

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Civil Writ Petition No.23640 of 2012

Date of decision: 19.11.2015

State of Punjab and others

... Petitioners

Versus

Satish Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Vaibhav Sharma, DAG, Punjab,
for the petitioners.

Mr.Puneet Kumar Bansal, Advocate,
for respondent No.1.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J.

1. The State has approached this court under Articles 226 and 227 of the Constitution of India challenging the impugned award dated June 15, 2012 passed by the learned Presiding Officer, Labour Court, Bathinda.

2. In order to activate the provisions of Section 25-H of the Industrial Disputes Act, 1947 [in short, “the Act”], the character of employment must be similar to the one from where the workman was disengaged. Assuming that the entry to service by the

respondent-workman on the cadre post of Pump Operator was illegal through a back door engagement on daily wages, then in case fresh Pump Operators were inducted into service, after his departure, by following a proper mode of appointment by calling names of eligible candidates by requisition sent to the District Employment Exchange and consequential selection made and 11 selected persons were appointed two years after the disengagement of the respondent-workman then rights may not flow automatically and this position is factually correct on the evidence on record of the Tribunal. Respondent No.1 served on temporary basis on muster rolls from September 1, 1994 to May 29, 1996 intermittently.

3. In a span of two years, he worked for only 159 days, the break-up of which days is as follows : -

1.9.1994 to 29.9.1994

1.12.1994 to 29.12.1994

17.5.1995 to 30.6.1995

1.12.1995 to 29.12.1995

1.4.1996 to 29.4.1996

1.5.1996 to 29.5.1996

4. The 11 Pump Operators were appointed on April 22, 1998 to manage operation of increased number of water supply schemes against vacancies including as a result of retirements from service etc. Unlike in the case of respondent No.1, the petitioner-State departed from the earlier pernicious pick and choose policy and resorted to appointments by calling names from

the employment exchange when it appointed the 11 persons as Pump Operators. Though, the appointments through employment exchange may not fully satisfy the test of Articles 14 and 16 of the Constitution of India but they are far sounder in quality than rank back door entries to service on public posts as distinguished from employment of daily wage labourers who do not hold cadre posts and stand beyond rule territory governed by control and supervision on a daily basis while carrying out the assigned manual work.

5. This position had been explained in the witness box by the management witness Balbir Singh, Sub Divisional Engineer whose deposition is at Annexure P-3. He is on record to testify that the Department had engaged 11 daily wage workmen while respondent No.1 had been engaged as a daily wager without any public process of recruitment to public service. The requisition was exhibited on record as W14. It was the admitted position that when the request was sent for making appointments of new persons as pump operators, there was nothing on record to suggest whether respondent No.1 had been called or not. It was the worker's case that this was flaw which entitled him to the protection of section 25-H of the Act.

6. The Labour Court has gone by the well recognized principle of industrial law that for application of Section 25-H of the Act, the necessity of completion of 240 days during the preceding 12 year calendar months from the date of termination is not necessary ingredient and, therefore, the respondent-workman

deserves re-employment on preferential basis. For this legal position, the Labour Court relied on the decision of the Supreme Court in **Central Bank of India v. S. Satyam and others**; (1996) 5 SCC 419 wherein the Supreme Court observed that Section 25-H casts a duty upon the employer to give an opportunity to retrenched workman to offer themselves for re-employment and Section 25-F of the Act is not confined to that category of retrenched workman who are covered by Section 25-F of the Act and a restricted meaning should not be given to the term “retrenchment” as defined in Section 2 (oo) of the Act. The Labour Court has held that no intimation of vacancy to the claimant by the management which is within the sweep and scope of the mandatory provisions contained in Section 25-H of the Act. Right to re-employment was an accrued right and when fresh hands were appointed as Pump Operators, the workman should have been offered appointment. The Labour Court has granted the relief of reinstatement with effect from April 22, 1998 with full back wages from the date of issuance of demand notice under Section 2-A of the Act i.e. May 20, 2003 when the 11 pump operators were inducted into service by ignoring the rightful claim of the respondent workman. The award was made on June 15, 2012 which is impugned by the petitioning State as erroneous application of the law.

