

(2001) 07 P&H CK 0212
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 9448 of 2000

Rajinder Singh

APPELLANT

Vs

The Presiding Officer

RESPONDENT

Date of Decision : 16-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10(1), 25

Citation : (2001) 07 P&H CK 0212

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

Bench : Single Bench

Advocate : R.K. Malik, for the Appellant; Vijay Dahiya, AAG, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—This petition under Articles 226/227 of the Constitution of India seeks quashing of Award Annexure P-9 dated 16.3.1999, given by the Labour Court-cum-Industrial Tribunal, Hisar, by issuance of a writ of certiorari. It is further prayed that a direction be issued to the respondents to reinstate the petitioner into service with all consequential benefits.

2. According to the case set up by the workman-petitioner, he was appointed on daily wages on 1.3.1993 in Provincial Sub Division No. 2, PWD B&R, Hansi and continued to work there till 31.3.1993. On the oral directions, the petitioner was deputed to Provincial Sub Division No. 1 w.e.f 1.4.1993 and continued to work there upto 31.8.1993. With effect from 1.9.1993 the petitioner continued to work in the Provincial Sub Division No. 2 upto 16.5.1994. Thereafter, he was shifted to Provincial Sub Division No. 6 where he worked up 16.6.1994 to 31.7.1994. His services were terminated on 31.7.1994.

3. The petitioner issued a notice of demand. Consequently, the appropriate Government referred the industrial dispute u/s 10(1) (c) of the Industrial Disputes Act (hereinafter referred to as "the Act"). The workman- petitioner

claimed that his services have been terminated arbitrarily, without any notice or compensation, in violation of the mandatory provisions of Section 25F of the Act.

4. Respondents No. 1 and 2 jointly and respondent No. 3 independently filed separate written statements. It was pleaded that the working of the workman-petitioner in different divisions amounted to working under independent employers and his working for the different periods in different divisions, could not be clubbed together.

5. After completion of the pleadings, the Labour Court framed the following issues vide order dated 5.8.1997:

1. Whether termination of the service of Rajender Singh is justified and in order ? If not, to what relief he is entitled to ?

2. Whether Rajender Singh was engaged afresh in different Sub Divisions, without the knowledge of previous work ? if so to what effect ?

3. Whether the reference is not maintainable, as alleged ?

4. Relief.

6. The workman stepped into the witness box as WW-1 and reiterated his case as narrated above. One Ram Chander, Sub Divisional Engineer, was examined as MW-2 by the management. He stated that the period of employment with different Sub Divisions could not be clubbed together. The Sub Divisional Engineers from Provincial Sub Division Nos. 1, 2 and 3, all stated that there was no continuity of work in any particular division. Relying on the aforesaid evidence, the Tribunal has returned the findings on issues No. 1 and 2 against the workman-petitioner.

7. I have heard the learned counsel for the parties at length and gone through the record of the case.

8. Mr. Malik submits that the Award suffers from an error apparent on the face of the record. The three different Provincial Sub-Divisions of the Public Works Department cannot be treated as three independent employers. If the period of employment is calculated on the assumption that the workman- petitioner was working under one employer, then clearly the workman-petitioner had completed 240 days service in a year preceding the date of termination of his services.

9. Mr. Vijay Dahiya, learned Assistant Advocate General, appearing for the State of Haryana, has reiterated the stated taken by the management before the Labour Court and submitted that three Provincial Sub Divisions are independent employers and the period spent by the workman-petitioner under three different Provincial Sub Divisions cannot be clubbed together.

10. I have considered the arguments put forward by the learned counsel for the parties. I am of the considered opinion that the Award suffers from an error apparent on the face of the record. It is not denied that Provincial Sub Division

No. 1, Provincial Sub Division No. 2 and Provincial Sub Division No. 3 are all under the administrative control of one Executive Engineer. Merely because the workman-petitioner was shunted out from one Provincial Sub Division to another, would not be a justification to deny him the benefit of continuous service. If all the periods spent by the workman-petitioner in three different Provincial Sub Divisions are clubbed together, then he has clearly completed 240 days service in the year preceding termination of the service. Thus, the petitioner was clearly entitled to the benefit of Section 25F of the Act. Merely because the petitioner has worked in different Provincial Sub Divisions of the management, is not a relevant consideration for calculating the total period of employment. A Division Bench of this Court in the case of *Gian Singh v. Union of India and Ors.*, C. W. P. No. 6589 of 1988, decided on 24.1.1989, considered a similar proposition. It was held that the nature and place of employment have un-necessarily been taken into consideration.

11. At this stage, Mr. Vijay Dahiya has submitted that in these circumstances, even if the Award is to be set aside, the matter deserves to be remanded back to the Labour Court. I am, however, not at all impressed by the submission made by the learned counsel. The workman-petitioner has been out of service for a period of seven years, his services having been terminated on 31.7.1994. It is not disputed on the record that the petitioner was neither offered any compensation nor given any notice as required u/s 25F of the Act. In such circumstances, the order of termination of service of the workman- petitioner would be void ab initio. That being so, the petitioner would be entitled to be reinstated in service with continuity of service. The petitioner would also be entitled to full backwages as he has categorically stated in his statement before the Labour Court that since his termination he has been unemployed. He has also stated that the management has never recalled him or offered him a job since his services were illegally terminated. This evidence of the workman-petitioner is not rebutted by the management. It would be wholly unjust to expose the workman-petitioner to another round of litigation.

12. In view of the above, present writ petition is allowed. The Award dated 16.3.1999, Annexure P-9, made by the Labour Court-cum-Industrial Tribunal, Hisar, is hereby quashed. The respondents are directed to reinstate the workman-petitioner into service with continuity of service and full backwages. No costs.

13. Petition allowed.