

(1988) 09 P&H CK 0040
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4815 of 1984

State of Punjab and Another

APPELLANT

Vs

Kashmir Singh and Another

RESPONDENT

Date of Decision : 08-09-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 25G

Citation : (1993) 3 LLJ 565

Hon'ble Judges : K.S. Bhalla, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : D.S. Brar, for the Appellant;

Final Decision : Dismissed

Judgement

K.S. Bhalla, J.—The only law point in this writ petition moved by the State of Punjab for quashing the award dated 11-10-1983, (Annexure P-1) of the Labour Court, Amritsar, is whether respondent Kashmir Singh, the workman, could legitimately be deprived of the advantage guaranteed by the provision contained in Section 25G of the Industrial Disputes Act, 1947, (the Act hereinafter). Section 25G of the Act is based on the principle of "first come last go". It says where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

2. Respondent Kashmir Singh was employed as Conductor with Punjab Roadways, Amritsar, on 8.8.1978 on purely temporary basis and his services could be terminated at any time without assigning any reason. His services were so terminated on 2-3-1979. It is, however, admitted that when his services were terminated, 32 conductors were working junior to him. The order of termination of the services of the respondent does not provide any reason for the retention of

those 32 conductors in preference to the respondent. Provision of Section 25G of the Act, therefore, stood violated resulting in award (Annexure P-1) in favour of the respondent by virtue of which his reinstatement was ordered with the direction that period of unemployment of respondent-workman shall be deemed as leave of the kind due to him.

3. To assail this award, Mr. Brar has drawn our attention to Sub-clause (bb) under Clause (oo) of Section 2 of the Act. Clause (oo) of Section 2 defines term "retrenchment" and sub-clause deal with the situations which are not included within the scope of the said term. The State of Punjab, however, cannot possibly take shelter behind Sub-clause (bb) as the same is not applicable to the facts of the present case. That sub-clause was inserted by Section 2 of Act 49 of 1984 and comes into operation with effect from 18-8-1984. Services of the respondent having been terminated much before i.e., on 2-3-1979, the situation provided by the said sub-clause cannot possibly govern instant retrenchment. The argument with regard to termination of the services of the workman as a result of non-renewal of contract of employment on its expiry or of such contract being terminated under a stipulation in that behalf, contained therein, therefore, is not open to the learned counsel for the petitioner.

4. No other point has been urged and the award in question otherwise is justified in view of Section 25G of the Act which stood violated as per admissions of the petitioner. We, therefore, see no merit in this writ petition and the same is dismissed with costs.