
(2013) 05 P&H CK 0134
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 6856 of 2002

Workman Sohan Lal

APPELLANT

Vs

Addl. District and Sessions Judge and Others

RESPONDENT

Date of Decision : 22-05-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo), 2(s), 25F, 25G, 25H

Citation : (2013) 139 FLR 709 : (2013) 138 FLR 763 : (2013) 4 LLJ 112 :
(2013) 3 LLN 396 : (2013) LLR 697 : (2013) LLR 1056 : (2013) 171 PLR 237

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Priya Khurana, for the Appellant; Tanisha Peshawaria, DAG Haryana, for the Respondent

Judgement

Rajiv Narain Raina, J.—When this labour matter came up for hearing on 2.12.2003, the Division Bench of this Court adjourned the case sine die to be listed after the decision of the Full Bench pending on the question whether a part time worker is covered under the definition of workman under the Industrial Disputes Act, 1947 (for short "the Act"). The issue was first raised in Mahesh Transport Company Vs. The Transport and Dock Workers Union, but was left undecided and has finally been resolved by the Supreme Court in Div. Manager, New India Assurance Co. Ltd. Vs. A. Sankaralingam, and reiterated in Devinder Singh Vs. Municipal Council, Sanaur, that part-time workers fall in the definition of workman u/s 2(s) of the Act.

2. The brief facts are that the petitioner Sohan Lal was appointed as a Sweeper on 1.5.1994 and worked up to 1.8.1997. His services were engaged on part time basis on daily wages at D.C. rates. In defence of the industrial dispute referred for adjudication, the management explained in its written statement that the part time sweeper was engaged subject to availability of work from time to time in the Irrigation Department and he was disengaged when the work with reference to his engagement was transferred to Bhakra Water Services. He used

to work for four hours a day under an oral arrangement. The Labour Court has returned a finding on evidence that the workman's disengagement was caused due to the maintenance work itself being transferred from building construction unit at Canal Colony, Kaithal to Bhakra Water Services Circle, Kaithal and that is how his service was put to an end. The Labour Court has followed precedents namely State of U.P. and Others Vs. Ajay Kumar, (SC) State of Himachal Pradesh Vs. Suresh Kumar Verma and another, Executive Engineer (State of Karnataka) Vs. K. Somasetty and others, and Anil Kumar v. State of Haryana, 2000 LIC 3222 to reach the conclusion that such disengagement does not amount to retrenchment u/s 2(oo) and therefore the benefit of Sections 25-F, 25-G and 25-H is not available to the workman nor protects him. Heard the learned counsel for the parties.

3. There is no doubt that the Labour Court has erred in not treating the case as one of retrenchment. A part time worker is also entitled to the protection of Section 25-F of the Act etc. and such an industrial right was available to him and a duty was cast on the employer to have complied with the provisions of the aforesaid section of the Act.

4. The Labour Court has denied relief completely which is erroneous exercise of jurisdiction by failure to exercise jurisdiction vested in it and to do so judiciously. The reference was made in 1998. The length of service on part-time basis is from 1.5.1994 to 1.8.1997 i.e. for three years and three months. The employment was in a Government Department. The petitioner was not appointed to a cadre post of Sweeper and the arrangement was casual in nature. At this distance of time, I do not find it appropriate to return him to a part-time job of four hours and that too to a different establishment from the one he was employed in. I am inclined to think that the ends of justice would be met if compensation of Rs. 1 lac in lieu of reinstatement would be reasonable compensation in a case of violation of Section 25-F of the Act.

5. Consequently, the writ petition is partly allowed and the impugned award dated 21.9.2001 is set aside and compensation as above awarded is granted by moulding the relief. The respondent-State would be at liberty to fix responsibility of erring officers/officials who were responsible for not complying with the provisions of Section 25-F of the Act at the time of retrenchment on 1.8.1997. Let an amount of Rs. 1 lac be paid to the petitioner by the respondent within two months from the date of receipt of a certified copy of this order failing which it will carry interest at 12% per annum till realization.