
(2015) 09 P&H CK 0165

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal Nos. 2025, 1645, 1947 and 1894 of 2014

The Haryana Dairy Development Cooperative Federation
Limited and Others

APPELLANT

Vs

Vipan Kumar Garg and Others

RESPONDENT

Date of Decision : 17-09-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 18, 25FF, 25H

Citation : (2015) 09 P&H CK 0165

Hon'ble Judges : Satish Kumar Mittal, J; Mahavir Singh Chauhan, J

Bench : Division Bench

Advocate : Ajay Chauhan, for the Appellant

Final Decision : Dismissed

Judgement

Mahavir Singh Chauhan, J—These intra court appeals (LPA Nos. 2025, 1645, 1947 and 1894 of 2014) under Clause X of the Letters Patent brought by the appellants to lay a challenge to order dated August 13, 2014, have arisen from a common order and involve identical/similar questions of facts and law and, as such are proposed to be disposed of by this common judgment being recorded in LPA No. 2025 of 2014, titled "The Haryana Dairy Development Cooperative Federation Limited versus Vipan Kumar Garg and others".

2. Before endeavoring to analyse acceptability, or otherwise, of the grounds of attack adverted to by the appellants against the impugned order, we deem it appropriate to acquaint ourselves with the chronology of events culminating into the instant appeals.

3. Consequent upon his name having been forwarded by the Employment Exchange, the Haryana Dairy Development Cooperative Federation Limited (the appellant herein-for short, "the management"), appointed Pawan Kumar (petitioner in Civil Writ Petition No. 12830 of 1991) (since deceased and represented by his legal representatives but State has chosen not to implead the

original petitioner through his Lrs but replaced petitioner with his Lrs in the memo of parties) (here-in-after referred to as "the workman") as Junior Auditor/Accounts Assistant, on ad hoc basis, and he joined his duties on February 03, 1981. Later on, vide order dated June 03, 1981 (Annexure P1), the workman was given regular appointment and was put on probation for a period of two years which he successfully completed as declared vide order dated June 24, 1983 (Annexure P2). However, in the meantime, vide order dated September 27, 1982 (Annexure P3) the workman was transferred from the head office of the management at Chandigarh to Desert Development Programme (DDP), Bhiwani. Vide order dated January 11, 1984 (Annexure R1) the workman was transferred to District Cooperative Milk Union, Bhiwani and then, vide order dated March 05, 1984 (Annexure P4), it was mandated that "no Milk Union shall make any retrenchment of staff absorbed in the Union at Union level but retrenchment shall be at State level", and that for the purposes of promotion etc. a joint seniority list would be maintained at the head office of the management. Such a joint seniority list (Annexure P5) was prepared and name of the workman was included therein at serial number 18. After transferring him to Semen Bank-cum-Training Centre, Rohtak and Milk Plant, Rohtak, the workman was again transferred back to the head office of the management at Chandigarh with effect from January 08, 1987 but again to be transferred to Milk Plant, Rohtak vide order dated March 28, 1990 (Annexure P6).

4. Vide order dated August 01, 1991 (Annexure P7) Milk Union Bhiwani was brought under liquidation and thereafter, vide order dated August 08, 1991 (Annexure P8), the workman was sent to that Union and ultimately his services were terminated vide order dated August 14, 1991 (Annexure P9) while his juniors (respondent Nos. 07 to 15) were retained in service.

5. The petitioners in CWP Nos. 12835 and 12909 of 1991 (respondents in LPA Nos. 1645, 1947 & 1894 of 2014) had similar grievances about the termination orders issued during their employment at the Milk Union, Bhiwani, However, their cases differ from the petitioner in CWP No. 12830 of 1991. Unlike the petitioner in CWP No. 12830 of 1991, who served in various other unions and even at the time of termination, he was serving at Rohtak, and was purportedly repatriated to Milk Union, Bhiwani only to be served with orders of termination and his name also figured in the joint seniority list, petitioners in CWP Nos. 12835 and 12909 of 1991 worked, after their absorption worked in Milk Union, Bhiwani only and their names were not there in the joint seniority list maintained at the head office of the management.

6. Workmen's claim was resisted by the management stating that vide order dated March 05, 1984, they were transferred to Milk Union, Bhiwani under Section 25FF of the Industrial Disputes Act, 1947 (for short, "the Act") where they had willingly joined and after such transfer they became employee of Milk Union, Bhiwani for all intents and purposes. The joint seniority list was prepared only for the purpose of promotions etc. under Rule 18.1 of the Service Byelaws

and the Pawan Kumar (petitioner in CWP No. 12830 of 1991) was taken on notional deputation to the head office of the management in the year 1987 and was repatriated to Milk Union, Bhiwani in the year 1991.

7. After hearing the parties and examination of the records, learned Single Judge, vide order dated August 13, 2014, while dismissing CWP Nos. 12835 and 12909 of 1991, has allowed CWP No. 12830 of 1991 by observing as under:

