
(2014) 02 P&H CK 0173
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 2863 of 2014

Smadh Bhai Multipurpose Cooperative Agricultural Service Society Ltd. APPELLANT

Vs

Presiding Officer, Industrial Tribunal RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo), 2(oo)(bb), 2(s), 25, 25F

Citation : (2014) 3 LLJ 44

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Balwinder Singh Sehra, Advocate for the Appellant; Kamaldeep Singh Sidhu, Advocate for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.—The present civil writ petition has been filed challenging the award dated 02.12.2013 (Annexure P-10) passed by the Labour Court, Bathinda whereby, respondent No. 2-workman was reinstated in service on the same post on the same terms and conditions on which he was already working with the management-petitioner with continuity of service alongwith 30% back wages from the date of demand notice i.e. 15.02.2011 till joining of his duty. Contention of counsel for the petitioner is that there is no such post of Driver with the society and as per the Rules, the procedure for appointment was never followed and, therefore, the Labour Court was not justified in directing reinstatement. It is further submitted that the appointment was only a contractual appointment and Section 2(oo)(bb) of the Industrial Disputes Act, 1947 (in short "the Act") was not kept in mind by the Labour Court.

2. Counsel for the workman-caveator, on the other hand, contended that it has come on record that even after the termination of the services of the petitioner, who had worked from 01.08.2007 to 15.12.2010, other Drivers were kept and, therefore, it shows that the work is of a perennial nature and the Labour Court is

well justified in directing reinstatement.

3. After hearing counsel for the parties, this Court is of the view that the award is well reasoned and deserves to be upheld.

4. A perusal of the paper book would go on to show that initially vide resolution dated 09.06.2007 (Annexure P-1), the petitioner-society had appointed the workman as a Driver for two months on contract basis with consolidated salary of Rs. 2,500/- per month and it had the liberty to dispense with his services at any time. Thereafter, vide resolution dated 19.07.2007 (Annexure P-2) w.e.f. 01.08.2007, the said workman was to work as a Driver as per the minimum wages fixed by the Deputy Commissioner, Moga on contract basis at a consolidated salary of Rs. 2,260/- per month and the post was temporary and his services could be dispensed with at any time without issuing notice. It is a matter of fact that the workman carried on and his services were dispensed with on 15.12.2010 (Annexure P-3) by passing a resolution that the crop season is over and there is no need of Driver and he would be appointed during the crop season again. The demand was accordingly raised on Section 25-F of the Act. The said demand was opposed by filing reply on 22.03.2011 taking various pleas including the ones which are being raised now. Accordingly, the matter was referred to the Labour Court. Before the matter was referred to the Labour Court, an offer was also made on 05.04.2011 to the respondent-workman to join, which was replied to that he was entitled for reinstatement with continuity of service as the tractor of the society operated throughout the year after removing him from service. Accordingly, the matter was referred to the Labour Court. The Labour Court, after examining the statement of Rajinder Singh, Secretary as MW1 and the statement of the respondent-workman, came to the conclusion that there is no reason why the services of the said workman had been dispensed with and the termination was not sustainable and accordingly, directed reinstatement.

5. The submission of the counsel that the order was without following the prescribed procedure is without any basis. The Apex Court in *Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana)*, held that the judgment of the Apex Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, would not be applicable while dealing with Section 25-F of the Act and the employer's obligation to comply with the mandatory provisions continue to operate. The relevant para read as under:

19. The judgment of the Constitution Bench in *Secretary, State of Karnataka v. Uma Devi (supra)* and other decisions in which this Court considered the right of casual, daily wage, temporary and ad hoc employees to be regularised/continued in service or paid salary in the regular time scale, appears to have unduly influenced the High Court's approach in dealing with the appellant's challenge to the award of the Labour Court. In our view, none of those judgments has any bearing on the interpretation of Section 25-F of the Act and employer's obligation to comply with the conditions enumerated in that section.

6. Similarly, the Hon'ble Apex Court in *Devinder Singh Vs. Municipal Council, Sanaur*, held that the definition of the workman also does not make any distinction between full time and part time employee or a person appointed on contract basis and if the mandatory requirements of the Act are violated, it would amount to retrenchment under the meaning of Section 2(oo) of the Act. The relevant observations read as under:

12 Section 2(s) contains an exhaustive definition of the term "workman". The definition takes within its ambit any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and it is immaterial that the terms of employment are not reduced into writing. The definition also includes a person, who has been dismissed, discharged or retrenched in connection with an industrial dispute or as a consequence of such dispute or whose dismissal, discharge or retrenchment has led to that dispute. The last exclusions, A person to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, is applicable or who is employed in the police service as an officer or other employee of a prison or who is employed mainly in managerial or administrative capacity or who is employed in a supervisory capacity and is drawing specified wages per mensem or exercises mainly managerial functions does not fall within the definition of the term "workman".

