the absorption of staff of the federation in the Milk Union had been a subject of contention between the employees in various Milk Unions when they were all purported to be transferred by invoking Section 25FF of the Industrial Disputes Act. It is an admitted case that all the petitioners had been served with notices of transfers u/s 25FF of the ID Act and they had joined in the respective unions and submitted themselves as employees of the respective unions. However, the subject of absorption in the federation was brought up and considered through the proceedings issued by the Chief Administrative Officer acting on behalf of the Managing Director when the workers had raised some apprehensions about the terms and conditions of service in the respective Milk Unions. It was at that meeting that it was decided that no Milk Union shall make any retrenchment of staff absorbed in the union at local level but that it should be done only at the State level. The deliberations further yielded to a concession that inter se seniority would be maintained at the Union level but for the purpose of promotion, the joint seniority of all categories of employees would be maintained at the head office of the federation.

3. The grievance of the petitioner in CWP No. 12830 of 1991 is that a joint seniority list had indeed been issued and he had been placed at serial No. 18 in

the seniority list issued on 31.12.1988 and he had come by transfers to various Milk Unions and at the relevant time in 1991 when he was working as a Junior Auditor at Rohtak, he was purported to be repatriated to the alleged parent Milk Union at Bhiwani and relieved from his duties. The cause of action for the writ petitioner in CWP No. 12830 of 1991 was an order issued by the office of the Liquidator of the Milk Union at Bhiwani when the union was wound up and the employees had been issued with notices of termination.

4. The petitioners in CWP Nos. 12835 and 12909 of 1991 had similar grievances about the termination orders issued during their employment at the Milk Union at Bhiwani and their case would differ only on the aspect of their conditions of service at Bhiwani, unlike with the case of the petitioner in CWP No. 12830 of 1991, who had been actually serving in various other unions and even at the time of termination, he was serving at Rohtak, purported to be repatriated only to be served with orders of termination. The case of the petitioners in CWP Nos. 12835 and 12909 of 1991 would also differ slightly from the case of the petitioner in CWP No. 12830 of 1991 in the aspect of seniority list which was drawn at the federation level when the petitioner's name was placed in the joint seniority list in CWP No. 12830 of 1991, while the respective petitioners in CWP Nos. 12835 and 12909 of 1991 did not have such a benefit.

5. The contest to both these contentions of the petitioners was by the respondents on a plea that when the employees had been originally employed in the federation which allowed for transfer to various Milk Unions, there underwent certain changes in the set up of the organization at three tiers: one at the State level with the functioning of the federation, which was an umbrella organization governing several Milk Unions and at the District level, the persons deployed worked independently treating the Milk Unions as autonomous bodies that came about some time in December 1983 and at the third level, which was at the grass root where the operational bodies were Cooperative Societies that were engaged in the actual act of collecting milk from the milk producers and distributing the same. The original rules that governed the functioning of the federation with liability for transfer of the employees of the federation gave place to a new system of transfer of employees of the federation to the Milk Unions u/s 25FF of the Industrial Disputes Act, when the persons transferred to such unions at the District levels were treated as employees of the respective unions and they broke the direct chain of engagement of federation by such a process. If the petitioner in CWP No. 12830 of 1991 had been brought back to the federation at any time, it was at the request of the union to utilize the services of an accountant at the federation and at various other unions and this act allowing for the petitioner to work with the federation at the head office or any other milk union was not to be taken as whittling down the effect of Section 25FF of the ID Act. The said provision constituted a complete transfer of the employees' relationship with the union to which he was assigned. It is also the objection of the federation that some of the petitioners had been directly appointed under the Milk Union at Bhiwani and Mohindergarh at their own level and they cannot treat

themselves at par in any event with the persons, who claimed their employment status to the federation. The federation will also join issues on contentions raised by the respective petitioners that the seniority was to be maintained at the State level and that retrenchment, if any, was to be effected by following the principle of "last come, first go", it was not to be applied without minding the effect of the Board resolution that had been passed subsequently on 03.12.1988 which recorded the effect of a resolution of the Board of Directors in its 69th meeting held on 30.09.1988. The order of the Managing Director brought through Annexure P8 in the writ petition in CWP No. 12835 of 1991 recorded the fact that the employees, who had been transferred u/s 25FF of the ID Act and assigned to Milk Unions would cease to have any lien on any post in the federation from the date when they had joined in Milk Union in compliance with the office order.

6. The whole dispute would, therefore, hinge on what obtained primacy, namely, of whether the communications made by the Managing Director through its Chief Administrative Officer to various Milk Producers Unions for absorption of staff of the federation in the Milk Unions and the conditions allowing for the seniority and retrenchment to be decided at the State level or the validity of the order issued by the Managing Director recording the resolution of the Board of Directors in their meeting on 30.09.1988 referred to in the order dated 03.12.1988.