"The petitioner in CWP No. 12830 of 1991, however, has a different case to contend. Although he was employed at the Federation and later transferred to the Milk Union at Bhiwani, it is seen that since he was an Accountant and his services were required at various Milk Unions under the control of the Federation, he had been sent back to the Federation and his services were utilized at several places in various Milk Unions. He was, at all times, treated as an employee under the Federation and it would seen, therefore, that he was transferred by the Federation as Junior Auditor to Bhiwani first on 27.09.1982, but later in a seniority list which was issued on 31.12.1988, he was kept in a joint seniority list maintained at the Federation level and placed in serial No. 18 (Annexure P5) and transferred by the Federation from the Headquarter at Chandigarh to Rohtak on 28.03.1990. The petitioner is aggrieved that he was stated to be on deputation from Bhiwani district and ordered to be transferred from Rohtak to Bhiwani only to be served with an order of termination at the instance of a Liquidator for the Milk Union at Bhiwani. The description of the petitioner as person on deputation was clearly a misnomer, for, it is incompatible with the order of transfer which was issued earlier on 28.03.1990 where he was not stated to be under deputation and also incompatible with the seniority list maintained at the Federation level and enlisted at Serial No. 17 which could not have been a case if he was retained at Bhiwani but merely taken on deputation at the level at Federation. I would, therefore, apply a different approach only to the case of the petitioner in CWP No. 12830 of 1991 and hold that the order of termination made was invalid in the eye of law. The petitioner is reported to have died and if he would have been alive, he would have attained the age of superannuation. For the wrongful termination that is effected, the appropriate remedy would be that he should have been deemed to have been in service and all the monetary benefits will have to be worked till the date of his age of superannuation or death whichever was earlier and 25% of the same shall be ordered to be paid to the legal representatives as the financial compensation for the wrongful termination. All the monetary benefits accruing subsequent to the death or superannuation whichever was earlier would be counted in full and shall be paid to the representatives without any abatement of claim"

8. We have heard learned counsel for the parties and have also examined the documents available on record.

9. On behalf of the management it has been strenuously contended that the learned Single Judge has missed the fact that consequent upon transfer of the workmen to various Milk Unions, which are independent autonomous entities,

under Section 25FF of the Act, the workmen ceased to be employees of the management and became employees of the Milk Unions for all intents and purposes and winding up of Milk Unions at Bhiwani and Mohindergarh was ordered after hearing all the concerned parties. It has also been argued that most of the workmen had directly joined Milk Union, Bhiwani whereas others signed fresh contracts with the Milk Unions and voluntarily joined their duties with the Milk Unions. Further, according to learned counsel for the management the joint seniority list was maintained by the management only for the purposes of promotion etc. and no benefit could be allowed on this account to Pawan Kumar (petitioner in CWP No. 12830 of 1991 in LPA No. 2025 of 2014). It has also been contended on behalf of the management that no reliance could be placed on order dated March 05, 1984 (Annexure P4) because this order stood withdrawn vide resolution dated September 30, 1988 as evidenced by order dated December 03, 1988 (Annexure R5) and even if this document is taken to be operative, its terms, including absorption of the workmen in Milk Unions, have to be treated as binding on the parties in terms of Section 18 of the Act.

10. Per Contra, on behalf of the workmen it has been argued with no less intensity that they were employees of the management and their retrenchment could be resorted to only at the State level or say at the level of the management by adhering to the principle of "last come first go" and not at the level of Milk Unions.

11. No other or further point has been urged on either side.

12. As regards Pawan Kumar (petitioner in CWP No. 12830 of 1991) the record reveals that he was employed at the Federation and was later on transferred not only to the Milk Union, Bhiwani, but to various other Milk Unions and Schemes, viz. Development Programme (DDP), Bhiwani, Semen Bank-cum-Training Centre, Rohtak and Milk Plant, Rohtak. He was again transferred back to the head office of the management at Chandigarh with effect from January 08, 1987 again to be transferred to Milk Plant, Rohtak vide order dated March 28, 1990. His name was also included in the joint seniority list of the staff of the management, maintained at Federation level, dated 31.12.1988 (Annexure P5) at serial number 18. He was, thus, treated as an employee under the Federation. Description of this workman as a person on deputation was clearly a misnomer, for, it is incompatible with the order of transfer which was issued earlier on 28.03.1990 where he was not stated to be under deputation and also incompatible with the seniority list maintained at the Federation level and enlisted at Serial number 18 which could not have been the case if he was retained at Bhiwani but merely taken on deputation at the level of Federation.

13. Order dated March 05, 1984 (Annexure P4), as regards stated absorption of the workmen in various Milk Unions, cannot be taken to be an agreement having binding force in terms of Section 18 of the Act firstly because it is not an agreement strictu sensu as only refers to certain clarifications issued pursuant to suggestions of the workers union; secondly because it does not contemplate that

representations were made by the workmen and were formally accepted by the management; and lastly because it is not shown to have been sent to the Government, the Labour Commissioner and the Conciliation Officer in terms of Rule 58(4) of the Industrial Disputes (Punjab) Rules of 1958 which contemplates that copy of the settlement arrived at between the employer and the workmen otherwise than in the course of conciliation proceedings to the State Government, the Labour Commissioner, and the Conciliation Officer concerned. Rule 58(4) reads thus:-

"Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceedings before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof, to the State Government, the Labour Commissioner, Punjab and to the Conciliation Officer concerned."

14. Case of other workmen, as rightly observed by the learned Single Judge, is distinguishable from that of Pawan Kumar in so far as not all of them were transferred from the Federation to the Milk Unions and had entered into direct contracts with the Milk Unions at the district level, while others entered into fresh contracts with the district level Milk Unions after their transfer under Section 25FF of the Act. They were never taken back in the employment of the Federation. Their names were also not included in the joint seniority list and they did not raise any objection regarding exclusion of their names from the seniority list maintained at the Federation level. Therefore, they cannot claim that they were treated as employees of the Federation and that their termination could be effected only at the Federation level and can have no grievance that they could not have been terminated and that their seniority must be considered at the Federation level and the principle of Section 25H of the Act for retrenchment on the basis of seniority should have been applied.

15. In view of the above, we do not find any illegality in the order of the learned Single Judge and, as a consequence, the appeals fail and are hereby dismissed.

16. In the peculiar facts and circumstances of the case parties are left to bear their own costs.