

(2004) 08 P&H CK 0118
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 1038 of 1996

Sunder Dass

APPELLANT

Vs

Punjab State Electricity Board and Others

RESPONDENT

Date of Decision : 23-08-2004

Acts Referred:

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

Citation : (2005) 2 LLJ 128 : (2005) 1 SLJ 176

Hon'ble Judges : V.K. Bali, J;K.S. Garewal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.K. Bali, J.—Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") enjoins that no workman employed in any industry who has been in continuous service for nor less than one year under an employer shall be retrenched by that employer until the workman has been given one month's notice in writing or has been paid in lieu of such period, wages for the period of the notice. By virtue of the provisions contained in Section 25-B of the Act, the period of one year when a workman shall be deemed to be in continuous service, would be during the period of 12 calendar months preceding the date with reference to which calculation has to be made, has actually worked under the employer for not less than 240 days. The only question in the present appeal filed under Clause X of the Letters Patent against the judgment of learned single Judge dated 20.8.1996 recorded in Civil Writ Petition No. 15541 of 1994 would be as to whether while calculating the period of 240 days, a workman is entitled to include in it the Sundays and other holidays, though he has not been paid for the said days being a daily wager.

2. The facts, on which the question as framed above arises, need to be noticed in the first instance. The workman was employed as daily-wager with the respondent Board in August, 1988. As per his version, he worked from August, 1988 to December, 1988 for certain number of days. He also pleaded that he

worked in the year 1989 for the same period, in which year his services were terminated. While complaining violation of the provisions of Section 25-F of the Act, he sought reference from the Government u/s 10(1)(c) of the Act which came up for adjudication before the Labour Court, Bathinda. The said Court vide award dated 3.3.1994 found that order of termination of services of the petitioner was not justified nor in order as the same was in violation of the provisions of Section 25-F of the Act. A direction was, thus, issued to the respondent Board to reinstate the petitioner with continuity of service and back-wages only with effect from 8.4.1992. This award of Labour Court was challenged in CWP No. 15541 of 1994, which has since been allowed by learned single Judge vide order dated 20.8.1996. The workman challenges this order of learned single Judge in the present appeal.

3. Order Ex.M-1, which is Annexure P-1 with the writ petition, clearly shows that the workman, who was daily-wager, worked only for 22 days in August, 1988, 27 days in November, 1988, 26 days in December, 1988, 29 days in January, 1989, 6 days in February, 1989, 26 days in March, 1989 and 6 days in April, 1989. The Labour Court, on the basis of Ex.M-1(P-1), calculated that the petitioner had worked for 206 days. It, however, added 34 days to the aforesaid period on finding out that in the period aforesaid, same were either Sundays or other holidays. In the manner aforesaid, it was held that the petitioner had worked for 240 days in a calendar year immediately preceding the order of termination. It is conceded position that these 34 days were holidays being Sundays or other holidays on which, the workman had, concededly, not worked nor had been paid, being a daily-wager. Further Ex.M-1(P-1) was not questioned at any stage nor is in question before us. That the workman was a daily-wager was also not in dispute. On the facts, as stated above, learned single Judge held us under :

"There is no dispute that the services of the 2nd respondent were terminated on 7.4.1989. Thus, it is clear that the working days mentioned in Annexure P-1 include Sundays and other paid holidays also. Therefore, the authorities relied upon by the learned Counsel for the 2nd respondent in *Chagga Lal v. Panchayat Samiti* 1990 LIC 1463), *Sudeep Singh Mohan v. The Presiding Officer, Labour Court, Chandigarh and Anr.*, 1989 (1) SLR 443 and the decision of CWP No. 12743 of 1994 (*Karnail Singh v. The Labour Court, Patiala*) have no application to the facts of the present case. In fact, there is no evidence on behalf of the workman to show that he worked for more than 240 days. It is for the respondent-workman to prove that he worked and was paid salary for more than 240 days so as to enable him to have the advantage of Section 25-F of the Industrial Disputes Act. The 2nd respondent miserably failed to prove this fact."

4. Mr. Vikas Singh, learned Counsel representing the appellant-workman, has not been able to show any provision either in the Act or any other allied statute or even for that matter certified standing order that might have been issued under the Industrial Employment (Standing Orders) Act, 1946 which may even remotely suggest that Sundays and other holidays can be added in computing

the period of 240 days in a calendar year immediately preceding the order of termination for the purpose of Section 25-F of the Act. The sole reliance for the purpose aforesaid has been placed upon a judgment of Hon''ble Supreme Court in Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, .

5. Before we might comment upon the contention of learned Counsel, as noted above, based upon the judgment of Hon''ble Supreme Court in Workmen of American Express International Banking Corporation's case (supra), it would be useful to reproduce Section 25-B of the Act, which deals with continuous service of a workman and in particular Section 2(a)(ii) pertaining to the calculation to be made for a period of one year during the period of 12 calendar months preceding the date with reference to which calculation is to be made. Same reads thus :

"25-B. For the purpose of this Chapter :

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a block-out (lock-out?) or a cessation of work which is not due to any fault on the part of the workman.

