
(2006) 08 P&H CK 0116
In the Punjab And Haryana At Chandigarh

The Block and Development Officer and Another	APPELLANT
Vs	
Nasib Singh and Another	RESPONDENT

Date of Decision : 22-08-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2007) 1 SLJ 401

Hon'ble Judges : J.S. Narang, J;Arvind Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arvind Kumar, J.—We have heard learned Deputy Advocate General at length and have also perused the paper book as also the award dated February 20,2006, which has been made the subject-matter of challenge in the instant petition.

2. It is not in dispute the respondent No. 1-workman was appointed as a Peon on 27.1.1995 for 89 days. Thereafter, his services were extended from time to time by giving breaks. He worked upto 24.10.1997, when his services were terminated. It is also not in dispute that prior thereto the workman had completed 240 days of service with the petitioner-department. Learned Deputy Advocate General has argued that the appointment of workman was contractual for a specific period and on transfer of regular incumbent, the services of the workman were terminated. Thus, the termination of services of workman does not amount to retrenchment. There is no question of applicability of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called as the Act). The contention is meritless. When a workman is employed repeatedly with breaks, as referred to above, the inference of indulging in the unfair labour practice by the management as illustratively defined in Vth Schedule (Clause 5(b) read with Clause 10) of the Act, can be drawn unless the management leads evidence and proved that the termination of the services are within exceptional Clause (bb) of Section 2(oo) of the Act. The burden lies on the employer and not upon the employee-workman to prove the same. However, in the instant case, the

petitioner-management has failed to discharge the said burden. Rather a bare perusal of the award shows that the Labour Court on the strength of orders passed by the then Deputy Commissioner, Kurukshetra and the then BDPO including Ex. M1 dated 27.1.1995, Ex. M4 dated 14.11.1995 and Ex. M5 dated 27.2.1996, giving re-appointment to the workman, concludes that the work against which the workman was engaged was neither of a fixed nature nor of fixed duration. It also concludes that the work of the post on which the workman had been working had still existed. In the case of *The Faridabad Central Co-op. Bank Ltd. v. The Presiding Officer, Labour Court (II), Faridabad* and Anr. 1999(3) RSJ 378, when it was established that the work on which the workman was appointed was not of temporary nature and his appointment was being extended from time to time and even when the workman was relieved of his duties, the work was available and the post was in existence, in such a situation, it was held that provisions of Section 25-F of the Act cannot be excluded by merely saying that the appointment is made for "89 days on daily wages". Further in the case of *The Haryana State Co-op. Land Development Bank Ltd., Chandigarh v. The Presiding Officer, Labour Court Rohtak* and Anr. 2001(3) RSJ 247, the workman, by virtue of various orders of appointment on 89 days basis had completed 240 days of service in the last calendar year immediately preceding the date of his termination. It has been observed that the termination of such employee by such order amounts to unfair labour practice.

3. The contention of learned Deputy Advocate General that the services of the workman were terminated on account of transfer of regular incumbents, is also of no avail. Retrenchment has been defined in Section 2(oo) of the Act, which reads as under:

2(oo) "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) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

[(bb) termination of the service of the workman as a result of the non- renewal of the contract or 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; or]

(c) termination of the service of a workman on the ground of continued ill-health;]

A bare perusal of the said definition shows that the termination of a workman "for any reason whatsoever" would constitute retrenchment except in cases excepted in the abovesaid section itself. The petitioner-department has failed to

prove if the case of the petitioner-workmen falls in any of the excepted categories. The termination of the services due to transfer of regular incumbents does not fall in any of the exceptions mentioned above. Therefore, this case falls within the term termination of the services "for any reason whatsoever". It would, thus, be retrenchment within the meaning of Section 2(oo) of the Act, referred to above. As said above, the workman had completed 240 days in 12 calendar months preceding the date of his termination and is thus, protected by provisions of Section 25-F of the Act. Admittedly, there is no compliance of the provisions of Section 25F of the Act *ibid*. The petitioner-department cannot rub off an employee/workman by bye-passing the provisions of Act. The Labour Court, after having gone through all the aspects, has rightly concluded that the termination of services of the workman is illegal.

4. Moreover, the issue whether the petitioner-department falls within the definition of "industry" or not, was not pressed by the petitioner-department before the Labour Court. As such, it is not open for them to raise this issue again before this Court. Moreover, nothing has been shown to us in this regard which would warrant any interference.

Keeping in view the facts and circumstances of the case, we are not inclined to interfere with the just and reasoned award of the Labour Court. The writ petition is accordingly dismissed in *limine*.