
(2013) 10 P&H CK 0409
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 15 of 2010 (O&M)

Punjab Agro Industries Corporation Ltd.	APPELLANT
Vs	
Pritam Singh	RESPONDENT

Date of Decision : 24-10-2013

Acts Referred:

Citation : (2014) 2 SCT 571

Hon'ble Judges : Rajive Bhalla, J; Bharat Bhushan Parsoon, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bharat Bhushan Parsoon, J.—In this Letters Patent Appeal, the appellant-Corporation has challenged judgment dated 8.9.2009 passed by learned Single Judge of this Court in C.W.P. No. 9794 of 2009 whereby Award dated 9.4.2009 (Annexure P-13) passed by the Presiding Officer, Industrial Tribunal and Labour Court, Union Territory, Chandigarh (hereinafter called the Tribunal) that the respondent-workman will draw all the terminal benefits treating him as having been superannuated on the date when he would have reached the age of superannuation and payment of interest with 50% back wages, was modified. The service of the respondent-workman while working with, the appellant-Corporation was terminated on 24.2.1983 vide order (Annexure P-1). On an industrial dispute raised by him, the Tribunal having found his termination to be in violation of provisions of Sections 25(F) and 25(H) of the Industrial Disputes Act, 1947 (hereinafter mentioned as the Act) had set aside termination of the workman holding him entitled for reinstatement with continuity of service and 50% of the back wages with interest @ 9% per annum from the date of the Award till realization. Challenge made to this Award by the appellant in the writ petition was found to be without merit vide the impugned judgment dated 8.9.2009. With the aforesaid modification, the writ petition was dismissed.

2. In this appeal, it is claimed by the appellant-Corporation that respondent-workman was to retire on 30.6.2009. Averring that the workman had been in

employment of the Corporation only for a short period of two years, he had been terminated on 24.2.1983 vide order (Annexure P-1) and having failed to prove that he had remained unemployed from the date of his termination, order of his reinstatement with 50% back wages was "absolutely illegal". It is claimed that even otherwise the workman had failed to prove that he remained unemployed throughout and rather there was evidence that he had been engaged in cultivation of his land and had been earning his livelihood even from sale of milk. In short, it is claimed that he was gainfully employed after his termination and was thus not entitled for any relief.

3. Learned counsel for the parties have been heard while going through the paper book.

4. Challenging applicability of Section 25(F) of the Act, learned counsel for the Corporation has asserted that not only requisite statutory notice of intended termination had been served in time but even compensation thereof had duly been paid to the workman in accordance with the statutory provisions of the Act. Denying such claim of the Corporation, there is assertion of workman that he was in employment with the Corporation for long and protection of Section 25 of the Act being statutorily available to him was denied as no compensation in terms thereof had been paid to him.

5. The Tribunal after evaluating oral as well as documentary evidence had come to a firm finding of violation of provisions of Section 25(F) of the Act. This provision for ready reference is appended as below:

25F. Conditions precedent to retrenchment of workmen.--No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette).

6. It is a conceded case of the appellant-Corporation that services of the workman were terminated on 24.2.1983. Payment of retrenchment compensation and pay in lieu of one month notice period was given to the workman only on 22.4.1983. Even from the own showing of the Corporation, draft for payment of one month pay as also amount of retrenchment compensation was not paid to the workman at the time of his termination. When we analyse the statutory requirement to make compliance of Section 25(F) of the

Act, one month advance notice and payment @ 15 days wages for each completed year of service rendered by the workman with the Corporation has to be made at the time of termination. Admittedly, one month notice had not been given. Hence, one month pay was to be statutory retrenchment compensation after being worked out in terms of this provision was to be paid concomitantly with termination of the workman. Though learned counsel for the appellant was vociferous that compliance with provisions of Section 25(F) of the Act had been made, when confronted, he could not satisfy either on facts or on law. Concedingly neither pay in lieu of one month statutory notice before or at the time of termination of his services nor statutory compensation for length of service rendered with the Corporation had been paid on that date to the workman. As per finding of the Tribunal rendered after due consideration of the entire oral and documentary evidence, there was no compliance of Section 25(F) of the Act. Finding of the Tribunal on this count is as under:

In case in hand order of retrenchment is dated 24th February, 1983 where it was written that corporation did not require services of the workman any more means that the workman was retrenched with effect from 24th February, 1983 itself. The demand draft sent to the workman is dated 25th February, 1983 and same was received by the workman on 5th March, 1983. Since amount of retrenchment compensation and one month pay in lieu of notice was not paid to the workman at the time of retrenchment but same was paid to him after a gap of more than VA month so I am of the view that the order of retrenchment is in clear violation of Section 25(F) of the Industrial Disputes Act. So same deserves to be set aside. Since it was mandatory for the respondent-management to pay retrenchment compensation and pay in lieu of notice period at the time of retrenchment so receipt of demand draft after long gap by the workman cannot override statutory provisions. There cannot be any estoppel against the statute.

7. Merely because of non-availability of any alternative employment if the workman was engaged in agricultural operations on his land, it is not a case of alternative employment having become available to the workman disentitling him from back wages. Rather, his statement is clear and categorical that he could not find any employment after termination of his services by the Corporation.

8. The Tribunal in relation to applicability of Section 25(H) of the Act had further come to a finding that though respondent-workman was retrenched on the ground that he was junior most fertilizer clerk rendered surplus on account of closure of the unit, on the contrary, it was found that more than 700 workmen were employed by the Corporation on average per working day in the preceding 12 months from the date of entering into services of the workmen who were retrenched. Findings of the Tribunal on this count as recorded by the Tribunal in this regard are reproduced as below;

Official clerk of the respondent-management was examined by the workman as AW-2. He deposed that on 10th August, 2001, persons were directly recruited for the post of fertilizer clerk. Since after retrenchment, fertilizer clerks were directly

recruited and some of the persons were promoted as fertilizer clerk so workman Shri Pritam Singh should have been given chance for the said post. Since as per version of the respondent-corporation, his services were retrenched on the ground that he was junior most fertilizer clerk, so there was violation of section 25H of the Industrial Disputes Act.

9. When at the time of new recruitment, neither any notice had been given offering employment to the respondent-worker nor he was taken back in the employment, there was clear violation of provisions of Section 25H of the Act.

10. It is to be noticed that though the Award was affirmed in entirety except with some modification, as noted in para. No. 1, vide the impugned judgment, these findings have not been challenged in this Court.

11. Keeping in view the fact that the workman had already crossed the age of superannuation i.e. 30.6.2009, he cannot be reinstated. Taking stock of the facts that other workmen were already doing work during the gap period, compensation only to the extent of 50% was allowed by the Tribunal which verdict was affirmed by the learned Single Bench. No infirmity can be found even with this finding.

12. Findings of the Tribunal with regard to violation of Sections 25(F) and 25(H) of the Act could not be successfully assailed by Corporation. There being no error of fact or law in the findings recorded by the learned Single Judge, the appeal, being devoid of merit, is dismissed.