

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17275 of 2015

Date of Decision: 20.08.2015

Prem Singh

... Petitioner

Versus

Chief Engineer, Canals Punjab
and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vikas Chatrath, Advocate,
for the petitioner.

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

RAJIV NARAIN RAINA, J.

It is not the specifically pleaded of the petitioner as to which of his colleagues were junior to him as daily wagers serving in the office of the Chief Engineer (Canals), Punjab other than merely mentioning two names of such persons in his affidavit by way of examination-in-chief tendered before the labour court without any material particulars or sufficient notice for the Government to admit or deny the assertion. If the statement was made on affidavit that Sanjiv Kumar and Vinod Kumar are still working and were junior to the petitioner and fresh recruitments were made after the termination of the services of the petitioner of persons, namely, Suraj

Kumar, Baljit Singh and Balbir Singh then no application was filed before the labour court calling upon the Government to produce service record/muster rolls/attendance registers of these persons and, therefore, the argument of Mr. Chatrath that these statements of the petitioner workman have not been shaken in cross-examination is of no practical avail since the affidavit was tendered on December 21, 2012 and the cross-examination was conducted on December 21, 2012 itself and on deferment the workman was further cross-examined on June 05, 2013. No request was made during the interregnum by the workman for production of official record from the respondents with respect to persons named in the affidavit and, therefore, the labour court could never have been in a position to return findings in on principle of 'last come first go' and right of re-entry to service protected by sections 25G and 25H of the Industrial Act, 1947 (for short "the Act") in absence of record. It is well settled that the workman is in position of a plaintiff in a civil suit to establish his case and cannot depend on the strength or the weaknesses of the case of either side. He did not summon record and the inference drawn is that he was afraid that it might go against his interest if produced. Therefore I would not make any allowance on this aspect in favour of the petitioner.

Lastly, Mr. Chatrath relies on a Supreme Court decision in **Rajinder Pershad (Dead) By LRs. vs. Smt. Darshana Devi**, 2001 Supp (1) SCR 442 arising from the Rent Control Tribunal and the issue was that when the postman was examined in the witness box it was not suggested to him that he was not on duty during the period in question and the endorsement "refused" on the envelope was incorrect. In these

circumstances, the Supreme Court held that in the absence of cross-examination of the postman on this crucial aspect his statement in the chief-examination was rightly relied upon by the Rent Controller. The Court also held that there is an age old rule that if you dispute the correctness of the statement of the witness you must give him opportunity to explain his statement by drawing his attention to that part of it which is objected to as untrue; otherwise you cannot impeach his credit.

I fail to see how this case lends help to the petitioner.

I do not find any error in the award of the labour court while declining relief on the finding that the workman had not put in 240 days of continuous service in the 12 calendar months preceding the date of retrenchment. The only way to climb over the hurdle of section 25 B of the Act read with section 25F was to establish by way of evidence a right under section 25-G or 25 H of Act where the principle of continuous service under section 25-B is not necessary to be fulfilled as held in **Harjinder Singh vs. Punjab State Warehousing Corporation**, (2010) 3 SCC 192 where the Supreme Court analyzed the interplay of the provisions in sections 25-F, 25-G & 25-H of the Act with each other and have disassociated the concepts of section 25-G and 25-H from the rigours of completion of 240 days and compliances of section 25-F of the Act. The court has emphasized that section 25-G prescribes the principle for retrenchment and applies ordinarily to the principles of “last come first go” which is not confined only to a workman who have been in continuous service for not less than one year preceding the date of retrenchment covered by section 25-F. In reaching this conclusion, the Supreme Court relied on its earlier dicta enunciated in the

leading case in **Central Bank of India vs. V.S. Satyam**, 1996(4) SCT 143: (1996) 5 SCC 419 quoted in the judgment in *Harjinder Singh* (supra). The law is not new and has only been reiterated in *Harjinder Singh* case on the subject matter.

In the present case, the workman has failed to establish the foundational principles underlying sections 25-G & 25-H inasmuch as he was unable to prove by way of evidence that persons junior to him from the date of induction on daily wages were retained or fresh recruitments were made after his exit on the position/engagement last occupied by him on daily wages.

In absence of establishing these jurisdictional facts, it is not possible for me to interfere in the award of the labour court.

However, Mr. Chatrath is right when he argues that for establishing a claim under section 25-H rights remain alive after retrenchment in case the workman is able to plead and prove that another person has been offered employment identical to the employment from where his services were terminated. The petitioner is always at liberty granted by statute to seek redress on the principle of section 25H from the administrator of the Act in the respondent department since the Act protects such rights and this court cannot take them away. But the workman must remember that in this pursuit when he raised the plea before the labour court and was unsuccessful there are placed fetters on his rights. How tight they are in strait jacket or how loose and accommodating are they is best left to the wisdom of the departmental record which was never summoned or produced for examination. The official record is supreme in such a matter.

With this narrow liberty, the petition stands dismissed.

(RAJIV NARAIN RAINA)
JUDGE

20.08.2015
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