13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act.

14. It is apposite to observe that the definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

15. Whenever an employer challenges the maintainability of industrial dispute on the ground that the employee is not a workman within the meaning of Section 2(s) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of "workman".

16. In *Shri Birdhichand Sharma Vs. First Civil Judge Nagpur and Others*, this Court considered the question whether bidi rollers were workmen within the meaning of the term used in the Factories Act, 1948, The factual matrix of the case reveals that the workers who used to roll the bidis had to work at the

factory and were not at liberty to work at their houses. Their attendance was noted in the factory and they had to work within the factory, though there was freedom of doing work for particular hours. They could be removed from service on the ground of absence for eight days. The wages were paid on piece-rate basis. After considering these facts, the Court held that the bidi rollers were workmen. The Court observed that when the operation was of a simple nature and did not require supervision, the control could be exercised at the end of the day by the method of rejecting bidis which did not meet the required standard and such supervision was sufficient to establish the employer employee relationship.

17. In *Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another*, the three Judge Bench held that the tailors employed in a tailoring shop, who were paid according to their skill and work and the quality of whose work was regularly checked were employees covered by the Andhra Pradesh (Telangana Area) Shops and Establishments Act, 1951.

18. In *L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another*, the Court held that even a daily rated worker would be entitled to protection of Section 25-F of the Act if he had continuously worked for a period of one year or more.

19. Section 25 couched in negative form. It imposes a restriction on the employer's right to retrench a workman and lays down 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 until he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or he has been paid wages for the period of notice and he has also been paid, at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months and notice in the prescribed manner has been served upon the appropriate Government or the authority as may be specified by the appropriate Government by notification in the Official Gazette.

20. This Court has repeatedly held that the provisions contained in Section 25F(a) and (b) are mandatory and termination of the service of a workman, which amounts to retrenchment within the meaning of Section 2(oo) without giving one month's notice or pay in lieu thereof and retrenchment compensation is null and void/illegal/inoperative-- *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, , *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, , *Santosh Gupta Vs. State Bank of Patiala*, , *Mohan Lal Vs. Management of Bharat Electronics Ltd.*, , *L. Robert D'Souza v. Southern Railway (supra)*, *Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another*, , *Gammon India Limited Vs. Niranjan Dass*, , *Gurmail Singh and Others Vs. State of Punjab and Others*, and *Pramod Jha and Others Vs. State of Bihar and Others*,

21. In *Anoop Sharma v. Executive Engineer, Public Health Division, Haryana* (supra), the Court considered the effect of violation of Section 25F, referred to various precedents on the subject and held the termination of service of a workman without complying with the mandatory provisions contained in Section 25-F(a) and (b) should ordinarily result in his reinstatement.

22. We may now advert to the impugned order. A careful analysis thereof reveals that the High Court neither found any jurisdictional infirmity in the award of the Labour Court nor it came to the conclusion that the same was vitiated by an error of law apparent on the face of the record. Notwithstanding this, the High Court set aside the direction given by the Labour Court for reinstatement of the appellant by assuming that his initial appointment/engagement was contrary to law and that it would not be in public interest to approve the award of reinstatement after long lapse of time. In our view, the approach adopted by the High Court in dealing with the award of the Labour Court was *ex facie* erroneous and contrary to the law laid down in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, *Sawarn Singh and Another Vs. State of Punjab and Others*, *P.G.I. of M.E. and Research, Chandigarh Vs. Raj Kumar*, *Surya Dev Rai Vs. Ram Chander Rai and Others*, and *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*,

7. Accordingly, keeping in view the above principles and in view of the fact that there is no denying the fact that Section 25-F of the Act was not complied with, this Court is of the opinion that there is no error apparent on the face of the record which is liable to be corrected. It has also come on record that after the services of the workman were dispensed with, two more Drivers were appointed namely Gurcharan Singh and Surjit Khan. The reinstatement, as directed by the Labour Court, is only on the same terms which were earlier of a contractual appointment on a fixed salary and the argument that there exists no post of driver under the rules, thus cuts no ice, with the Court. In such circumstances, no prejudice has been caused to the petitioner-Society and the present petition, the same is dismissed in limine.