

(2013) 09 P&H CK 0100

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13384 of 1992 and C.W.P. Nos. 5606 and 15012 of 2006

Punjabi University

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 09-09-2013

Acts Referred:

Citation : (2014) 1 PLR 156 : (2014) 2 SCT 385

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Judgement

Rameshwar Singh Malik, J.—This order proposes to dispose of three writ petitions bearing CWP No. 13384 of 1992 (Punjabi University,

Patiala v. Presiding Officer, Labour Court, Patiala and another), CWP No. 5606 of 1996 (Harpreet Singh v. Vice Chancellor Punjabi University,

Patiala and others) and CWP No. 15012 of 2006 (Harpreet Singh v. Vice Chancellor Punjabi University, Patiala and others). All the three writ

petitions are between the same parties and the later two filed by the respondent workman, are dependent on the result of first writ petition, filed by

the petitioner-management, i.e. CWP No. 13384 of 1992. However, the facts are being culled out from the first writ petition, i.e. CWP No.

13384 of 1992. Facts first.

The present writ petition is directed against the award dated 13.3.1992 passed by the learned Labour Court, Patiala, thereby directing

reinstatement of respondent-workman with continuity of service and 50% back wages. Respondent No. 2 was working as Clerk with the

petitioner-management. His services came to be terminated w.e.f. 4.5.1988. The reconciliation proceedings having failed, industrial dispute raised

by the respondent-workman was referred to the learned Labour Court for its adjudication. After completion of the pleadings, respective evidence was led by both the parties. The specific stand taken by the petitioner-management was that respondent-workman did not complete 240 days in the preceding 12 calendar months on the date of his termination, because of which petitioner-management was not under legal obligation to comply with the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 ("the Act" for short).

2. It was pleaded and argued case on behalf of the petitioner-management that from 25.4.1987 till 3.5.1988 the respondent-workman worked

only for 214 1/2 days. He was paid only for the days he worked in the University. However, relying upon the Division Bench judgment of this

Court, learned Labour Court counted Saturdays, Sundays and other holidays for the purpose of completion of 240 days, to the credit of the

respondent-workman. It was finally held that after counting Saturdays, Sundays and other holidays, the respondent-workman rendered more than

240 days continuous service with the management, because of which he was entitled for the protection u/s 25-F of the Act. Reinstatement with

continuity of service and 50% back wages was ordered vide impugned award dated 13.3.1992 (Annexure P-1). Feeling aggrieved, petitioner-

management approached this Court by way of instant writ petition.

3. Notice of motion was issued and pursuant thereto written statement on behalf of respondent-workman was filed. Operation of the impugned

award, which was initially stayed vide order dated 1.10.1992 was modified vide order dated 20.1.1993, while admitting the writ petition. It was

ordered that ad-interim stay will operate subject to the provisions of Section 17-B of the Act.

4. Record of the case further goes to show that vide order dated 28.10.1994, this Court vacated the stay order because the petitioner

management failed to comply with the mandatory provisions of Section 17-B of the Act. Learned counsel for the parties are ad idem that in

compliance of the order dated 28.10.1994 passed by this Court Vacating the interim stay, respondent-workman was allowed to rejoin his

services. However, thereafter services of the respondent-workman were terminated for which a separate industrial dispute was raised, which was

referred to the learned Labour Court, who is seized of the matter.

5. Parties are pursuing their respective claims before the learned Labour Court, on account of later alleged termination of the service of the respondent-workman.

