

(2009) 11 P&H CK 0056
In the Punjab And Haryana At Chandigarh

Smt. Neelam

APPELLANT

Vs

Presiding Officer, Labour Court-I and Another

RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2010) 124 FLR 1078 : (2010) 157 PLR 373 : (2010) 5 SLR 64

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—The sole point for consideration in this case is whether the period spent during the training period, after the duration of which, the workman had been absorbed to regular service, could be counted for determining the continuity of service. The contention of the workman, which led to a reference before the Labour Court was that she had been initially appointed as a Personal Assistant on 22.05.1995 and after a training period of six months, she was given a regular appointment order on 01.01.1996. The workman claimed that she had been terminated from service on 18.03.1998 illegally. When complaining of such retrenchment, the workman had sought reference to a Labour Court for industrial adjudication relating to the validity of the termination. The workman had also complained that some juniors had been retained in service and there was also a violation of Section 25-G of the Act. The management filed a reply denying the contentions raised by the workman and pleaded that the services had been terminated on account of the abolition of post and all the legal dues were sent to the claimant when the post was abolished. She had accepted the same, which included the notice pay, service compensation etc. The compensation was calculated on the basis that the service was to be reckoned only from the date when she was regularized in the post on 01.01.1996.

2. The Labour Court found that the appropriate amount had been calculated and the service could be reckoned only from the date of regular service and the period of training could not be included for determining the compensation

payable. The Court accordingly held that there was a due compliance of Section 25-F of the Industrial Disputes Act and the workman had no cause for complaint.

3. Adverting to the issue that the period during training was also required to be counted, the learned Counsel appearing for the petitioner refers to the decision in Haryana State Electricity Board v. Sh. Randhir Singh 1993 (3) S.C.T. 712 that the period during ad hoc service shall also have to be counted for reckoning the period of service. This judgment will not squarely govern the issue but the principle could be taken to be clearly established in order that the period of continuous service is determined u/s 25-B of the Industrial Disputes Act only requires that the workman shall be in uninterrupted service, which would, however, include service which may be interrupted on account of sickness, authorized leave or accident or strike, if it is not illegal or cessation of work, which is not due to any fault on the part of the workman. Section 25-B of the Industrial Disputes Act is exhaustive in its content as to what shall be excluded and what would count for continuous service. Sub-Section (2) details instances where even if the period of service is less than 240 days, the workman shall be deemed to be in continuous service. The Section leaves out no scope for a doubt that two months prior to the date of termination, if the workman had uninterrupted service no matter the service included period of training, the workman shall be entitled to count the said period also. This situation was addressed in a decision of Rajasthan High Court in Mohd. Yusuf v. Labour Court (2001) 1 L.L.N. 424, where it was held that for invoking the provisions of Section 25-F, the condition to be fulfilled is that the workman ought to have been employed under the same employer, however, the employment need not be of the same character.

4. The amount of compensation that the workman had been paid at the time of termination of service did not admittedly count the period of a training and the compensation amount was, therefore, inadequate leaving out of reckoning the 15 days wage that he was bound to be given for the period when she was working as a trainee. The consequence is that there was no due compliance of Section 25-F of the Industrial Disputes Act and therefore, the termination order was not valid.

5. The issue cannot be left at merely deciding that the termination was invalid and the question whether the workman is entitled to reinstatement will have been examined in the particular instance where the management had contended that the post had been abolished. It has been emphasised many times that the principle is that a workman shall not be entitled to reinstatement merely because there was no due compliance of Section 25-F of the Industrial Disputes act. Where there exist no cause for engagement, the appropriate relief, in my view, would be only to grant compensation in lieu of reinstatement. Having regard to the fact that the workman had worked for nearly three years and there was no deliberate act of the management to deny to the workman of what was due to her, I am of the view a compensation of Rs. 50,000/- will meet the ends of

justice.

6. In the circumstances, the award of the Labour Court is modified. The denial of reinstatement is maintained and in lieu thereof, the workman shall be entitled to compensation of Rs. 50,000/-, which shall be paid to the workman within four weeks from the date of receipt of copy of the order, failing which the amount shall bear interest @9% per annum. The workman shall also be entitled to costs against the management fixed at Rs. 5,000/-. The writ petition is partly allowed in the above terms.