7. The rights of parties can be decided only with reference to the effect of Section 25FF of the ID Act that allows for a transfer of employees from one Management to another. If the conditions of service are same, there is no prejudice to a workman and consequently, the exceptions brought through the provision of Section 25FF will make inapplicable the provision for notice and compensation in accordance with the provisions of Section 25F. It is an admitted case of the employees of being transferred to the Milk Unions from the Federation were apprised that the transfers were in the circumstance contemplated by the exceptions u/s 25FF and they also had signed their contracts with the respective Milk Unions recognizing the respective Milk Unions to be the employers. Another important issue is that after such transfer orders, there had been a meeting of the workers' union with the Management when some of the effects of Section 25FF were sought to be rewritten in that the Managing Director recorded the fact on 05.03.1984 (Annexure P7) that no Milk Union shall make retrenchment of staff absorbed in the Union at Union level and that it shall be done only at the State level. While all the petitioners would, therefore, contend that irrespective of the fact that they had been transferred u/s 25FF with the Milk Unions, after the agreement with the workers' unions that finds expressed in a communication of the Chief Administrator Officer on behalf of the Managing Director, all the workers in the respective Unions could not be terminated from service without the Federation itself applying the principle of "first come, last go" and "last come, first go" to the employees in the various Milk Unions. According to them, the closure of Milk Union cannot immediately result in retrenchment of the employees of that Union, but they must have been redeployed in some other Union by terminating the services only of the junior

most employees among all the Milk Unions.

8. The learned counsel for the respondents would argue that the communication under Annexure P7 ought not to be given effect, since it had been withdrawn expressly pursuant to a Board Resolution passed on 30.09.1988 and it was specifically mentioned that the persons, who were terminated from Union, shall cease to have lien on any post in the Federation. If the communication dated 05.03.1984 were to have the effect of settlement that would bind the workers Union and the Management, then the settlement which was otherwise than in the course of conciliation proceedings would have to conform to Section 18 of the ID Act. Section 18(1) states that a settlement arrived at by the agreement between the employer and the workmen otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement. The communication dated 05.03.1984 merely records the fact that the workers' Union had met the Management and raised some doubts and a clarification was being issued. It did not result in any separate agreement between the Management and the Workers' Union. There is certainly a degree of formality which is necessary to give effect to Section 18(1) of the ID Act. The Industrial Disputes (Punjab) Rules of 1958 contemplates a settlement arrived at between the employer and the workmen otherwise than in the course of conciliation proceedings contemplate service of such settlement with a copy thereof to the State Government, Labour Commissioner and to the Conciliation Officer concerned. Rule 58(4) reads thus:-

"Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceedings before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof, to the State Government, the Labour Commissioner, Punjab and to the Conciliation Officer concerned."

9. It is nobody's case that the representations made by the workmen that gave rise to the clarification took a formal acceptance in the manner contemplated u/s 18(1) or sent to the Government and the Conciliation Officer in the manner contemplated under the Rules. I cannot, therefore, find that a transfer of the employees from the Federation to the Union u/s 25FF could have been annulled through a clarification issued which did not take effect as a settlement u/s 18(1). None of the employees, who had been transferred to the Milk Unions and who entered into direct contracts with the employer at the district level, could have any grievance that they could not have been terminated and that their seniority must be considered at the Federation level and the principle of Section 25H for retrenchment on the basis of seniority could have been applied. Indeed, in this case, not all the petitioners, who were employees of the respective Milk Unions, were appointed at the Federation and transferred u/s 25FF. It is stated by the counsel appearing on behalf of the respondents that many of the petitioners had been employed directly at the Milk Union and they could never have any case that they were treated as employees of the Federation and that the termination

could be effected only at the State level at the Federation. This would conclude the issues raised by the petitioners in CWP Nos. 12835 and 12909 of 1991. The said writ petitions ought to therefore dismissed and accordingly, dismissed.

10. The petitioner in CWP No. 12830 of 1991, however, has a different case to contend. Although he was employed at the Federation and later transferred to the Milk Union at Bhiwani, it is seen that since he was an Accountant and his services were required at various Milk Unions under the control of the Federation, he had been sent back to the Federation and his services were utilized at several places in various Milk Unions. He was, at all times, treated as an employee under the Federation and it would seen, therefore, that he was transferred by the Federation as Junior Auditor to Bhiwani first on 27.09.1982, but later in a seniority list which was issued on 31.12.1988, he was kept in a joint seniority list maintained at the Federation level and placed in serial No. 18 (Annexure P5) and transferred by the Federation from the Headquarter at Chandigarh to Rohtak on 28.03.1990. The petitioner is aggrieved that he was stated to be on deputation from Bhiwani district and ordered to be transferred from Rohtak to Bhiwani only to be served with an order of termination at the instance of a Liquidator for the Milk Union at Bhiwani. The description of the petitioner as person on deputation was clearly a misnomer, for, it is incompatible with the order of transfer which was issued earlier on 28.03.1990 where he was not stated to be under deputation and also incompatible with the seniority list maintained at the Federation level and enlisted at Serial No. 17 which could not have been a case if he was retained at Bhiwani but merely taken on deputation at the level at Federation. I would, therefore, apply a different approach only to the case of the petitioner in CWP No. 12830 of 1991 and hold that the order of termination made was invalid in the eye of law. The petitioner is reported to have died and if he would have been alive, he would have attained the age of superannuation. For the wrongful termination that is effected, the appropriate remedy would be that he should have been deemed to have been in service and all the monetary benefits will have to be worked till the date of his age of superannuation or death whichever was earlier and 25% of the same shall be ordered to be paid to the legal representatives as the financial compensation for the wrongful termination. All the monetary benefits accruing subsequent to the death or superannuation whichever was earlier would be counted in full and shall be paid to the representatives without any abatement of claim.

11. In the result, CWP Nos. 12835 and 12909 of 1991 are dismissed and CWP No. 12830 of 1991 is allowed partly in the manner indicated above.