

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

Civil Writ Petition No.6255 of 2013

Date of decision: 15.10.2015

Vijay Kumar

... Petitioner

Versus

Presiding Officer and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Anil Shukla, Advocate,
for the petitioner.
Mr.Atul Gaur, Advocate, for
Mr.Sumeet Goel, Advocate,
for respondent No.2.

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

RAJIV NARAIN RAINA, J. (Oral)

Heard Mr.Shukla appearing for the workman-petitioner and
Mr.Gaur appearing for the management.

2. The only question involved in this petition is with respect to the interpretation of the appointment letter dated 1st July, 2005 and whether it would fall within exemption in Sub-section (bb) of Section 2(oo) of the Industrial Disputes Act, 1947 [for short, “the Act”] to take the appointment out of the teeth of retrenchment and therefore compliance of Section 25-F of the Act. To understand the drift of the argument, the best document is the appointment letter itself and it is reproduced: -

“DPSF/P-87

July 01, 2005

Mr Vijay Kumar

I am pleased to offer you temporary appointment as

a helper, peon, in General Duty at Delhi Public School, Faridabad for a period of six months on a consolidated salary of Rs.3200/- (Rupees Three Thousand two hundred only) per month all inclusive w.e.f. 1st July, 2005.

Your services are purely temporary and can be terminated at any time without any prior notice and assigning the reason.

If the above terms and conditions of service are acceptable to you, please give your written consent.

Sd/-Manager”

3. The Presiding Officer, Labour Court-I, Faridabad vide the impugned award dated 11th May, 2012 has non-suited the workman on the ground that the appointment is contractual in nature and was purely temporary and thus, the workman did not acquire any legal right to hold the post. When this finding was returned, it followed sequitur that the services of the workman were dispensed with legally and in accordance with law. For this reason alone, the reference was declined and the relief of reinstatement and consequential benefits was denied to the workman.

4. Cases which fall under the exceptions to retrenchment in Section 2(o) of the Act are always differently worded which manifest the intention of the parties that they are entering into a contract fixed by tenure, duration or period of time by a stipulation contained in this behalf in the appointment order. As I read the appointment order in this case, I cannot see that the appointment is contractual as was asserted vehemently by the management. The management did not say that it was pleased to offer a contractual appointment fixed by time. Merely because six months period has been mentioned in the appointment letter would not make the

appointment one on contract. The nature of the appointment or engagement on contract is always a matter in the realm of the intention of the parties and the intention of the parties has to be gathered from the words expressly used in the letter of appointment, subsequent events and the surrounding circumstances. When we look at the surrounding circumstances, then the Court is informed by Mr.Shukla that on expiry of the appointment letter dated 1st July, 2005 the period of service was extended by another six months period prescribed in the letter by a fresh letter which added a new twist to the tale when the word, “*ad hoc*” was been used in the second appointment letter. Ad hoc service is well known in service jurisprudence as not by nature contractual unless the two elements are mixed up to form a single formulation. It is an arrangement for the time being, that is ad hoc and till some better option is available to the employer, the management or the State to make regular recruitment in accordance with the rules or Certified/Model Standing Orders if the employment is private, as the case may be.

5. It would do well to notice the provisions of Section 2(oo) (bb) to put the case in its right perspective and, therefore, the statutory definition of Section 2 (oo) (bb) is reproduced below for quick reference : -

“2. Definitions :

X X X

(oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include --

X X X

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment

between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein.”

6. The Industrial Disputes Act, 1947 in Section 2(oo) defines what retrenchment is and it encompass all kinds of termination brought about for any reasons whatsoever as explained in **State Bank of India v. N.Sundara Money**; AIR 1976 SC 1111 : 1976 (3) SCR 160 and **Santosh Gupta v. State bank of Patiala**, AIR 1980 Supreme Court 1219:1980 SCR (3) 884 and a host of other cases descended from these basic precedents on the subject. However, the four exceptions in Section 2 (oo) have been carved out of “retrenchment” to exclude voluntary retirement, retirement on reaching the age of superannuation, termination of the service of a workman on the ground of continued ill-health and more crucial and the one which is invoked by the respondent and was used by the Labour Court in its misunderstanding of the law to dismiss the reference are meant for contractual appointments pure and simple and thus the framers devised Sub-Section (bb) of Section 2 (oo) to take out from the purview of retrenchment, termination as a result of non-renewal of the contract of employment on its expiry or of such contract being terminated under a stipulation in that behalf contained therein, i.e. in the contract of employment.

7. In **Chairman, Mewat Development, Nuh v. Ravinder Balwan**, 2012 (2) SLR 407: 2012 (3) S.C.T. 154: 2012 (2) RSJ 428 while sitting with Hon. M.M.Kumar, J. [then ACJ] I had occasion to explain the purpose and object of Section 2(oo) (bb) in simple words to make a word

picture for guidance of labour courts-:

“The Labour Court also does not appear to be acquainted with the object and reasons for introducing Section 2(oo) (bb) in 1984 by amendment. Section 2 (oo) (bb) ordinarily was intended for such engagements that are under special contract, express or implied which come to an end by efflux of time, or fixed tenure under contract for a specified purpose which by nature is limited by time. We may give an example so that the Labour Court would construct a word picture in mind to help it decide cases in future. Suppose a Chef has been engaged by a Hotel to train cooks for a specified period, say one year and the training is complete. The Cooks are trained. The contract is over. The Chef must exit out and such automatic disengagement would not have any reference to prior notice or payment of retrenchment compensation under Section 25-F of the Act. This is only by way of illustration open to be multiplied in myriad and different fact situations presented in each case. No hard and fast rules can be laid down.”

