

(1990) 09 P&H CK 0122
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2409 of 1987

Satpal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-09-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1992) 1 ILR (P&H) 104

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

Bench : Single Bench

Advocate : Sabina, for the Appellant;

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—The matter here concerns the applicability of Clause (bb) of Section 2(oo) of the Industrial Disputes, Act, 1947 (hereinafter referred to as "the Act").

2. The Petitioners, in this bunch of writ petitions, were employed on, daily wages for fixed periods of time. They had all completed more than one years service before Clause (bb) of Section 2(OO) of the Act came on to the statute, book by the amending Act of 1984, which came into effect on August 18 1984.

3. The appointments of the Petitioners being for fixed periods, which had come to an end by efflux of time the Labour Court held that the termination of their services fell within the purview of Clause (bb) of Section 2(oo) of the Act and it did not, therefore, amount to retrenchment and they were thus not entitled to the benefits of Section 25F of the Act.

4. It was sought to be contended on behalf of the Petitioners that as they had completed one year's service before Clause (bb) of Section 2(oo) of the Act became law, the Petitioners had acquired a vested right in having applied to them the law date when they completed one year's service and therefore, the termination of their services amounted to retrenchment rendering them eligible

to the benefits of the provisions of Section 25F of the Act. This is indeed a wholly untenable contention as to test the validity of the termination of the services of a workman, the law to be considered and applied is that in force on the date of the termination and not on any date prior thereto. Admittedly, on the date when the services of the Petitioners were terminated Clause (bb) of Section 2(oo) of the Act was in force and is thus clearly applicable in the case of the Petitioners here.

5. Faced with this situation, an argument was sought to be raised questioning the constitutional validity of Clause (bb) of Section 2(oo) of the Act. This now stands concluded by the judgment of this Court in *Raj Bahadur v. General Manager Food Specialties Ltd.* ILR 1992 (1) P&H 102.

6. Finally, unfair labour practice was sought to be imputed to the Respondents on the plea that the Petitioners had been repeatedly given appointments of fixed periods. Cited in support being *Shailendra Nath Shukla and others Vice Chancellor Allahabad University and others* 1987 Lab. I.C. 1607, where, it was observed, if contractual employment is resorted to as a mechanism to frustrate the claim of the employee to become regular or permanent against a job which continues or the nature of duties is such that colour of contractual engagement is given to take it out from the principal clause, then such agreement shall have to be tested on the anvil of fairness of bona fide. It was held therefore, that Clause (bb) of Section 2(oo) of the Act cannot be extended to such cases, where the job continues and the employee's work is also satisfactory, but periodical renewals are made to avoid regular status being conferred upon him.

7. Reference was next made to *Dalip Hmnmantrao. Shirke and Ors. v. Zila Parishad Yavatmal and Ors.* 1990 Lab. I.C. 100, where, it was held that the amended Sub-clause (bb) of Section 2(oo) of the Act would apply to only such cases where the work ceases with the employment or the post itself ceases to exist or such other analogous cases where the contract of employment is found to be fair proper and bona fide. It was observed there that it was always open to the Court to examine the case and protect the workman against abuse of the amended provision.

6. No occasion is however, provided for the application of the principle enunciated in the judicial precedents cited, keeping in view the fact that it was never the plea of the Petitioners that the work for which they Had Been employed was continuing or that their repeated appointments were a mere device to-deny them regular or permanent status.

9. The impugned Award of the Labour Court thus warrants no interference in writ proceedings. This petition is accordingly hereby dismissed. In the circumstances, however, there will be no order as to costs.