(2) where a workman is not in continuous service within the meaning of Clause (1) 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) for a period of six months, if the workman, during a period of six 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) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case."

6. We may also add right here that in common parlance, as it is ordinarily understood, a daily-wager has no pay scale. He draws no increment. He is paid for the day, he works. A daily-wager in comparison to a regular employee employed under the service rules, may work on holidays and Sundays as well and shall definitely be paid if he might have worked on such holidays.

7. Having observed, as mentioned above, time is now ripe to evaluate the

contention of learned Counsel, based upon the judgment of Hon"ble Supreme Court in Workmen of American Express International Banking Corporation's case (supra). Facts of the case aforesaid reveal that the American Express International Banking Corporation terminated the services of the workman on 31.10.1975. It was common ground in the case aforesaid that provisions of Section 25-F of the Act were not complied with. However, according to the management, it was not necessary to comply with the provisions of Section 25-F of the Act as the workman concerned was not in continuous service for not less than one year as prescribed by Section 25-F read with Section 25-B of the Act. This contention of the management was upheld by the Tribunal. Whereas, according to the management, the workman actually worked for 220 days, the workman stated that excluding the breaks in service, he actually worked for 275 days during the period of 12 months immediately preceding 31.10.1975, when his services were terminated. The difference between the two computations was due to the circumstance that the workman had included and counted Sundays and other paid holidays as days on which he actually worked under the employer while the employer had not done so. The question for consideration before Hon"ble Supreme Court was as to whether Sundays and other holidays for which wages are paid under the law, by contract or statute, should be treated as days on which the employee actually worked under the employer for the purposes of Section 25-F read with Section 25-B of the Act. It is significant to mention that the question framed by us takes in its sweep Sundays and other paid holidays, meaning thereby that the concerned workman was paid for Sundays and other days, even though he might not have worked for the said days. Hon"ble Supreme Court while referring to Sections 25-F and 25-B of the Act and Sections 16,17 and 18 of the Delhi Shops and Establishments Act, 1954, which provide for "closed days", "weekly holidays" and "wages for the holidays" and while relying upon its several decisions as also observations made by Lord Wilberforce's opinion in *Prenn v. Simmonds* 1971 (3) All ER 237, held that "expression, which we are required to construe, is "actually worked under the employer"". This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or pen but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. Facts of the case aforesaid reveal that the workman had joined the services of American Express International Banking Corporation on 4.11.1974 as a Typist-Clerk in a temporary capacity and further that during the period he remained in the employment, he was paid for Sundays and other holidays. It is in the context of the facts, as mentioned above, that it was held that expression "actually worked under the employer" must necessarily comprehend all those days during which the workman was in the employment of the employer and for which, he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.

8. Facts of Workmen of American Express International Banking Corporation's case (supra), in our considered view, cannot possibly be applied to the facts of the present case. The workman in (he present case was a daily-wager and was not paid for Sundays or other holidays either under the express or implied contract of service or by compulsion of statute, standing orders etc. There are no obligation on the part of the employer to pay to the workman wages for the period that he had no worked, be it Sundays or otherwise. In fact, what interestingly transpires from Ex.M-1 (P-1), a chart containing the days in various months and years is that the workman had worked only for 206 days. It is quite apparent from a bare look at Ex.M-1(P-1) that the workman had in some months worked even on Sundays. In January, 1989, he worked for 29 days. In this month, there were 4 Sundays, surely, he had worked on 2 Sundays. In February, 1989, which was not a leap year, the workman had worked for 26 days, the month being of 28 days, he must have worked for 2 Sundays as well. It is proved beyond doubt that the Workman had not been paid for Sundays and holidays, when he had not worked. It is also proved that where the workman worked on Sundays and holidays he was paid for those days. The very fact that the workmen was working on some Sundays rather goes to show that the respondent-management had paid him for those working Sundays and holidays. Surely, the workman would never have worked on any Sunday without pay. Therefore, there could never be any justification for adding Sundays to the tally of 206 working days.

9. In view of what has been stated above, answer to the question as posed in the very beginning of the judgment would turn against the appellant-workman and it has to be held that where there is no obligation on the part of the management to pay to the workman either under the express or implied contract of service or by compulsion of statute, standing orders etc., for Sundays and other holidays when a workman has actually not worked. This may actually be more common in cases of daily-wager. Therefore, while computing the period of 240 days for the purpose of Section 25-F of the Act only working days can be counted and not unpaid holidays. That being so, we confirm the judgment of learned single Judge and dismiss this letters patent appeal, leaving, however, the parties to bear their own costs.