8. In this case, the first contract was renewed; temporary appointment was converted into *ad hoc* appointment, the word, “contract” was not used. Even if it were used but the intention could be gathered that the appointment was contractual, still something could be said but there was no stipulation clear spelled out unambiguously that the appointment was curtailed by fixed time and that the event stipulated had happened and therefore the exit would not amount to retrenchment.

9. I have, therefore, no hesitation in holding that neither of the two appointments orders P-4 and P-5 fall in exception (bb) of Section 2(oo) of the Act and therefore the award of the Labour Court suffers from a fundamental flaw of law and fact which has occurred due to incorrect reading of the two documents and the error is apparent on the face of the record for which the reasoning in the award cannot be legally be sustained.

10. When the appointment is not contractual and the case does not fall in Section 2(oo)(bb) of the Act, then the question immediately arises as to non-compliance of Section 25-F of the Industrial Disputes Act, 1947. There is no dispute that Section 25-F was not complied with since neither notice nor wages in lieu of notice nor retrenchment compensation was paid to the workman at the time of termination and therefore the termination was patently illegal.

11. Mr.Gaur argues that the DPS School is run by a Society and the Society was not made a party before the Labour Court and therefore the society is not bound by the award. The argument has ingenuity but the objection is not sustainable as it matters little in industrial adjudication testing termination who brought it about so long as the employer is party and contesting the reference, call it the DPS School or the Society as both are part and parcel of the management responsible for compliance of the law. The occupier of the school is the face of the management so is its principal. The objection is hyper technical and if accepted would defeat the ends of justice. Besides, the appointment letter/s is/are not issued by the Society. In any case the argument falls to the ground when the Labour Court had specifically framed issues No.3 and 4 for determination, their answers

lying in the evidence and documents on record for all to see and were dealt with in the impugned award on fallacious reasoning flowing from the incorrect major premise that the appointment came to an end by effluxion of time: -

“3. Whether the respondent is not a juristic person? If so, to what effect?

4. Whether the case is bad for non-joinder and misjoinder of necessary parties? OPR”

12. The Labour Court has answered both these against the management and the management is not in a writ petition assailing the findings nor have they filed a cross writ petition or cross-objections in this writ petition to stand on terra firma and, therefore, this objection is not sustainable and is rejected.

13. The award is not sustainable and cannot survive as it suffers from grave defects in the reasoning adopted as the labour court has misunderstood the law on exceptions to retrenchment. Hence, the award has to be set aside. The question is as to the relief which can be granted in this case. While looking to the merits, this Court notices that the period of engagement was for one year which by any standards is brief.

14. There can be no doubt that the period of service may be brief but the flaw in the award is writ large. Who should suffer for it? The party that took a false defence contrary to the record and delayed adjudication of what appears to be such a simple matter which required hardly any elaborate or complex arguments. It is equally well settled that breach of Section 25-F of the Act would not result in automatic reinstatement but the issue of relief has to be examined and decided on the totality of facts and circumstances

presented and several factors as are indicated in **Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited;** AIR 1979 SC 75 and the case law developed by the Supreme Court picking up the threads from *Hindustan Tin Works Limited* and **Surendra Kumar Verma v. CGIT**, AIR 1981 SC 422 cases in the triumphal march of binding precedents of the Supreme Court on the subject matter in recent cases, cf. **Harjinder Singh v. Punjab State Warehousing Corporation**, (2010) 3 SCC 192, **Anoop Sharma v. Executive Engineer Public Health Division No.1, Panipat (Haryana)**, (2010) 3 SCC 497, **PGIMER v. Raj Kumar**, (2001) 2 SCC 54, **Jasmer Singh v. State of Haryana and another** (2015) 4 SCC 458, **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya & Ors**; (2013) 10 SCC 324, **Tapas Kumar Paul v. BSNL and another**; 2014 (3) SCT 106 etc.

15. Keeping in view the above guidelines in the judgments of the Supreme Court as to how jurisdiction is to be exercised by the labour courts and tribunals and the fact that the petitioner has asserted in his statement of claim before the Labour Court that he was not gainfully employed after the illegal termination and during his period of enforced idleness, then the management has not discharged its onus before the Labour Court to disprove the fact in the statement of claim in order to deprive the workman in case reinstatement is awarded to monetary relief.

16. Mr.Shukla points out that even in the statement of claim/written statement filed by the management, they did not dispute that part of the claim statement filed by the workman. No other issue was raised or pressed before the Labour Court for this Court to examine in the present

proceedings except two of them which are taken up for discussion hereafter.

17. The two other reasons why the Labour Court has dismissed the reference is that the reference itself is not maintainable and the workman has no locus standi to claim a reference.

18. Since the Labour Court first reached the conclusion that the case fell under Section 2(oo)(bb) of the Act, therefore, it reasoned that the reference would not be maintainable and the workman would have no locus standi to challenge the termination which fell in the exception. I would only observe that in case the cornerstone of the building on which the case stands in the award is dislocated, then the superstructure will fall. In the considered view of this Court, the case does not fall within the four corners of Section 2 (oo)(bb) of the Act and the labour court fell in grave error in holding the reference was not maintainable and the petitioner has insufficient locus standi to prosecute his reference successfully. On all three counts the award is untenable and stands vitiated by legal and factual infirmities which are beyond redemption. I find no reasons to sustain the award.

19. For the reasons recorded above, this Court has no hesitation in setting aside the impugned award and directing reinstatement of the petitioner to service with continuity. However, the back wages will remain restricted to 50% of the arrears calculated from the date of demand notice till realization.

20. The writ petition is allowed in the above terms.

(RAJIV NARAIN RAINA)
JUDGE

October 15, 2015