
(1997) 01 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 484 of 1982

State of Punjab

APPELLANT

Vs

Labh Singh C/o Trade Union Council and Another

RESPONDENT

Date of Decision : 03-01-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 25G, 200

Citation : (1997) 116 PLR 135

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : P.S. Chhina, DAG, for the Appellant; Sarjit Singh and Vikas Suri, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—The State of Punjab through the General Manager, Punjab Roadways, has filed the present writ petition" under Articles 226/227 of the Constitution of India for the issuance of a writ or direction quashing the impugned order (Annexure P1), and the present petition has been filed against Labh Singh workman (respondent No. 1), who was reinstated into service with benefit of continuity of service and with backwages to the extent of 50% vide the award (Annexure P1).

2. The case set up by the petitioner is that the General Manager, Punjab Roadways, Ludhiana, was the employer of respondent No. 1 and he was his appointing and punishing authority. Respondent No. 1 was appointed as Conductor on ad hoc basis by the Department vide order (Annexure P2). His services were terminated vide order dated 20.4.1978 (P3), which does not cast any stigma. The duration of service of respondent No. 1 was hardly less than 240 days and he was an ad hoc employee of the petitioner. According to the appointment letter (Annexure P2) the services of respondent No. 2 could be terminated at any time without assigning any reason and without issuing any notice. His services were terminated in a legal manner and as per the conditions

of the appointment letter. In spite of the above fact, the Presiding Officer, Labour Court, Ludhiana, vide the impugned award (Annexure P1) held that the workman was entitled to reinstatement into service with benefit of continuity of service and backwages and that the decision of the Labour Court is illegal and liable to be quashed for the reasons that respondent No. 1 was an ad hoc employee and he was appointed as Conductor Or purely temporary basis his total service was less than 240 days and that the services of respondent No. 1 were terminated as per the terms and conditions of his appointment letter, which does not cast any stigma. There is no finding from the Labour Court that the petitioner had victimised respondent No. 1 or that his termination from service was a mala fide act. Even the impugned award passed by the Labour Court is not speaking one and with the above main averments, the petitioner, i.e., the State of Punjab, has prayed for allowing of the present writ petition.

3. Notice of the writ petition was given to respondent Labh Singh, who filed a short reply dated 16th March, 1992 and denied the allegations of the State-petitioners. It has been stated in the written statement that the writ petition is liable to be dismissed on the short ground that the award has been implemented by the petitioner and that the respondent has been reinstated into service. Respondent No. 1 Labh Singh further averred in his short written statement that the petitioner-management initiated inquiry against him as is evident from the letter dated 2.9.1981 (Annexure R1) and this fact had been concealed by the petitioner. The question whether any junior was kept in service is a question of fact and cannot be agitated in the present writ petition, which is being disposed of with the assistance of Shri P.S. Chhinna, Senior Deputy Advocate General, Punjab, appearing on behalf of the petitioner who argued that the Labour Court fell in error while giving the award holding that the management did not comply with the provisions of Section 25G of the Industrial Disputes Act, 1947 (for short "the Act") According to Mr. Chhinna, the services for respondent No.1 were terminated as per terms of his appointment. He was appointed on ad hoc basis as is evident from the letter (Annexure P2). Before he could complete the service of 240 days, the services of respondent No. 1 were terminated in accordance with the terms and conditions of his appointment letter dated 28.12.1977. No stigma has been cast. In these circumstances, the award is liable to be quashed and set aside.

4. After considering the contentions raised by the learned counsel appearing on behalf of the petitioner, this Court has come to the conclusion that the submissions raised by Mr. Chhinna are devoid of any merit. Section 2(oo) of the Act, which defines "retrenchment" means the termination by the employer of the service of a workman for any reason, whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include :-

"(a) xx xx xx

(b) xx xx xx

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein:

(c) xx xx xx xx "

Learned counsel for the petitioner wanted to bring his case under the proviso (bb) of Section 2(oo) of the Act by alleging that the services of respondent Labh Singh were terminated as a result of non-renewal of the contract of employment between the State and him, as he at the time of his termination was on probation. The contention of Mr. Chhinna cannot be fortified in view of the letter (Annexure R1) dated 2.9.1981, which would show that the termination of the services of respondent No. 1 was actuated on account of some alleged act of embezzlement, which has been attributed to him. On 2.9.1981 the General Manager, Punjab Roadways, Ludhiana, passed an order to the effect that there was a prima facie case of embezzlement and gross negligence against Labh Singh and for that reason he was placed under suspension with immediate effect pending departmental inquiry. It was further ordered that Labh Singh would draw subsistence allowance during the period of suspension as admissible under the rules. This was the order which motivated the State in passing the order dated 20.4.1978. Thus, it cannot be said that the order dated 20.4.1978 was a simpliciter order of discharge. The case of the petitioner thus is not covered under the provisions of Section 2(oo)(bb) of the Act, rather it would amount to an order of retrenchment within the meaning of Section 2(oo) and in these circumstances the provisions of Section 25G of the Act would come into play irrespective of the fact that Labh Singh had worked for less than 240 days before passing of the order dated 20.4.1978. The principle of "Last Come First Go" has been recognised by Section 25G of the Act, which lays down as under: -

"25G. Procedure for retrenchment.-

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."

Order (Annexure P2) would show that one Harpal Singh son of Nachhattar Singh was recruited on ad hoc basis with effect from 13.11.1977 whereas Labh Singh was recruited with effect from 1.11.1977. The order dated 20.4.1978 does not indicate why Harpal Singh had been left out and why respondent No. 1 was picked up for the termination of his services. The safe conclusions can be drawn that Labh Singh was picked up on account of the alleged allegations of embezzlement against him and for which no inquiry was initiated. Irrespective of the fact that Labh Singh was on ad hoc basis, if his services had been terminated

in violation of the provisions of Section 25G of the Act, it will remain a "retrenchment" within the meaning of Section 2(oo) of the Act, which speaks of the termination by the employer of the services of the workman for any reason, whatsoever. A very broad meaning has been given by the legislature in drafting Section 2(oo) of the Act. If the order dated 20.4.1978 was to be passed in a most innocent manner, it should reflect upon Harpal Singh and not upon Labh Singh. This matter was discussed by the Labour Court in para No. 7 of the impugned award when it was observed by it that one Harpal Singh had been shown junior to the present workman and there was no evidence led by the management/employer that the services of said Harpal Singh were terminated or discontinued. The onus u/s 25G of the Act was upon the management to show that Labh Singh was rendered surplus or that he was the junior most person. In the absence of the best evidence, the Labour Court was justified in drawing the inference against the management. Thus there is no error of jurisdiction apparent in the impugned award dated 26th May, 1981 passed by the Labour Court.

5. This writ petition is devoid of any merit and the same is hereby dismissed leaving the parties to bear their own costs.