
(2009) 05 SHI CK 0018
In the High Court Of Himachal Pradesh

Shri Thakur Dass

APPELLANT

Vs

The State of H.P. and Another

RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

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

Citation : (2009) 05 SHI CK 0018

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—The petitioner served in the Indian Army in Dogra Regiment from 27.12.1977 to 31.12.1992. He got his name registered with the employment exchange for seeking suitable employment. He was engaged daily wage Driver in the respondent-Department on 27.5.1993. He was not permitted to discharge his duties with effect from 1.4.2001.

2. Mr. Bhuvnesh Sharma has strenuously argued that his client had completed 240 days in each calendar year with effect from 1993-1994 upto 2000-2001. He then argued that the petitioner instead of being terminated should have been regularized taking into consideration eight years of uninterrupted service rendered by his client.

3. The learned Senior Additional Advocate General has argued that the petitioner could not be regularized since he has not completed 240 days in each calendar year.

4. I have heard the parties and perused the record carefully.

5. The petitioner was appointed on 28.5.1993. It has come in the reply that the petitioner had worked from 1993 to 2001. However, the respondents have not properly calculated 240 days in a period of twelve months as per the law laid down by their Lordships of the Hon'ble Supreme court in Surendra Kumar Verma

and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, . Their Lordships have held as under:

8. The cases of Usha Kumari and Madhu Bala were treated by the Labour Court as distinct from the cases of all the other appellants on the ground that, though they had worked for more than two hundred and forty days in the preceding twelve months, they had not been in employment for one year. It appears that Usha Kumari and Madhu Bala were in the employment of the Bank from May 4, 1974 to January 29, 1975 and had worked for 258 and 266 days respectively during that period. As the period from May 4, 1974 to January 29, 1975 was not one year, it was conceded before the Labour Court that there was no violation of the provisions of Section 25F of the Industrial Disputes Act. Before us, the concession was questioned and it was argued that there was non-compliance with the requirements of Section 25F of the Act. Since the facts were not disputed, we entertained the argument and heard the counsel on the question. The concession was apparently, based on the decision of this Court in *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, That decision was rendered before Section 25B, which defines "continuous service" for the purposes of Chapter VA of the Industrial Disputes Act was recast by Act .36 of 1964. The learned Counsel for the employer submitted that the amendment made no substantial difference. Let us take a look at the statutory provisions. Section 25F, then and now, provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until certain conditions are fulfilled. Section 25B's marginal title is "Definition of continuous Services". To the extent that it is relevant Section 25B(2) as it now reads is as follows:

Where a workman is not in continuous service...for a period of one year or six months, he shall be deemed to be in continuous service under an employer....

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days in any other case;

(b) ...

Explanation...

The provision appears to be plain enough. Section 25F requires that a workman should be in continuous service for not less than one year under an employer before that provision applies. While so, present Section 25B(2) steps in and says that even if a workman has not been in continuous service under an employer for a period of one year, he shall be deemed to have been in such continuous service for a period of one year, if he has actually worked under the employer for 240

days in the preceding period of twelve months. There is no stipulation that he should have been in employment or service under the employer for a whole period of twelve months. In fact, the thrust of the provision is that he need not be. That; appears to be the plain meaning without gloss from any source.

9. Now, Section 25B was not always so worded. Prior to Act 36 of 1964, it read as follows:

For the purposes of Sections 25-C and 25-F, a workman who, during a period of twelve calendar months, has actually worked in an industry for not less than two hundred and forty 4 days shall be deemed to have completed one year"s continuous service in the industry.

Explanation...

The difference between old 25-B and present 25-B is patent.

The clause "where a workman is not in continuous service...for a period of one year" with which present Section 25B(2) so significantly begins, was equally significantly absent from old Section 25-B. Of the same degree of significance was the circumstance that prior to Act 36 of 1964 the expression "Continuous Service" was separately defined by Section 2(eee) as follows:

(eee) "continuous service" means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal, or lock-out or a cessation of work which is not due to any fault on the part of the workman;

Section 2(eee) was omitted by the same Act 36 of 1964 which recast Section 25B. Section 25B as it read prior to Act 36 of 1964, in the light of the then existing Section 2(eee), certainly lent itself to the construction that a workman had to be in the service of the employer for a period of one year and should have worked for not less than 240 days before he could claim to have completed one year"s completed service so as to attract the provisions of Section 25F. That precisely was what was decided by this Court in *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, . The Court said:

On the plain terms of the section (Section 25F) only a workman who has been in continuous service for not less than one year under an employer is entitled to its benefit. "Continuous Service" is defined in Section 2. (eee) as meaning uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal or a lock-out or a cessation of work which is not due to any fault on the part of the workman. What is meant by "one year of continuous service" has been defined in Section 25B. Under this section a workman who during a period of twelve calendar months has actually worked, in an industry for not less than 240 days shall be deemed to have completed service in the industry. xxx xxx The position (therefore) is that during a period of employment for less than 11 calendar months these two persons worked for more than 240 days. In our

opinion that would not satisfy the requirement of Section 25B. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a period of not less than 12 calendar months and, next that during those 12 calendar months he had worked for not less than 240 days. Where, as in the present case, the workmen have not at all been employed for a period of 12 calendar months it becomes unnecessary to examine whether the actual days of work numbered 240 days or more.

Act 36 of 1964 has drastically changed the position. Section 2(eee) has been repealed and Section 25B(2) now begins with the clause "where a workman is not in continuous service...for a period of one year". These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months; it is not necessary that he should have been in the service of the employer for one whole year. So we hold that Usha Kumari and Madhu Bala are in the same position as the other appellants.

6. In case the days are calculated preceding 31.5.2001, he had completed 240 days in a block of twelve calendar months upto 27.5.1993. He had completed eight years service for the purpose of regularization. The State has framed policy for regularizing the services of persons appointed on daily wages basis after the intervention of the Hon'ble Supreme Court in Mool Raj Upadhyay's case. The period of ten years initially prescribed was reduced to eight years.

7. Accordingly, in view of the observations made hereinabove, the writ petition is allowed. The respondents are directed to consider the case of the petitioner for regularization within a period of eight weeks from today. However, it is clarified that the petitioner shall not be entitled to back wages but this period shall be counted for the purpose of seniority alone. No costs.