

(1988) 01 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4200 of 1982

Ram Lakhan Singh

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 21-01-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1994) 3 LLJ 333

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : K.L. Arora, for the Appellant; Vinod Sharma, for R2 Punjab Agro-Industries Corporation Ltd., for the Respondent

Final Decision : Dismissed

Judgement

J.V. Gupta, J.—This writ petition is directed against the award of the Labour Court, Union Territory, Chandigarh, dated 9th March, 1982.

2. On 14th July, 1980, Ram Lakhan Singh- the petitioner-workman was employed as a part-time Mali for two hours a day at a remuneration of Rs. 73 per month. On 6th November, 1980, the employment of the workman was modified to four hours a day at a salary of Rs. 133.50 per month. On 6th February, 1981, the petitioner was given an ad hoc and temporary appointment as a Chowkidar for a period of 89 days. His services as Chowkidar were eventually terminated on 18th June, 1981, vide order annexure P- 1. An industrial dispute was raised by the workman with regard to the termination of his services, for which reference was made under Clause (c) of Sub-section (1) of Section 10 of the Industrial Disputes Act, the matter referred for adjudication being:

"Whether the services of Shri Ram Lakhan Singh were terminated illegally by the management of Punjab Agro Industrial Corporation Ltd., Chandigarh ? If so, to what effect and to what relief he is entitled, if any ?"

3. According to the claim of the workman before the Labour Court he had been in

continuous and uninterrupted employment of the Punjab Agro Industrial Corporation Ltd., from 14th July, 1980 to 18th June, 1981, and the termination of his services was retrenchment under the Industrial Disputes Act. Since there was non-compliance with the provisions of Section 25F of the Act, his termination was thus illegal- He claimed reinstatement with full back wages.

4. The stand taken by the management was that the workman was not covered by the provisions of Section 25F of the Act, as he had not worked for more than 240 days, nor was he appointed for a year. It was pleaded that he was appointed only on ad hoc basis for a period of 89 days and had been removed from service as per the terms and conditions of his appointment letter. It was also made clear in the written statement that initially Ram Lakhan Singh was appointed for two hours a day and then for four hours a day. At that time the office of the respondent was situated in a residential building in Sector 19-A, Chandigarh, Later when the office was shifted to the first floor of shop-cum-office No. 315-16, Sector 35-B, Chandigarh, there being no need for a Mali, the petitioner was then appointed as a Chowkidar on ad hoc basis for 89 days. Since the petitioner was only a part-time employee till 6th February, 1981, while he worked as a Mali, this period could not be treated as his continuous period of employment as Chowkidar under the management. It was only on 6th February, 1981, that the petitioner was appointed as Chowkidar and that too on ad hoc basis for 89 days. He was relieved from service on 18th June, 1981, when during regular selection for the post of Chowkidar he was found to be over-aged for appointment to this post.

5. The Labour Court on the pleadings of the parties framed the following issues:

"1. Whether the benefit of the provisions of Section 25F of the Industrial Disputes Act is available to the workman ? If not, to what effect ?

2. Whether the workman was appointed only on ad hoc basis for a period of 89 days and was relieved from service as per the terms and conditions of his appointment ? If so, to what effect ?

3. Whether the services of the workman were terminated illegally by the management ? If so, to what effect ?

4. Relief ."

6. The Labour Court concluded that "in this view of the matter, it cannot but be held that the appointment of Ram Lakhan Singh as mali was a separate and distinct appointment from that of his appointment as Chowkidar without giving him the benefit of adding this period on to his subsequent employment as Chowkidar". The Labour Court also found that "there is no dispute in this case that he was relieved from service as Chowkidar as per the terms and conditions of this appointment". Ultimately, it was concluded that the workman was not entitled to the benefit of the provisions of Section 25F of the Industrial Disputes Act, as his services were not terminated illegally by the management.

7. Learned counsel for the petitioner vehemently contended that the provisions of Section 25F of the said Act were attracted as the workman had completed 240 days and since he was not paid compensation as required under Clause (b) of Section 25F, the termination was illegal. According to learned counsel, termination by efflux of time also amounts to retrenchment if the workman has completed 240 days. In support of his contention he referred to *Hindustan Steel Ltd. v. Labour Court*, Orissa AIR 1977 SC 31. He also referred to *Mohan Lal Vs. Management of Bharat Electronics Ltd.*, to contend that the termination amounted to retrenchment because of the non-compliance of Section 25F of the Industrial Disputes Act. It has been wrongly held by the Labour Court that his services as a Mali could not be counted for completion of 240 days because, according to learned counsel, the petitioner did fall within the definition of "retrenchment" read with Section 2(s) of the said Act. In support of his contention he referred to *A.M. Mazdoor Biri Co. Vs. Industrial Tribunal III and Others*, , where the persons working on piece rate basis were held to be workmen.

8. On the other hand, learned counsel for the management respondent No. 2 submitted that the Labour Court has given a categorical finding that the appointment of the petitioner as Mali was a separate and a distinct appointment from that of his appointment as Chowkidar and, therefore, he could not be given the benefit of adding this period to his subsequent employment as Chowkidar. According to learned counsel, this being a finding of fact could not be interfered with in writ jurisdiction. Moreover, according to learned counsel, the petitioner could not be said to be workman when he was employed for a part-time of two hours and four hours a day. In support of this contention he referred to *Rangamannar (G) (Satyanarayana Rice Mills, Nellore) v. Industrial Tribunal 1959 II LLJ 565*.

9. I have heard learned counsel for the parties. The main question to be decided in this petition is whether the petitioner has completed 240 days or not as to claim the benefit of Section 25F of the Industrial Disputes Act. Admittedly, the petitioner was appointed as Chowkidar on 6th February, 1981, and his services were terminated on 18th June, 1981. By that time he had not completed 240 days. The earlier period when he was appointed as Mali for two hours only with effect from 14th July, 1980, and then for four hours only with effect from 6th November, 1980, could not be counted towards 240 days. The appointment of the petitioner as Mali for two hours and four hours subsequently was an altogether separate and distinct appointment, taking into consideration that the office was situated in a residential building. That being so, there is nothing wrong or illegal in the finding of the Labour Court that it was a separate and distinct appointment from his appointment as Chowkidar. The matter as to whether part-time employment was an employment for the purpose of the Industrial Disputes Act or not, came up for consideration before the Andhra Pradesh High Court in *Rangamannar Chetti's case* (supra). It was observed therein:

"The point urged for setting aside the aforesaid award is that part employment is inconsistent with the relationship of master and servant: Sastri would not be an employee within the meaning of the Industrial Disputes Act, XIV of 1947, and, therefore, the Tribunal would not have the jurisdiction to determine the main question. It is now well settled that if a person be not an employee within the meaning of the Act, questions cannot be referred to the Tribunal under the enactment. Further, there are several decisions by Industrial Tribunals to which reference has been made before me that part-time employees are not covered by the Act". No judgment taking the contrary view has been cited at the Bar.

10. In this situation, the writ petition fails and is dismissed with no order as to costs.