
(2008) 01 P&H CK 0122
In the Punjab And Haryana At Chandigarh

Surjit Singh

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25F, 2A

Citation : (2008) 01 P&H CK 0122

Hon'ble Judges : K.C. Puri, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.C. Puri, J.—Under challenge in this Civil Writ Petition filed under Articles 226/227 of the Constitution of India is the award dated 8.5.2005, Annexure P-6, passed by the Labour Court, UT, Chandigarh where the claim of the petitioner was rejected.

2. The averments of the petitioner are that he was appointed as a Car Driver vide order dated 17.1.1996 by respondent No. 2 against vacant post in the pay scale of Rs. 1020-2130 with special pay of Rs. 350/- and other allowances on which post he continued to work till 31.1.1997. His services were terminated by the respondent No. 2 without issuing him any show cause notice. He was also not given any personal hearing and no enquiry was held before termination of his services. He was also neither given any one month's notice nor compensation to which he was entitled to u/s 25F of the Industrial Disputes Act, 1947 (in short the Act). He served a demand notice u/s 2-A of the Act upon respondent No. 2 on 3.4.1997. The respondent No. 2 filed reply stating therein that the petitioner had not completed 240 days of continuous service and that he was not entitled to the relief claimed by him. The Labour Court ultimately passed impugned award dated 8.5.2002 whereby his claim was rejected. He has impugned the award dated 8.5.2002 on various grounds which will be discussed in the later part of the judgment.

3. The claim of the petitioner was contested by respondent No. 2. In the written statement, it has been pleaded that the petitioner was appointed purely on temporary basis for 89 days vide order dated 17.1.1996. He joined duty on 4.3.1996 and remained in service upto 31.5.1996. There were breaks in his service from 4.6.1996 to 31.8.1996 and from 3.9.1996 to 31.10.1996. His services were not required after 31.10.1996. Therefore, there was no need to give him any show cause notice or hearing as per terms and conditions of his appointment letter. There was also no need to hold any inquiry. The provisions of Section 25F of the Act were not applicable in this case as the petitioner had not completed 240 days of service as a driver. Similarly, no retrenchment compensation was required to be paid to the petitioner on the same count. The services of the petitioner were not required after 31.10.1996. The petitioner continued to work voluntarily and without pay after 31.10.1996. It was denied that the petitioner worked upto 3.1.1997 without any breaks. The respondent No. 2 has supported the award of the Labour Court.

4. Mrs. Alka Chatrath has submitted that the petitioner has been non-suited by the Labour Court on the ground that he has not completed 240 days with the respondent No. 2. The finding of the learned Labour Court cannot be accepted. According to respondent No. 2, the petitioner has worked 237 days with the respondent as under:

4.3.1996 to 31.5.1996 89 days. 4.6.1996 to 31.8.1996 89 days. 3.9.1996 to 31.10.1996 59 days. ----- Total 237 days. -----

5. According to the respondent, the petitioner has not worked from 1.6.1996 to 3.6.1996 and 1.9.1996 to 2.9.1996. The petitioner has produced on the file copies of log book. From the perusal of the log book, it is revealed that the petitioner has been on duty with Shri M.S. Bitta, Cabinet Minister, Punjab and was in Delhi with the State Minister. In case these five days i.e. from 1.6.1996 to 3.6.1996 and 1.9.1996 to 2.9.1996 are considered to be duty days, in that case, the petitioner has completed service of 240 days in the last calendar year. So, in these circumstances, the award is liable to be set aside and the petitioner is entitled to reinstatement with full back wages, in view of authorities reported as *The Karnal Central Cooperative Bank Limited, Karnal v. State of Haryana and Ors.* 1996(3) SLR 508 S.D.O (Civil)-cum-Authority, Ambala Improvement Trust, Ambala v. Presiding Officer, Ambala etc. 2001(1) SLR 179 *Mukesh Kumar v. Presiding Officer and Anr.* 2001(2) S.L.R. 516 *Board of School Education, Haryana v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon* 1996(5) SLR 476 *President Zila Parishad and Anr. v. The Presiding Officer and Anr.* 2000(6) SLR 446 and *Bikku Ram v. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak* 1998(1) RSJ 703.