7. There is another important aspect of the matter which is that when the services of respondent No.1 were terminated, he raised an industrial dispute and claimed reinstatement. The

appropriate Government referred the dispute to the Labour Court vide reference No.209 of 1997. The reference was declined on May 15, 2001 when the reference was rejected on the ground that the claimant respondent 1 had not developed industrial rights as he had not put in 240 days of service which was a pre-requisite of Section 25-F of the Act read with its Section 25-B. Having lost the case, the workman turned around and raised a fresh dispute claiming rights for the first time under Section 25-H of the Act which has been allowed by the Labour Court as noticed above.

8. Mr.Vaibhav Sharma appearing for the State contends that the Irrigation Department of the State is not an industry since its functions are essentially governmental functions and these functions neither partake of the nature of trade or business nor are even remotely analogous thereto and as such the department does not come within the ambit of 'industry' as defined in Section 2(j) of the Act. For this proposition, he cites Full Bench decision of this Court in **Om Parkash v. The Management of M/s Executive Engineer, SYL Division, Kurukshetra and another**; 1984 (2) ILR (P & H) 215. The Full Bench decision was rendered after noticing the decision of the Supreme Court in **Bangalore Water Supply and Sewerage Board v. A. Rajappa and others**; AIR 1978 SC 548. In view of this ruling, the contention is that the reference is bad and deserves to be rejected. The view expressed by the Full Bench (supra) that the Irrigation Department is not an industry has not been accepted by the Supreme Court as correct in **Des Raj**

and others v. State of Punjab and others; (1980) 2 SCC 537 : AIR 1988 SC 1182 where the Full Bench decision stands directly overruled by the Supreme Court. Besides, in **State of Maharashtra and another v. Sarva Shramik Sangh, Sangli and others;** (2013) 16 SCC 16 the question whether the Irrigation department of a State Government [Maharashtra] cropped up again and the Supreme Court relied on *Rajappa* case to hold that it qualifies as Industry. The Supreme Court observed in *Sangli* that even though the *Rajappa* case is pending re-consideration before the larger Bench of the Supreme Court in view of the orders passed by the constitution bench in **State of U.P. v. Jai Bir Singh;** (2005) 5 SCC 1 but that does not mean that the proposition laid down in *Rajappa* case would not hold good. The law in *Rajappa* case would have to be followed until it is over ruled the Supreme Court has ruled. The Irrigation Department of the State of Punjab is an industry within the meaning of Section 2(j) of the Act as the position stands at present. The amended section 2(j) of the Act has not yet been brought into force even after lapse of over three decades [Section 2(C) of the amended Act, 1942]. The contention of Mr. Sharma on non-maintainability of the reference is thus noticed and rejected for the reason aforesaid. But that is not the end of the matter which would be examined on merits after noticing the arguments of the respondent to support the award.

9. To turn to the arguments raised by Mr. Puneet Kumar Bansal appearing for respondent No.1 and noticing the case law cited by him in support of his case, the foremost of which is the

Satyam's ruling [supra] it is held that the proposition in *Satyam* case was entirely different and thus it is distinguishable on facts. The debate in *Satyam* was whether the meaning given in the definition of retrenchment contained in Section 2(oo) is to be read subject to the context, and the context in Section 25-H indicates that the word, "retrenched" in Section 25-H has similar meaning as it has in Section 25-F and 25-G while simultaneously reading Section 25-F along with Section 25-B of the Act since they form a part of the same scheme in Chapter VA of the Act. The times 'workman' who has been in continuous service for not less than one year'. Thus, Section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words workman. Who has been in continuous service for not less than one year. It is clear that Section 25-F applies to the retread a workman who has been in continuous service for not less: one year and not to any workman who has bean in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less the one year. Chapter V-A deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of 'last come first so' which is not confined only to workmen who have been in continuous service for not less than

one year, covered by Section 25-F.