6. Learned counsel for the petitioner, while relying upon a specific averment taken in para 2 of the writ petition and the observations made by the

learned Labour Court in para 8 of the impugned award, submits that since the respondent-workman did not complete 240 days in the preceding

12 calendar months on the date of his termination of service, i.e. 3.5.1988, he was not entitled for the protection u/s 25-F of the Act. He further

submits that the respondent-workman was paid only for the days he worked with the petitioner-management. He next contended that the learned

Labour Court committed serious error of law, while counting Saturdays, Sundays and other holidays for the purpose of completion of 240 days, to

the credit of the respondent-workman. He submits that the impugned award passed by the learned Labour Court runs counter to the law laid

down by this Court in Full Bench judgment in the case of Executive Engineer, Public Health Division No. 1, Panipat v. Sanjay Rana and another,

(CWP No. 15278 of 2000) which has also been followed by a Division Bench of this Court. Finally, he prays for setting aside the impugned

award, by allowing the present writ petition.

7. Per contra, learned counsel for the respondent-workman submits that the learned Labour Court committed no error of law while passing the

impugned award. The respondent-workman had rendered continues service of 1 year and 1 month before the termination of his service and he had

completed 240 days, during the preceding 12 calendar months. There was no complaint against the respondent-workman. His services were

terminated in glaring violation of provisions of Section 25-F of the Act. He prays for dismissal of the writ petition.

8. In the writ petition bearing CWP No. 5606 of 1996 filed by the respondent-workman, he was claiming a writ of mandamus directing the

management to regularise his services.

9. In CWP No. 15012 of 2006 filed by the respondent-workman, he has challenged the order dated 2.3.2006 passed by the learned Labour

Court, Patiala, thereby declining the claim of the respondent-workman u/s 33-

C(2) of the Act, qua wages u/s 17-B of the Act for the period w.e.f.

1.10.1992 till 28.12.1994. However, it is not disputed during the course of hearing that result of both the writ petitions filed by the respondent-

workman, will be dependent on the decision of the first writ petition filed by the management.

10. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful

consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, the instant

writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

11. It has gone undisputed on record that the respondent-workman was in the service of petitioner-management w.e.f. 24.4.1987 to 3.5.1988.

The specific averment taken by the petitioner-management in para 2 of the writ petition, reads as under:--

That Respondent No. 2 Shri Harpreet Singh was engaged on daily wages on different dates as and when required by the University to do the

work assigned to him. In the first instance, he worked for 123 days from 25.4.1987 to 31.10.1987. Again he worked for 91 1/2 days during the

period 23.11.1987 to 3.5.1988. He was paid salary on daily wages basis @ Rs. 20/- per day for the days he worked in the University. He was

neither appointed on regular basis, nor on adhoc basis in the University nor any letter of appointment was issued to him.

12. In the corresponding para 2 of the written statement filed on behalf of respondent-workman, he did not deny the categoric averment taken by

the petitioner. Para 2 of the written statement on merits; reads as under:--

Wrong and denied as stated. Number of days of service indicated is wholly incorrect. Answering respondent was engaged in the capacity of a

clerk and had a continuous service of a year to his credit at the time of termination.

13. A bare reading of the observations made by the learned Labour Court in para 8 of the impugned award, will make it crystal clear that the

learned Labour Court proceeded on counting Saturdays, Sundays and other holidays while counting the total service rendered by the respondent-

workman w.e.f. 24.4.1987 to 3.5.1988. Relevant observations made by the

learned Labour Court in this regard, read as under:--

On going through the evidence and documents, I am of the opinion that the workman having worked w.e.f. 24.4.87 to 3.5.1988 when the

management has not counted Sundays, Saturdays and other holidays in counting 214 days service only, has rendered more than 240 days service

continuously. Our own High in D.B. Judgment Sudeep Singh v. Presiding Officer, Labour Court Chandigarh and another, 1980 (1) Recent

Services Judgments 76 held that Saturdays, Sundays and paid holidays are to be counted in a year while calculating 240 working days.