6. It is further submitted that even if the duties of the petitioner be taken as 237 days, in that case also, there is unfair practice on the part of the respondent in terminating his services as the petitioner was about to complete 240 days in the calendar year. So, a prayer has been made to set aside the award and reinstate

the petitioner with full back wages.

7. In reply to the above noted submissions, the learned Counsel for respondent No. 2 has submitted that the petitioner has not completed 240 days in a calendar year and as such the provisions of Section 25F are not attracted. The petitioner was appointed for a fixed period of 89 days and his term has expired on 31.10.1996. The petitioner was not appointed on regular basis. His appointment was merely a back door entry, in view of latest Division Bench authority of our own High Court in Civil Writ Petition No. 267 of 2007, decided on 31.8.2007 titled Divisional Forest Officer (Social), Hisar v. Krishan Kumar and Anr. In the said authority, it has been held that even if workman has completed 240 days, the provisions of Section 25F are not attracted as the petitioner was working on daily wages for a fixed term of 89 days. He was not recruited as per rules and regulations.

8. The learned Counsel for respondent No. 2 has also relied upon the following authorities:

1. Manager (Now Regional Director) R.B.I. Vs. Gopinath Sharma and Another, .
2. Chalti v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and Ors. 2007 (6) S.L.R 829.
3. Director Maharaj Agarsen Medical Research and Education Society, Agroha, District Hisar v. The Presiding Officer, Industrial Tribunal-cum- Labour Court, Hisar and Anr. 2007(6) SLR 775. I have considered the submissions made by both sides and have gone through the record of the case.

9. It is not disputed that the petitioner was initially appointed for 89 days and appointment letter dated 17.1.1996, Annexure P-1 has been placed on the file. The petitioner was assigned the duty of driver for 89 days with the observation that he shall have no right to be adjusted permanently with the department and his services could be terminated even before the completion of the term of his appointment, without any notice.

10. The learned Counsel for the petitioner has submitted that respondent No. 2 has not taken 1.6.1996 to 3.6.1996 and 1.9.1996 to 2.9.1996 as duty period in order to curtail his period for less than 240 days. The learned Labour Court has given a definite finding that the petitioner has worked for 237 days i.e. less than 240 days. The petitioner has not pleaded before the Labour Court that respondent No. 2 has used unfair practice and that plea cannot be allowed to be taken for the first time in the writ jurisdiction. The copies of log book also do not help the petitioner to the effect that he remained on duty from 1.6.1996 to 3.6.1996 and 1.9.1996 to 2.9.1996 as the petitioner while appearing as his own witness has not stated that the log book contained his signatures. Therefore, the petitioner cannot derive any benefit of the above-said arguments. Otherwise also, a Division Bench of our own High Court in Krishan Kaman's case (supra) has held that even if a workman has completed 240 days and has not been

recruited as per rules and regulations, in that case provisions of Section 25F are not attracted. In authorities Gopinath Sharma, Chalti and M/s. Director Maharaj Agarsen Medical Research and Education Society cases, the Hon'ble Apex Court has held that Section 25F is not attracted in case the appointment is not made according to rules and regulations in Government job while dealing with Section (bb) and (oo) of the Act. So far as authority in the Karnal Central Cooperative Bank Limited, Karnal (supra) is concerned, that authority is not applicable to the facts of the case as the factum of unfair labour practice has neither been pleaded nor proved by the petitioner.

11. The authorities in S.D.O (Civil), Mukesh Kumar, Board of School Education, Haryana, President Zila Parishad and Bikku Ram's cases (supra) relied upon the petitioner do not advance the case of the petitioner, in view of Supreme Court authorities, referred to above.

12. In view of the above discussion, the petition is without any merit and the same stands dismissed.