The next provision is Section 25-H which is couched in wide language and is capable of application to all retrenched workmen not mere; covered by Section 25-F. It does not require the ordinary meaning of the word 'retrenchment' used therein. The Provision for re-employment of retrenched workmen merely gives preference to a retrenched workman in the matter of re-employment over other persons. It is enacted for the benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman.

Chapter V-A providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25-F applies but for all cases of retrenchment and, therefore, there is no reason to restrict application of Section 25-H therein only to one category of retrenched workmen. We are, therefore, unable to accept the contention of Shri Pai that a restricted meaning should be given to the word 'retrenchment' in Section 25-H. This contention is, therefore, rejected."

10. While the question was answered by the Supreme Court, the relief was denied in the following manner : -

"The other submission of Shri Pai, however, merits acceptance. All the retrenched workmen involved in the present case were employed for short periods. Between 1974 to 1976. It was only in 1982 that a writ petition was filed by them to claim this benefits. The other persons employed in the industry during the intervening period of

several years have not been impleaded. Third party interests have arisen during the interregnum. These third parties are also workmen employed in the industry during the intervening period of several years. Grant of relief to the writ petitioners (respondents herein) may result in displacement of those other workmen who have not been impleaded in these proceedings, if the respondents have any claim for re-employment. The laches leading to the long delay after which the writ petition was filed in 1982 is sufficient to disentitle them to the grant of any relief in the writ petition. Moreover there is not even a suggestion made or any material produced to show that on the construction we have made of Section 25-H, the respondents would be entitled to get any relief in the highly belated writ petition after the lapse of several years by way of preference over any person employed during the intervening period. In our opinion, this alone was sufficient for the High Court to decline any relief to them. It was urged by learned-counsel for the respondents that only a limited relief has been granted to the respondents which need not be disturbed. In our opinion, the lapse of a long Period of several years prior to the filing of the writ petition is sufficient to decline any relief to the respondents.

We allow the civil appeal for the reason given by us and set aside the High Court judgments resulting in dismissal of the writ petition filed in the High Court by the respondents.”

11. In *Satyam* case, the claimant workers had put in less than 240 days of service and, therefore, did not fall in the category of retrenched workman covered by Section 25-F of the ID Act as

they had worked for lesser period than the law required for protective cover. The second question in issue related to relief and whether it was grantable for service for short periods ranging from 1974 to 1976 for which claim the petition was filed belatedly in 1982. The Supreme Court denied relief as it found the claim suffering from laches as well likelihood of causing prejudice to the other workmen employed during the intervening period who were not impleaded as parties. Rules 77 and 78 of the Industrial Disputes (Central) Rules, 1957 were pressed in support of the submission on behalf of the management and those were found to hold good stead.

12. The question of law answered was this, holding that the expression “retrenched workman” in Section 25-F relating to re-employment of retrenched workman is not confined only to the category covered by Section 25-F but has to be extended to all retrenched workman including those not covered by Section 25-F.

13. Rule 77 deals with maintenance of seniority list of workmen and rule 78 with re-employment of retrenched workman. Rule 78 requires intimation of vacancies by registered post to every one of all the retrenched workmen who were “eligible to be considered” therefor. In *Satyam* case [supra], the Supreme Court did not deal with the situation relating to the nature and character of the employment from where the termination took place. If the appointment itself was illegal and against the constitutional scheme of public appointments as explained by the constitution bench of the Supreme Court in **Secretary, State of Karnataka v.**

