

IN THE COURT OF PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CWP No.7553 of 1995 (O&M)

Date of Decision: 19.02.2015

Punjab Tourism Development Corporation

...Petitioner

Vs.

Bakshish Singh and another

..Respondents.

Present:- Mr. Anil Kshetarpal, Sr.Advocate with
 Mr. Saurabh Garg, Advocate for the petitioner.

MAHESH GROVER, J. (ORAL)

CM No.2269 of 2015

CM is allowed.

CWP No.7553 of 1995

There is no representation on behalf of the respondents despite several opportunities given in this regard. The petitioner impugns the Award of the Labour Court dated 22.12.1994 whereby the Reference claimed by the respondent workman to the effect of his termination being justified and in order or not was accepted.

The workman was employed as a Porter with the petitioner for around four years i.e. from 1979 to 1984.

Pleading the violation of Section 25(F) of the Industrial Disputes Act, the workman through the proceedings in the Labour Court

claimed reinstatement with continuity of service which claim was resisted by the petitioner to contend that the Corporation had gone into losses and several employees were retrenched on account thereof. The applicability of the provisions of Section 25N of the Act was questioned and likewise it was pleaded that none of the provisions of Industrial Disputes Act were violated.

The following issues were framed by the Tribunal.

- (i) Is the reference not competent in view of preliminary objection Nos.1 and 3?
- (ii) Was the workman retrenched and if so, illegally? If not, to what effect?
- (iii) Whether termination of the services of the workman is justified and in order?

The Tribunal concluded in favour of the workman primarily on three counts.

- (i) The provisions of Section 25N of the Act were violated.
- (ii) The plea of the Corporation of its running into losses forcing the retrenchment of employees was incorrect.
- (iii) The order of termination was passed by a lesser authority than the one competent to appoint the workman.

Section 25(N) is extracted herein below:

“Conditions precedent to retrenchment of workmen.

- (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,
 - (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages

- for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government on the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workman concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- (4) Where an application for permission has been made under sub section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.
- (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6)The appropriate government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub section (3) or refer the matter or, as the case may be, cause it to be referred to a Tribunal for adjudication;

Provided that where a reference has been made to a Tribunal under this sub section, it shall pass an award within a period of thirty days from the date of such reference.

(7)Where no application for permission under sub section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8)Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary to do so, by order, direct that the provisions of sub section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9)Where permission for retrenchment has been granted under sub section (3) or where permission for retrenchment is deemed to be granted under sub section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. “

In the absence of the respondents, the Court with the assistance of the learned counsel for the petitioner, has perused the award as also the relevant material placed on record.

Insofar as the plea of applicability of Section 25N is concerned the issue is no longer res integra. A Division Bench of this Court in ***CWP No.17604 of 2003 decided on 8.1.2004 titled as Punjab Tourism Development Corporation Limited Vs. State of Punjab and others*** observed as under:

“Petitioner, Punjab Tourism Development Corporation Limited is a company registered under the Companies Act and is wholly owned and financed by the State of Punjab. Petitioner is in the business of running restaurants, bars, liquor vends, bonded warehouses, foreign liquor, cafeterias, Milk Bars, Bakeries, Ships Catering Establishments, Petrol Pumps, Repair Workshops, Emporia, Tourist Bungalows, Hotels, Huts, Motels, Guest House, Entertainment Projects and other places of Tourist, archaeological and historic interest in Punjab and/or such like business as have been mentioned in the memorandum of Association. The Punjab Government took a decision to disinvest various business being run by the petitioner. Accordingly, the petitioner filed an application under section 25 N of the Industrial Disputes Act, 1947 (for short, the ‘Act’) seeking permission of the Labour Commissioner to retrench 73 workmen as per list (Annexure A-1). All these employees are members of the Punjab Tourism Karamchari Dal represented by respondent No.3. This application has been rejected by the impugned order dated August 22, 2003 on the ground that the petitioner does not fall within the definition of Industrial Establishment as given under Section 25-L of the Act and accordingly, the provisions of Chapter V-B of the Act inapplicable. It was held that since the petitioner was not involved in any manufacturing activities, it did not fall within the definition of Factory’ under section 2(m) of the Factories Act, 1948 read with clause (a) of Section 25-L of the Act.

Mr. Nehra, ld. counsel for the petitioner states that one of the

business of the petitioner is running of restaurants where food is cooked and served to the customers. According to him, the cooking of food tantamounts to manufacturing. This contention of the Supreme Court in Indian Hotels Co. Ltd. and others Vs. Income Tax Officer and others (2000) 245 ITR 558 wherein it has been categorically held that the foodstuff prepared by cooking or by any other process from raw materials such as cereals, pulses, vegetable, meat or the like cannot be held that such food staff is manufactured or produced. In view of the law laid down by the Apex Court, we are of the view that the Petitioner cannot be said to be involved in manufacturing activities so as to be considered as a factory within the definition of term 'factory' under the Factory Act.

No other point has been raised.

Thus we find no merit in this writ petition and it is accordingly dismissed. This shall not, however, debar the petitioner from taking any other action as permissible under the law.

In view of the facts and circumstances of the case, there shall be no order as to cost.”

The Division Bench observed that since the establishment was not covered under the provisions of Chapter VB of the Act, the provisions contained in Section 25N are clearly not attracted. The ratio of this judgment would persuade me to express a similar view.

Insofar as the plea of workman that termination orders were passed by the Authority lesser than the one empowered to appoint him is concerned (Annexure P-2) on record would belie it. The order has been passed by the Managing Director who was also the appointing Authority of the petitioner. This material has not been controverted by the workman and thus would have to be accepted.

As far as last reasoning adopted by the Labour Court regarding

the yearly increase of wages having shown in balance sheets to belie the contention of loss is concerned same would also be fallacious argument considering the presumption of correctness to be accorded to the statement of profits and loss prepared in accordance with law and submitted to the competent authorities. The Tribunal was wrong in substituting its own opinion by discarding such material all together.

For the aforesaid reasons, I accept the petition and hold that the award passed by the Labour Court is unsustainable and is, thus liable to be set aside.

19.02.2015
Meenu

(Mahesh Grover)
Judge