

(2003) 02 P&H CK 0095
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1463 of 1987

Punjab State Cooperative Supply and Marketing Federation	APPELLANT
Vs	
Presiding Officer Labour Court and Another	RESPONDENT

Date of Decision : 05-02-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2003) 2 LLJ 620 : (2003) 133 PLR 728 : (2003) 2 RCR(Civil) 153 : (2003) 2 RCR(Civil) 438

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : D.S. Nehra and Arun Abrol, for the Appellant; Sarjit Singh and Vikas Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—The Petitioner-Punjab State Cooperative Supply & Marketing Federation Limited (hereinafter referred to as "the Federation"), is a society registered under the Punjab Cooperative Societies Act, 1961. Respondent No. 2 (hereinafter referred to as the "the workman") was appointed as a Field Officer (Cotton) on August 02, 1980. According to the letter of appointment, he was on probation for a period of one year. His appointment was subject to other terms and conditions as mentioned in the letter of appointment. During the period of probation, the service of the workman could be terminated if his work was found to be unsatisfactory. The respondent-workman accepted the aforementioned terms and conditions. On assessment of the work of the workman, it was found that his work was unsatisfactory. Consequently, his services were terminated vide order dated February 09, 1982, which was an innocuous order. Dissatisfied with the same, the workman sought a reference under the Industrial Disputes Act, to the Labour Court. The necessary reference having been made the Labour Court passed the award on October 06, 1986, directing the reinstatement of workman with continuity of service with full back wages. It is this award, which is

sought to be challenged in the present writ petition.

2. At the time of termination of services of the workman, he was drawing a salary of Rs. 950/- per month. It was submitted before the Labour Court that the workman was essentially performing the duties of a supervisory nature. He was also drawing emoluments which were above the statutory limit of Rs. 500/- as it existed in the Industrial Disputes Act at the relevant time. Therefore, respondent No. 2 the workman did not fall within the definition of workman.

3. Mr. D.S. Nehra, learned senior counsel appearing for the petitioner has argued that the maximum limit of Rs. 500/- was only amended in August, 1984, therefore, at the relevant time, the workman, who was drawing a salary of Rs. 950/- p.m. was clearly not a workman. According to the learned counsel the Labour Court has wrongly held that respondent No. 2, is a workman. However, this order seems to have been not argued before the Labour Court, therefore, finding given by the Labour Court on Issue No. 1 cannot be held to be either erroneous or illegal.

4. Mr. Nehra, thereafter, vehemently argued that workman was merely on probation. His work having been found to be unsatisfactory, the management terminated his services in accordance with letter of appointment. This letter of appointment had been accepted by the workman. Therefore, by no stretch of imagination, could it be said that the case of the workman would fall within the definition of retrenchment. The learned counsel have strenuously argued that the provisions contained in the Industrial Disputes Act should be interpreted in such a manner that would advance the object and reasons for which the Labour Legislature was enacted. It is submitted that permitting even a probationer to claim that he has been retrenched would render meaningless the statutory rule of the Corporation. He submitted that there would be no reason for placing any workman on probation as irrespective of the terms and conditions of appointment the workman would be able to plead before the Labour Court retrenchment without cause and succeed.

5. It is also vehemently argued by Mr. Nehra, the learned Senior counsel that ignoring the terms and conditions contained in the letter of appointment and the regulations of the management, would have a disastrous affect on the discipline in the industrial concern. It is submitted by the learned counsel that services of the workman having been terminated, accordance with the letter of appointment, the award of the Labour Court is unsustainable.

6. To highlight the damage that can be cause to the industries by ignoring the terms and conditions contained in the appointment letter, Mr. Nehra has pointed out that the workman in the present case has been enjoying the wages u/s 17-B of the Industrial Disputes Act, for the last 20 years. On one hand, the management is not in a position to take work from the workman on the other, the management has to keep on making the payment u/s 17-B of the Act. According to the learned counsel, award rendered by the Labour Court is wholly

erroneous as a probationer cannot be permitted to claim that he has been retrenched from service.

7. Having heard the submissions of the learned Senior counsel for the petitioner at length, I am of the considered opinion that the writ has to be dismissed. In view of the law laid down by the Supreme Court in the case of Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another, . In the aforesaid case, the employer was in appeal against the judgment of the Bombay High Court in which, it had been held that termination of employees while on probation on the ground of unsuitability amounted to retrenchment. The termination was also held to be for non-compliance of provisions of Section 25-F of the Industrial Disputes Act, 1948. In the aforesaid case, under statutory Rule 7 made u/s 45 of the Corporation Act, direct recruits were to be on probation for two years. The employer terminated the employment of some of the employees during initial period of probation and of some others during the extended period on the ground of unsatisfactory service. Industrial dispute was raised. The Labour Court rejected the claim of the employer that termination of service did not amount to retrenchment. The Single Bench of the Bombay High Court dismissed the writ petition of the employer holding that the order of discharge amounts to retrenchment as defined in Section 2(oo) of the Industrial Disputes Act. The Corporation challenge the decision of the Single Judge before a Division Bench, which upheld the decision of the single Judge. Before the Supreme Court, again it was argued that termination of services of an employee during probation would not amount to retrenchment as the order of discharge was grounded upon unsatisfactory work. The Supreme Court after considering the view taken by the different benches of the Supreme Court held as under:-

"In the series of cases that have come later the Constitution Bench decision has been examined and the ratio indicated therein, has been confined to its own facts. The view indicated by this Court in that case obviously did not meet with the approval of Parliament and, therefore, the law has been subsequently amended as already indicated. Lord Devlin once observed;

" I am not one of those who believe that the only function of law is to preserve the status-quo. Rather, I should say that law is the gate-keeper or the status quo. There is always a host of new ideas galloping around the out-skirts of society's thought. All of them seek admission but each must first win as spurs" the law at first resists, but will submit to a conqueror and become his servant, in a changing society, the law acts as a valve New policies must gather strength before they can force an entry, when they are admitted and absorbed into the consensus, the legal system should expand to hold them, as also it should contract squeeze out old policies which have lost the consensus they once obtained". Chorley Lectures delivered at the London School of Economics on 25.6.1975.

We are inclined to hold that the stage has come when the view indicated the The

State Bank of India Vs. Shri N. Sundara Money, has been "absorbed into the consensus" and there is no scope for putting the clock back or for an anti-clockwise operation.

Once the conclusion is reached that retrenchment as defined in Section 2(OO) of the Disputes Act covers every case of termination of service except those which have been embodied in the definition, discharge from employment or termination of service of a probationer, would also amount to retrenchment. Admittedly, the requirement of Section 25-F of the Disputes Act had not been complied with in these cases. Counsel for the appellant did not very appropriately dispute before us that the necessary consequence of non-compliance of Section 25-F of the Disputes Act in a case when it applied made the order of termination void. The High Court, in our opinion, has, therefore, rightly come to the conclusion that in these cases, the order of retrenchment was bad and consequently it upheld the Award of the Labour Court which set aside those orders and gave appropriate relief. These Appeals are dismissed. There would be one set of costs. Consolidated hearing fee is assessed at Rs. 5,000/-."

8. In view of the law laid down by the Supreme Court, the writ petition has to be dismissed.

9. Dismissed. No costs.