
(1995) 03 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No's. 3134 and 3135 of 1993

Punjab State Electricity Board

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 29-03-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B(2), 25F

Citation : (1996) 1 LLJ 373 : (1995) 111 PLR 28

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : S.C. Goyal and G.S. Kanwar, for the Appellant; R.K. Chopra and P.S. Saini, for the Respondent

Final Decision : Allowed

Judgement

1. Civil Writ Petitions 3134 and 3135 of 1993 are being disposed of by this order as they are directed against identical awards passed by the Labour Court, Gurdaspur whereby termination of service of the workmen in both the cases was held to be illegal and they were directed to be reinstated with half back wages in one case and full back wages in the other,

C.w.p.NO. 3134 of 1993.

Sulakhan Singh - Workman was employed as a daily wager by the Punjab State Electricity Board (for short the management) and it is alleged that he continuously worked from August 1985 to May 1988 when his services were terminated unlawfully without any notice, charge-sheet or enquiry and nor was he paid any retrenchment compensation in terms of Section 25-F of the Industrial Disputes Act, 1947 (Here-inatter called the Act.). It is also claimed that he worked for a total period of 362 days and the last pay drawn by him was Rs. 567/- per month. On a demand Notice served by the Workman the State Government referred the Industrial dispute regarding termination of his services for adjudication to the Labour Court-respondent. Along with the demand Notice,

the workman attached a copy of his service roll showing that he had worked for a period of 362 days. The management contested the reference and denied the allegations of the workman as incorrect and baseless without giving any further details.

Since the management did not produce the attendance register/muster roll of the workman, the Labour Court drew an inference against the former and held that the workman has worked with it for more than 240 days continuously prior to his termination. The provisions of Section 25-F of the Act had not been complied with and, therefore, it was held that the termination of the Services of the Workman was neither justified nor in order and he was ordered to be reinstated with/continuity of service and half back wages. This award of the Labour Court dated April 20, 1992 has been impugned in the present petition.

2. After hearing counsel for the parties, I am of the opinion that the award cannot be sustained. The Labour court was not justified in drawing any inference against the management because the muster rolls containing the details of the employment of the workman had been filed by the workman himself and the same could not be ignored. It is common case of the parties that the workman had worked for 362 days with the management though it was alleged by the workman that he worked continuously. This plea of the workman is obviously false because if he had worked continuously from August, 1985 to May, 1988 as alleged by him in his demand notice (Annexure P) with the writ petition, the number of working days would have been more than 362. The workman had attached a copy of his service roll with the demand notice which has not been produced on the record here though the management in para 2 of its writ petition has given the break-up which is as under:-

(i) January 1, 1988 to December 31, 1988 i.e in the year 1988.

105 days.

(ii) January 1, 1987 to December 31, 1987 i.e in the year 1987.

100 days.

(iii) January 1, 1986 to December 31, 1986 i.e 5/86 and 6/86

60 days.

(iv) January 1, 1985 to December 31, 1985 i.e in the year 1985.

97 days.

8/85 to 12/85

362 days.

The workman has not denied the aforesaid break-up in the written statement.

3. The termination of services of the workman, no doubt, amounts retrenchment

within the meaning of Section 2(00) of the Act as it does not fall in any of the exceptions mentioned therein but he would be entitled to claim retrenchment compensation in terms of section 25-F of the Act only if he had been in continuous service with the management for not less than one year preceding the date of termination. According to Section 25-B(2)(a) of the Act the workman will be said to be in continuous service for a period of one year if he has actually worked under the employer for not less than 240 days. This period of 240 days is to be counted during a period of 12 calendar months preceding the date with reference to which the calculation is to be made which in the instant case is the date of termination. In other words, we have to see whether the workman had worked for 240 days in a period of 12 months immediately preceding December 1988. When so calculated the workman had put in only 105 days service. In fact he had not put in 240 days during any period of 12 calendar months as is clear from the aforesaid chart and he had been working as a daily wager intermittently. In this view of the matter, it has to be held that he had not put in one year of continuous service with the management at the time when his services were terminated. The provisions of Section 25-F of the Act were not, required to be complied with. The labour Court was, therefore, not right in holding that the termination was illegal or unjustified. The impugned award has, thus, to be quashed.

C.W.P.No 3135 of 1993

In this case, Gurvinder Singh - Workman was employed as a daily wager with the management and he claims to have worked from 1981 to February 7, 1989 when his services were allegedly terminated without any notice, charge sheet or enquiry and nor was he paid any retrenchment compensation. It is further claimed that he was drawing wages at the rate of Rs. 26/- per day. On a demand notice served by him, the dispute regarding termination of his services was referred to the Labour Court -respondent. He filed his statement of claim before the court and along with it he also filed a copy of his service record showing the total period for which he had worked. The management contested the reference and his claim was denied. After recording evidence of the parties, the Labour Court found that the assertion of the workman that he had continuously worked from October 9, 1981 to February, 1989 has remained unrebutted and, therefore, the termination was illegal because Section 25-F of the Act had not been complied with. He was, therefore, directed to be reinstated with full back wages. The service record of the workman which was attached along with the statement of claim has not been produced on the record before me but the total break up of his service has been mentioned in Annexures P4 to P6 with the writ petition showing that he worked for 273 days from October, 1981 to September, 1982 and again for 235 days from February, 1983 to May, 1984. He worked for only 28 days in August, 1985 and for 29 days in the year 1987. The management has also given the break-up in paras 2 & 3 of the writ petition which has not been controverted by the workman. A perusal of Annexures P4 to P6 shows that the workman had not put in 240 days prior to February, 1989

when his services are alleged to have been terminated. In fact he had worked for only 37 days from October, 1988 to December, 1988. He had not completed one year of continuous service prior to the date of termination of his service and, therefore, the provisions of Section 25-F of the Act. were not required to be complied with in his case as well. This being so, the Labour Court was not right in holding that termination of his service was illegal or unjustified. Consequently, the award directing his reinstatement with full back wages has to be set aside.

4. In the result, both the writ petitions are allowed and the impugned awards of the Labour court quashed leaving the parties to bear their own costs.