

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18635 of 2015

Date of Decision: 20.10.2015

The Executive Engineer, Public Health
Engineering Division No.2, Yamunanagar

... Petitioner

Versus

Mahavir Prashad and another

... Respondents

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

Present: Ms. Vibha Dhiman, AAG, Haryana,
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.

1. For good and sufficient reasons, the Presiding Officer, Labour Court, Ambala vide award dated February 26, 2015 has accepted the claim of the workman for declaration that his termination was illegal. The Labour Court has awarded reinstatement with continuity of service but has declined back wages.

2. The Executive Engineer, Public Health Engineering Division No.2, Yamunanagar has filed this petition on behalf of the State of Haryana challenging the impugned award. They have not disputed either before the Labour Court or before this Court that the provisions of Section 25-F of the Industrial Disputes Act, 1947 ("the Act") were not complied with at the time of termination as neither was notice issued to the workman, nor wages in

lieu of notice and retrenchment compensation was paid at the time of termination. The termination was brought about by resort to condition No.4 in the engagement letter dated July 21, 2009 by which the services of the respondent-workman could be terminated at any time without notice. Even assuming that resort could be had to condition No.4 and the termination was effected without notice that did not mean that the mandatory provisions of sub section (a) and (b) of Section 25-F of the Act could be circumvented by breach. The monetary aspects of Section 25-F of the Act had to be passed on to the workman at the time of retrenchment which would act as subsistence allowance to guard against sudden disruption of employment to tide over the crisis, which is the policy underlying Section 25-F of the Act. In any case, condition No.4 cannot override the statute and remains subservient to procedure as established by law. Resort to a provision such as condition No 4 in the appointment letter may justify the order but not the action.

3. Therefore, the award is not liable to be set aside as suffering from error in not upholding the termination in terms of condition No.4. Besides, the workman was engaged on “term appointment” without specifying the terms, unless the expression meant that the term appointment was an appointment on monthly basis. The engagement letter was not curtailed by time and no stipulation can be read into it which does not appear to be falling in the exceptions in (bb) of Section 2 (oo) of the Act. The case does not fall within the teeth of Section 2 (oo) (bb). It was nothing but retrenchment. Retrenchment, in any case, in industrial law is a term of wide amplitude and accounts for severance of relationship of employment “for any reason whatsoever” as explained by the Supreme Court in **State**

Bank of India v. Shri N. Sundara Money, AIR 1976 SC 1111; 1976 (3) SCR 160 and **Santosh Gupta v. State Bank of Patiala**, AIR 1980 SC 1219; 1980 (3) SCR 884.

4. There is another startling feature when the engagement letter is read when it appoints the respondent-workman in an amalgam of posts with several descriptions which are a combination of “Pump Attendant/Chowkidar/Mali-cum-Chowkidar/Keyman/Beldar Class IV post”. It is not spelled out in the petition filed by the State that there is lack of availability of work for which the workman was engaged in 2009 and nothing has been pointed out in the pleadings filed either before the Labour Court or this Court that there is no work left in the department which was performed by the workman. Therefore, the plea cannot be entertained for the first time in writ jurisdiction.

5. Hence, I have no reason with me to differ with the view taken by the learned Labour Court on the evidence adduced by the parties on record. It may however be noted that the Labour Court did not accept the claim of the workman based on breach of procedure and rights protected in Section 25-G & 25-H of the Act and limited the consideration to Section 25-F of the Act and based its award on such breach keeping in view the totality of facts and circumstances of the case. The view taken by the labour court on facts after appreciating the evidence is both a possible and plausible view and it is not for this court to re-appreciate the evidence and come to a different conclusion as though sitting in appeal. The award does not suffer from any fundamental flaw or an error apparent on the face of record and calls for nor interference.

6. Consequently, the writ petition is dismissed as without any substance.

(RAJIV NARAIN RAINA)
JUDGE

20.10.2015
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