

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 3124 of 2015 (O&M)

Date of Decision: 23.02.2015

Executive Engineer, Fatehabad Water
Services Division

--Petitioner

Versus

Suresh Kumar & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Pritam Saini, Addl. A.G., Haryana.

TEJINDER SINGH DHINDSA.J

State of Haryana has preferred the instant petition raising a challenge to the award dated 11.7.2014 (Annexure P-4), passed by the Industrial Tribunal-cum-Labour Court, Hisar in terms of which the workman/respondent no.1 has been held entitled to reinstatement in service with all consequential benefits but without back wages.

Learned State counsel has raised a two fold submission. In the first instance, it is argued that the impugned award cannot sustain as the onus was clearly upon the workman to prove that he had worked for 240 days in the preceding 12 months taken from the date of alleged termination and such onus having not been discharged the finding as regards non-compliance of Section 25-F of the Industrial Disputes Act, was perverse. Second submission raised is that the workman had worked only on daily wage basis intermittently and the details thereof had been furnished before the Labour Court and under such circumstances even if there had been violation of Section 25-F of the Act only adequate compensation could have been granted. In support of such contention it has also been submitted that the engagement of the workman was not in pursuance to any regular

selection process and was *de hors* the recruitment rules and as such, the Labour Court has erred in directing reinstatement.

Having heard learned State counsel at length and having perused the pleadings on record, this Court is of the considered view that no basis for interference is made out.

Pleadings on record would reflect that the claim set up by the workman/respondent no.1 was that he was engaged as a Beldar on daily wage basis w.e.f. 1.9.1998 and had continuously worked up to 30.9.2010. After 30.9.2010 he was not allowed to perform his duties. Specific claim of the workman was that he had completed 240 days in the calendar year preceding his termination. In the amended reply filed by the State to the claim statement and placed on record and appended as Annexure P-3 along with the instant petition, it had been stated that the workman had never been appointed and as such, was not issued any termination letter. However, a reference was made to the muster rolls of the workman stating that he had worked for 77 days for the period 5.9.1998 to 12.12.1998, 120 days from 2.1.1999 to 5.10.1999, 120 days in between 19.6.2000 till 17.12.2000, 85 days from 3.1.2001 till 31.12.2001, 8 days in between 9.8.2002 till 16.8.2002, 9 days between 7.6.2003 to 30.6.2003, 8 days between 30.7.2004 till 6.8.2004, 67 days between 31.5.2005 till 31.12.2005, 15 days in between 3.6.2006 till 29.6.2006 and finally for 13 days in between 22.5.2007 till 8.9.2007.

Learned State counsel, however, does not controvert that the workman had moved an application for issuance of directions for production of muster rolls and muster issuance register to prove that he had worked for 240 days in the preceding 12 months from the date of

termination but a reply had been submitted by the employer stating that record for such period could not be produced as it was not traceable being old record.

The position of law relating to onus came to be examined by the Hon'ble Supreme Court in **R.M. Yellatti Vs. The Assistant Executive Engineer, J.T. 2005 (9) S.C., 340** and it was observed as follows:-

“Analyzing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgements, we find this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case.”

In the present case the workman/respondent no.1 was a daily wager, who had neither been issued an appointment letter nor a termination letter. Management was the custodian of the records. Undoubtedly, the initial onus to prove the fact of having completed more than 240 days in service in the 12 preceding months from the date of termination was on the workman. Towards discharging such onus the workman had summoned the

concerned records. The management filed a response to the application taking a stand that the record was not traceable being old.

The workman had taken a plea that his services had been dispensed with w.e.f. 30.9.2010. It is difficult to fathom that on the one hand in the reply to the claim statement details of the working days put in by the workman for the period 1998 to 2007 were furnished but on the other hand in response to an application filed by the workman seeking production of record in the one year preceding the date of termination i.e. 30.9.2010 the same was declined on the plea that the record is old and not traceable. This Court is of the considered view that the best relevant evidence has been withheld by the management and the Labour Court has rightfully drawn an inference against the management. Finding recorded by the Labour Court as regards the workman/respondent no.1 having completed 240 days in the preceding 12 months and Section 25-F of the Industrial Disputes Act having not been complied with, does not call for any interference.