14. It is neither pleaded nor argued case on behalf of the respondent-workman that he was, as a matter of fact, paid for Saturdays, Sundays and

other holidays during the relevant period w.e.f. 24.4.1987 to 3.5.1988. In the absence of any such pleadings having been taken on behalf of the

respondent-workman, coupled with the categoric averment taken by the petitioner-management in para 2 of the writ petition noted above, which

have gone un rebutted, this Court feels no hesitation to conclude that the respondent-workman did not complete 240 days during the preceding 12

calendar months on the date of his termination, i.e. 3.5.1988. In this view of the matter, the respondent-workman was not entitled to the statutory

protection provided u/s 25-B read with Section 25-F of the Act. Thus, the respondent-workman was not entitled for relief of reinstatement with

continuity of service and back wages.

15. During the course of arguments, learned counsel for the respondent-workman could not put into service any argument so as to persuade this

Court to take a different view. Had the respondent workman been, as a matter of fact, paid for the Saturdays, Sundays and other holidays, during

the relevant period, i.e. w.e.f. 24.4.1987 to 3.5.1988, then he would have been certainly entitled for counting those days for the purpose of

computing 240 days so as to seek protection u/s 25-F of the Act. However, this is not the fact situation established in the present case. In this view

of the matter, it is unhesitatingly held that the learned Labour Court has proceeded on a misconceived and erroneous approach, while passing the

impugned award of reinstatement with continuity of service and 50% back wages. Thus, the impugned award cannot be sustained.

16. The view taken by this Court also finds support from the Full Bench judgment

of this Court in Sanjay Rana's case (supra) which came to be followed by a Division Bench of this Court in Ram Gopal Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1 and Another, . The

relevant observations made by the Division Bench of this Court, read as under;

8. In view of the aforesaid divergent views, expressed by Division Benches of this Court, the matter was referred to the Full Bench to consider the

following issue : ""Whether a daily wager who may be entitled to a rest day is entitled to reckon such rest day also as a day of service to be relevant

for computation of 240 days of continuous service, irrespective of whether such rest day shall be a paid holiday or not?"" The majority view of the

Full Bench of this Court in the case of - Executive Engineer, Public Health Division No. 1, Panipat v. Sanjay Rana and another (CWP No. 15278

of 2000, decided on December 03, 2010) was that the view expressed by the Division Bench of this Court in Executive Engineer, Public Health

Division, Narnaul v. Rajbir Singh and another (supra) is not the correct law, and it was held that a daily wager may be entitled to a rest day but

unless and until he is paid for the said day, it cannot be counted towards computation of 240 days of continuous service to get benefit under the

provisions of Section 25-F of the Act.

9. In the present case, undisputedly, the appellant was working on daily wages and for Sundays and other holidays, he was not being paid salary.

Therefore, in view of the aforesaid decision of the Full Bench of this Court, the appellant has no case on merits. Since as per the finding of fact

recorded by the Labour Court, the appellant had worked only for 222 days in a calendar year, therefore, the management, before retrenching his

services, was not required to comply with the provision of Section 25-F of the Act.

17. Recapitulating the facts of the present case and respectfully-following the law laid down by the Full Bench as well as Division Bench of this

Court, it is held that since the respondent-workman did not complete 240 days, during the preceding 12 calendar months on the date of this

termination on 3.5.1988, the petitioner-management was not under legal obligation to comply with the mandatory provisions of Section 25-F of the

Act nor respondent-workman was entitled to the protection thereunder. Thus, the impugned award cannot be sustained.

18. No other argument was raised.

19. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant writ petition deserves to be allowed.

20. Consequently, CWP No. 13384 of 1992 filed by the petitioner-management stands allowed and the impugned award dated 13.3.1992

passed by the learned Labour Court, Patiala, is hereby ordered to be set aside. CWP No. 5606 of 1996 and CWP No. 15012 of 2006 filed by

the respondent-workman have been found to be misconceived, bereft of merit and without any substance. Thus, both these writ petitions must fail

and are ordered to be dismissed. Resultantly, CWP No. 5606 of 1996 and CWP No. 15012 of 2006 filed by the respondent-workman are

dismissed, whereas CWP No. 13384 of 1992 filed by the petitioner-management stands allowed, however, with no order as to costs.