

(2012) 02 P&H CK 0278
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11955 of 2011 (O and M)

Rajbir Kumar

APPELLANT

Vs

Presiding Officer, Labour Court, Ambala and Another

RESPONDENT

Date of Decision : 06-02-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Industrial Disputes Act, 1947 — Section 2, 25F, 25H, 26

Citation : (2012) 134 FLR 121 : (2012) LLR 491

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Advocate : P.S. Bhangu, for the Appellant; O.P. Sharma, Addl. AG, Haryana, for the Respondent

Final Decision : Allowed

Judgement

Mahesh Grover, J.—The petitioner impugns the award dated 23.2.2011. The case of the petitioner is that he has been working with the respondents since 1993 till 2006 when his services were terminated. He thus raised a dispute which was referred to the Labour Court, Ambala for adjudication with a question "whether termination of services of workman Rajbir Kumar is justified or not" If not, to what relief he is entitled." The petitioner's specific case was that he was working on daily wages for the period from 1993 till 2006 when his services were terminated.

2. As against this the respondents admitted in their reply to the demand notice that the petitioner was working on daily wages as unskilled labour w.e.f. 1993 but set up a case that petitioner had abandoned his services voluntarily.

3. The Tribunal concluded that the petitioner was indeed a workman who had worked with the respondents since 1993 and has also completed 240 days of service with the respondents preceding 12 calendar months before the date of termination: which finding found supportive content from the statement of MW1 who admitted this fact. Likewise, the plea of voluntary abandonment of service

was not believed by the Tribunal as there was no record produced by the respondents. The Tribunal thus concluded that the petitioner had completed 240 days in the last preceding 12 calendar months prior to his termination and also disbelieved the plea of voluntary abandonment but failed to grant protection of the provisions of Section 25H of the Industrial Disputes Act by observing that respondents being a State, the procedure required for public appointment was not followed in the case of the employment of the petitioner.

4. I am afraid the view of the Labour Court, Ambala is unsustainable in view of the fact that no such plea was raised by the respondents at the initial stage while filing reply to the demand notice. The Hon"ble Supreme Court in *Devinder Singh Vs. Municipal Council, Sanaur*, has observed that once the Tribunal has concluded that an employee has completed 240 days of service in a 12 calendar month preceding the date of his termination, then the only conclusion that can be arrived at is that the person is entitled to the benefits of Section 25H of the Industrial Disputes Act and it is also held that the person will be entitled to reinstatement with back-wages.

5. Similarly, In case titled as *Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana)*, It has been observed in para 25 and 26 as follows:-

25. The judgment of the Constitution Bench in *Secretary, State of Karnataka v. Uma Devi* (supra) and other decisions in which this Court considered the right of casual, daily wage, temporary and ad hoc employees to be regularised/ continued in service or paid salary in the regular time scale, appears to have unduly influenced the High Court's approach in dealing with the appellant's challenge to the award of the Labour Court. In our view, none of those judgments has any bearing on the interpretation of Section 25-F of the Act and employer's obligation to comply with the conditions enumerated in that section, 26. At the cost of repetition, we consider it necessary to mention that it was not the pleaded case of the respondent before the Labour Court and even before the High Court that the appellant was engaged/employed without following the statutory rules or Articles 14 and 16 of the Constitution and that was the basis for discontinuing his engagement. Therefore, the High Court was not justified in relying upon the alleged Illegality of the engagement/employment of the appellant for upsetting the award of reinstatement.

For the aforesaid reasons, I am of the considered view that the impugned award is unsustainable and deserves to be set asides, moreso, when the respondents have now taken a stand which is at complete variance with the stand taken before the Labour Court regarding the petitioner being an employee on daily wages to rather having stretched the plea that petitioner is working on contract basis. The case of the petitioner apparently is covered under the provisions of Section 2(oo) and 2(s) of the Industrial Disputes Act.

For the aforesaid reasons, impugned award is set aside. The writ petition is

allowed and petitioner is held entitled to reinstatement with complete back-wages.