The contention raised by learned State counsel that even towards non-compliance of Section 25-F of the Act, the workman instead of reinstatement should have been awarded compensation would now require examination.

Hon'ble Apex Court in case of **Anoop Sharma Vs. Executive Engineer Public Health Division No.1, Panipat, 2010 (3) S.C.C 497** while examining the issue of non-compliance of Section 25-F of the Act held as under:-

“13. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until

*the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman **at the time of retrenchment**, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and noncompliance thereof renders the retrenchment of an employee nullity – **State of Bombay v. Hospital Mazdoor Sabha** AIR 1960 SC 610, **Bombay Union of Journalists v. State of Bombay** (1964) 6 SCR 22, **State Bank of India v. N. Sundara Money** (1976) 1 SCC 822, **Santosh Gupta v. State Bank of Patiala** (1980) 3 SCC 340, **Mohan Lal v. Management of M/s. Bharat Electronics Ltd.** (1981) 3 SCC 225, **L. Robert D'Souza v. Executive Engineer, Southern Railway** (1982) 1 SCC 645, **Surendra Kumar Verma v. Industrial Tribunal** (1980) 4 SCC 443, **Gammon India Ltd. v. Niranjana Das** (1984) 1 SCC 509, **Gurmail Singh v. State of Punjab** (1991) 1 SCC 189 and **Pramod Jha v. State of Bihar** (2003) 4 SCC 619. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/ engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as *ab initio* void, sometimes as *illegal per se*, sometimes as nullity and sometimes as *non est*. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25-F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.*

Undoubtedly, in subsequent judgements rendered by the Hon'ble Supreme Court in cases of **Assistant Engineer, Rajasthan Development Corporation & another Vs. Gitam Singh, 2013 (2) S.C.T 30** and **B.S.N.L. Vs. Bhurumal, 2014 (3) S.C.T. 49** a shift is noticeable, wherein it has been held that while exercising discretion the Labour Court in the case of a daily wager workman, whose termination has been found to be bad in law on account of non-compliance of Section 25-F of the Act, relief of reinstatement is not to be granted as a thumb rule.

However, in a recent Full Bench decision of this Court rendered in **L.P.A No.754 of 2010** titled as **Municipal Council, Dinanagar Vs. Presiding Officer, Labour Court, Gurdaspur** decided on 10.10.2014, all the judicial precedents have been considered including the judgements of the Hon'ble Apex Court in cases of **Anoop Sharma, Gitam Singh and Bhurumal** (supra) and while considering the question as to whether persons appointed without following proper procedure would be entitled for reinstatement in view of violation of the provisions of Section 25-F of the Act, certain principles have been culled out. It has been held by the Full Bench that the power of the Industrial Tribunal to direct reinstatement on account of violation of provisions of Section 25-F of the Act cannot be denied solely on the ground that appointments were made not in accordance with relevant statutory recruitment rules. It was held that the right of reinstatement, however, is not automatic and while directing reinstatement the Labour Court will have to take into consideration various aspects viz nature of appointment, availability of post, availability of work, whether appointment was as per rules, length of service and delay in raising industrial dispute.

In the facts of the present case the workman had rendered service from the year 1998 to 30.9.2010 be it on daily wage basis. There was no delay on his part in having raised the industrial dispute. The Labour Court has exercised its discretion in granting relief of reinstatement but has denied the back wages. There is no direction as regards regularization in service. As such, by applying the dictum laid down by the Full Bench in **Municipal Council, Dinanagar's** case (supra) and keeping in view the length of service rendered by the workman be it on an intermittent basis, the relief of reinstatement directed by the Labour Court but without back wages does not call for any interference.

Writ petition is, accordingly, dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

February 23, 2015
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Whether to be referred to Reporter? Yes.