
(1988) 08 P&H CK 0126
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. 836 of 1988

Ram Lakhan Singh

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 08-08-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25B, 25F

Citation : (1989) 1 ILR (P&H) 261 : (1995) 3 LLJ 810

Hon'ble Judges : V. Ramaswami, C.J.;G.R. Majithia, J

Bench : Division Bench

Advocate : K.L. Arora, for the Appellant;

Final Decision : Dismissed

Judgement

1. This is an appeal against the order of the learned single Judge of this Court dismissing the writ petition filed by the appellant, praying for the issue of writ of certiorari to quash the award dated 19-3-1982 of the Labour Court and also for the issue of a writ of mandamus directing the second respondent to treat the petitioner as in continuous service from the date of his termination with all back wages. The petitioner was originally working as a part-time Mali for two hours a day and later it was modified as four hours a day. When he was working two hours a day he was paid Rs. 73/- per month and when he was working four hours a day he was paid Rs. 113.50 paise p.m. This part-time job continued from 14-7-1980 till 5-2-1981. It appears that the second respondent was having its office in a residential building where there was a need of Mali and, under these circumstances, he was employed as a part-time Mali in that premises. When the Corporation shifted its office to the second floor of another building, they could not continue his part-time employment. However, they appointed him as Chowkidar on purely temporary and ad hoc basis for a period of 89 days on 6-2-1981. Again, by proceedings dated 18-6-1981, Annexure P-1 to the writ petition, the period of 89 days was extended upto 18-6-1981 and on that day he was also relieved from that duty. Thereafter, the petitioner raised an industrial

dispute and the following question was referred for ad-judication to the Labour Court:

"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 to, if any?"

The Labour Court held that the period ; during which he was employed as a part-time Mali could not be taken into consideration for the purpose of finding out continuous service within the meaning of S.25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and that it is not a case of retrenchment u/s 25F of the Act. With that view, the question was answered against the workman. He filed Civil Writ Petition No. 4200 of 1982, against the aforesaid award of the Labour Court.

2. The learned single Judge heard the writ petitioner, considered the matter afresh in detail and came to the conclusion that the period during which he was a part-time Mali could not be tagged on to that during which he was a temporary and ad hoc Chowkidar and if those two periods could not be clubbed together, there is no continuous service of 240 days in order to invoke the provisions of Section 25F of the Act. He was also of the view that part-time employees are not covered by the provisions of the Industrial Disputes Act and, for this view, the learned single Judge relied upon a Division Bench judgment of the Anahra Pradesh High Court reported as G. Rangamannar Chetty, Proprietor Sri Satyanarayana Rice Mill, Nellore Vs. The Industrial Tribunal by its Chairman, Hyderabad and Another, Accordingly, the writ petition was dismissed.

3. In this appeal, the learned counsel for the appellant has strenuously contended that the definition of "workman" in Section 2(s) of the Act does not make any distinction between a part-time employee and a full-time employee and if there is relationship of master and servant he would satisfy the definition of "workman" unless he falls in any one of the excepted categories. He also contended that once he is a Workman as Mali or as Chowkidar, there is no reason why both the period should not be clubbed together for the purpose of finding out continuous service within the meaning of Section 25B of the Act. If both the periods are clubbed together there is no doubt that the total period comes to about 11 months, which will be more than 240 days entitling the appellant to the benefits of Section 25F of the Act. Since admittedly the conditions of Section 25F of the Act had not been complied with, the award of the Labour Court is unsustainable. In this connection, the learned counsel for the appellant referred to a few judgments of the Supreme Court including Shri Birdhichand Sharma Vs. First Civil Judge Nagpur and Others, where the Bidi Workers were considered to be workmen within the meaning of Section 2(s) of the Act and also to a judgment of the Gujarat High Court in Gobindbhai v. N.K. Desai Wherein the learned single Judge considered that a part-time worker will also be a "workman" within the meaning of the Industrial Disputes Act. We are unable to agree with the learned counsel for the appellant that part-time workers could be

considered as employees within the meaning of the provisions of the Act. May be, they : are workmen in the strictest sense of Section 2(s) of the Act but what is relevant is whether that could be considered as continuous employment under one employer. The word "part-time" does imply that there is no prohibition for the worker to have employment in more than one place outside the part-time employment. It is not an exclusive employment under one employer. Literally, the work begins in the morning when he starts the work and ends by the time he finishes the work for that day. The appellant was employed as a part-time Mali for two hours a day. It is true that he was paid a consolidated sum of Rs. 73/- per month. That makes no difference at all. Once a part-time employment is accepted and there is no restriction on him to seek employment under any other employer and legally he could get employment anywhere and work more number of hours and earn more money, he could not be said to be in exclusive employment of an employer for the purpose of getting benefits u/s 25F of the Act. It is true that there is no evidence that the appellant was employee under any other employer during that period but we are not concerned with the factual question if really there was no legal bar to seek such employment. We have to understand part-time workers as not falling under the provisions of the Act. The other way of approaching the question is that the part time job of Mali ended on 5-2-1981. In other words, the part-time job was terminated from that date and a new appointment as Chowkidar was made on 6-2-1981. There is no dispute that the period during which the appellant worked as Chowkidar, though on temporary and ad hoc basis, will have to be taken as period of continuous service. But he held that post only for four months and, therefore, did not satisfy the definition of Section 25B in order to enable him to invoke the provisions of Section 25F of the Act. Therefore, the question whether the part-time post of Mali and the temporary post of Chowkidar could be taken together in order to find out the total number of 240 days of continuous service does not even arise. Even if we assume that both posts could be tagged, we are unable to see how the appellant has completed 240 days to enable him to get the benefits of Section 25F of the Act, because part-time work cannot be considered to be continuous. This is not to say that we agree with the learned counsel for the appellant that the period during which he worked as a part-time Mali and the period during which he worked as a temporary Chowkidar could be taken together for invoking the provisions of Section 25F of the Act. We also leave open the question as to whether the appellant is a "workman" as defined in Section 2(s) of the Act. But we are of the view that the period during which the appellant worked as a part-time Mali could not be taken as continuous in order to invoke the provisions of Section 25F of the Act.

In the light of the above discussion, we do not see any reason to refer to the various judgments relied upon by the learned counsel for the appellant. In result, the appeal fails and is dismissed.