
(2011) 03 P&H CK 0138
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4307 of 2011

Puran Chand

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10, 10(1), 25F, 25G, 25H

Citation : (2011) 131 FLR 504 : (2012) 1 LLJ 663 : (2011) 163 PLR 712

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Grover, J.—This writ petition under Articles 226/227 of the Constitution of India is directed against the order Annexure P-6 by which the reference claimed by the petitioner u/s 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") has been declined.

2. According to the petitioner, he joined the department of the respondents as Malicum-Chowkidar on daily wage basis on 1.6.1992 and his services were illegally terminated on 30.12.1992. He pleaded that even though he had not completed 240 days but compliance of the provisions of Section 25F of the Act was mandatory. He further pleaded that the provisions of Section 25-G of the Act had been violated as juniors to him had been retained in service. The demand notice also contained an averment that the respondents had resorted to employment of other persons in the year 2006 and this conferred a right upon him to be considered for re-employment by virtue of the provisions of Section 25H of the Act.

3. The respondents submitted a reply to the demand notice and denied that the petitioner was a workman. They submitted that the petitioner was employed on daily wages with effect from 1.6.1992 as a casual laborer and no appointment letter was issued to him. His services were never terminated, rather he stopped

attending to his duties from 30.12.1992 of his own, which, according to them was evident from the fact that he never represented to the authorities even after a lapse of more than a decade.

4. The appropriate government by virtue of the impugned order declined to forward the reference to the Labour Court as the claim had been raised belatedly after a lapse of about 17 years.

5. Learned counsel for the petitioner while assailing the impugned order of the respondents contended that Section 25-F of the Act conferred a right upon a workman who has been retrenched by his employer and since the respondents had resorted to offer employment to the various persons in the year 2006, this gave him a right to raise a dispute at that point of time. He further contended that mere delay would not stand in the way of the petitioner to claim a reference as the Act does not visualize any time limit for the same. He placed reliance upon *Kuldeep Singh v. G.M., Instrument Design Development and Facilities Centre and Another*, 2011 (1) SCT 465, wherein in Para 21 it has been observed as follows :-

21. In view of the above, law can be summarized that there is no prescribed time limit for the appropriate Government to exercise its powers u/s 10 of the Act. It is more so in view of the language used, namely, if any industrial dispute exists or is apprehended, the appropriate government "at any time" refer the dispute to a Board or Court for enquiry. The reference sought for by the workman cannot be said to be delayed or suffering from a lapse when law does not prescribe any period of limitation for raising a dispute u/s 10 of the Act. The real test for making a reference is whether at the time of the reference dispute exists or not and when it is made it is presumed that the State Government is satisfied with the ingredients of the provision, hence the Labour Court cannot go behind the reference. It is not open to the Government to go into the merit of the dispute concerned and once it is found that an industrial dispute exists then it is incumbent on the part of the Government to make reference. It cannot itself decide the merit of the dispute and it is for the appropriate Court or Forum to decide the same. The satisfaction of the appropriate authority in the matter of making reference u/s 10(1) of the Act is a subjective satisfaction. Normally, the government cannot decline to make reference for lakhs committed by the workman. If adequate reasons are shown, the government is bound to refer the dispute to the appropriate Court or Forum for adjudication. Even though, there is no limitation prescribed for reference of dispute to the Labour Court/ Industrial Tribunal, even so, it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly, when disputes relate to discharge of workman. If sufficient materials are not put forth for the enormous delay, it would certainly be fatal. However, in view of the explanation offered by the workman, in the case on hand, as stated and discussed by us in the earlier paragraphs, we do not think that the delay in the case on hand has been so culpable as to disentitle him any relief. We are also satisfied that in view of the details furnished and the

explanation offered, the workman cannot be blamed for the delay and he was all along hoping that one day his grievance would be considered by the Management or by the State Government.

6. After hearing the learned counsel for the petitioner and upon perusal of the material on record, I am of the opinion that the petition is misconceived and deserves to be dismissed. The petitioner in his demand notice has averred that he was employed as Mali-cum-Chowkidar on daily wage basis. He admitted that he was not a workman having not completed 240 days but was entitled to the protection u/s 25G and 25H of the Act. The respondents in the reply disputed the status of the petitioner as a workman and had said that he was merely working on casual basis and the demand had been raised belatedly. Section 25H of the Act reads as under :-

25H. Re-employment of retrenched workmen. -Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons.

7. A perusal of the aforesaid provisions of law reveals that the benefit of Section 25H of the Act can be availed of a workman whose services have been retrenched. The provisions, therefore, presupposes a fact that the incumbent is a workman and a citizen of India and his services have been terminated. If the facts of the case are to be seen that according to the respondents he worked for 15 days and not completed 240 days, therefore, he was not a workman within the meaning of the Act. To determine this question he would have to approach the Labour Court if his plea was that he was a workman within the meaning of the provisions of the Act. This question, therefore, ought to have been raised by him at an earlier point of time when according to him his services were terminated. The respondents, on the other hand, while replying to the show cause notice have clearly denied the claim of the petitioner and stated that he was employed on casual basis and was employed for a period of 15 days and he had abandoned his services himself. Therefore, if the averments made in the demand notice were to be accepted in to and the dispute which is raised by the petitioner is accepted to be existing, that could have been evaluated by the appropriate government at that point of time when the alleged termination took place and not at a remote point of time i.e. after 17years when the petitioner had sought to raise the demand. The delay was, therefore, fatal to the case of the petitioner. The petitioner himself admits that he was not a workman and the provisions of the Act were not applicable to him. Hence, there is no merit in the petition and the same is dismissed.