Umadevi, (2006) 4 SCC 1 and even so the period of service is less than 240 days in any of the years of service spent with the employer, would the Court still give re-employment to an illegal appointee when the entry of fresh recruits had taken place during the intervening period on permissible standards of public notice howsoever limited to names called from the employment exchanges while notifying vacancies. This is the question which arises in the present case to decide which a different vantage point has to be found before striking at relief in all the possibilities law presents in the present set of facts. The fresh recruits have come in through the employment exchange unlike respondent No.1 whose entry involved no legal process and was offer of appointment accepted in furtherance of the much chastised policy of pick and choose method which gives hardly any legal colour of acceptability of constitutional standards for filling a public post governed by statutory rules of service. It is, however, not necessary to go into any further details or discussion since the relief deserves to be declined for the reason contained *Satyam's* case itself due to lapse of time.

14. Mr. Bansal's reliance on case law in **Gulab Singh v. Barara Cooperative Marketing and Processing Society Limited, Barara and another**; 2004 (4) RSJ 521, **Durgapur Casual Workers Union and others v. Food Corporation of India and others**; 2015 (1) RSJ 93 and **Karambir v. Haryana Urban Development Authority and another** is not appropriate to the cause or to the award of relief. The learned Labour Court has

applied the law in *Gulab Singh's* case on the premise that it is absolutely similar and identical to the facts of this case. However, the facts of *Gulab Singh's* case reveal that the claimant was appointed as a Clerk on regular basis with effect from October 1, 1992 whereas Gulab Singh had served as a Clerk from 1970 to 1985. It was not the case in '*Gulab Singh*' that the quality and nature of appointment of Pardeep Kumar and Gulab Singh were any different as Clerks and, therefore, the Court did not accept either of the arguments that the two posts were separate and distinct from the post from which the petitioner-workman had been retrenched and thus acceptance of compensation in lieu of reinstatement in terms of the award of the Labour Court had rendered the rights under Section 25-F of the Act nugatory on principle of waiver. Both these arguments were rejected by the Division Bench.

15. It is well settled that the ratio of a judicial decision alone binds as *stare decisis* and not all observations made and one fact here or there can make a world of a difference. I do not see from where the Labour Court has assumed that the case in *Gulab Singh* and the present case is absolutely similar and identical. They are both quite far apart and distinguishable from each other on facts.

16. This Court is inclined to think that offering appointment by court verdict to the respondent-workman via Section 25-H of the ID Act may amount to perpetuating an illegality and this issue was raised by the management before the Labour Court in its pleadings which deserved to have been looked into, considered and decided. There was ample evidence in the testimony of Balbir

Singh, SDO to support negation of relief to the claimant which has not been read or appreciated by the Labour Court. At any rate, the award of the labour Court when it grants full back wages from the date of demand notice served in 2003 is wholly erroneous and that too without any discussion on the point and appears not to be the correct position in law and on the other hand Mr. Vaibhav Sharma is correct on this point when he urges that the impugned award is in excessive exercise of jurisdiction to return the ex workman to public employment with back wages on a post he had to vacate years ago while he lost his first round of litigation and still waited by the passing hour to return to the arena from a different angle of challenge. In any case, reinstatement cannot be ordered automatically as held in **Assistant Engineer, Rajasthan Development Corporation and Another Vs. Gitam Singh**, 2013 (5) SCC 136 and a catena of judgments before and after to which reference here is not necessary or required. The respondent-workman cannot be held to be eligible to be considered for re-employment as provided in mechanism in rule 78 of the 1957 rules.

17. In the light of the above discussion, the impugned award is not sustainable from any of the angles including delay and laches and, therefore, this Court is satisfied that the impugned award suffers from errors of law and fact resulting from non-reading and misreading of oral and documentary evidence adduced on record or is a correct interpretation of the law on the subject. In the considered view of this court formed after hearing

the learned counsel at length on the issues involved that this petition deserves to be accepted on merits and for the reasons recorded above the petition is hereby allowed. The impugned award dated June 15, 2012 is set aside.

(RAJIV NARAIN RAINA)
JUDGE

November 19, 2015

Paritosh Kumar