

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

LPA No.478 of 2015 (O&M)

Date of Decision: 26.05.2015

Daljit Singh and others

..... Appellants

Versus

Punjab State Power Corporation Limited & Another

..... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. J.S. Jaidka, Advocate
for the appellants.

S.S. SARON, J.

This appeal has been filed by the appellants who were respondents No.1 to 13 in CWP No.10095 of 1996 against the judgment and order dated 03.07.2014 passed by the learned Single Judge of this Court in *CWP No.10095 of 1996 titled 'Punjab State Electricity Board v. Major Singh and others'* and *CWP No.14092 of 1996 titled 'Punjab State Electricity Board v. Hakam Singh and others'* whereby the writ petitions filed by the Punjab State Electricity Board now Punjab State Power Corporation Limited ('Corporation' for short) (respondent No.1) have been disposed of by modifying the award dated 09.04.1996 passed by the learned Presiding Officer, Labour Court, Ludhiana to the extent that the workmen would not be entitled to back-

wages from their retrenchment/notice of retrenchment dated 09.11.1989 till the passing of the award dated 09.04.1996.

Along with the appeal, CM No.965-LPA of 2015 has been filed seeking condonation of 66 days' delay in filing the appeal. Besides, CM No.966-LPA of 2015 has been filed seeking condonation of 81 days' delay in re-filing the appeal.

The learned Labour Court had consolidated fourteen references vide order dated 05.01.1996. The facts were taken from reference No.1424 of 1992. The workman in the said reference had been working with the respondent-Corporation as daily paid worker for a period of two years. He was getting salary of Rs.825/- per month. His services were terminated on 28.04.1990 without any notice, charge-sheet, inquiry and payment of retrenchment compensation. The termination of the services of the workmen in the respective cases, it is alleged by the appellants, were in violation of the provisions of the Industrial Disputes Act, 1947, ('Act' for short). According to the appellants, they had worked for 240 days during 12 calendar months preceding their retrenchment.

The Punjab Government referred the industrial disputes under Section 10 (1) of the Act vide various reference orders dated 19.10.1992. The references were to the effect as to whether the termination of the services of (by name), were justified and in order and if not, to what relief/exact amount of compensation would they be entitled.

The respondent-Corporation, in its written statement

before the learned Labour Court, raised preliminary objections that the references were bad in law; and that the workmen had suppressed material facts. It was stated that the services of the workman in the case from which facts have been derived was retrenched on 28.04.1990 due to completion of work. Besides, the terminations were made after service of notices. The workmen were offered retrenchment compensation but they refused to receive the same. The amounts of compensation were sent through Registered Posts, but these were also refused. However, it was accepted that the workmen had worked for 444 days and retrenched on 28.04.1990 due to the completion of work.

The learned Labour Court framed the following issues:

- i) whether the reference is bad in law?
- ii) Whether the termination of the services of the workman is justified and in order? If not, to what relief is he entitled?

After considering the evidence and material on record, the learned Labour Court, Ludhiana, vide its award dated 09.04.1996, held that the workmen were entitled to reinstatement with full back-wages from the date of retrenchment notice. The references were answered accordingly.

The workmen before the learned Labour Court raised a plea that their retrenchments were in violation of the provisions of Section 25 N of the Act, inasmuch as more than 100 employees were working with the respondent-Corporation. The

respondent-Corporation, however, contended that the workmen had not taken the plea that there was any violation of Section 25 N of the Act.

Section 25 N of the Act, it may be noticed provides for conditions precedent to retrenchment of workmen. Section 25 N (7) of the Act, which is relevant for the present case, reads as under:

"Where no application for permission under sub-section (1) is made or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

The learned Single Judge noticed that the plea of Section 25 N of the Act had been raised, during arguments, before the learned Labour Court. In the writ petition that was initially filed, the operation of the award of the learned Labour Court was stayed vide order dated 16.07.1997, which was later modified to the extent that the operation of the award shall remain stayed subject to Section 17 B of the Act.

On the plea regarding Section 25 N of the Act, the learned Single Judge placed reliance on the judgment of the Supreme Court in 'Pramod Jha and others v. State of Bihar and

others' (2003) 4 SCC 619, wherein a similar plea which was sought to be invoked, had been rejected. It was inter alia held therein that the plea of non-compliance with the provisions of Section 25 N of the Act and consequential relief could not be allowed because that was not raised either before the High Court or in the SLPs but was sought to be taken only at the time of hearing. The infirmity in retrenchment by reference to Section 25 N of the Act, it was held could not be ventured to be found out without laying factual foundation attracting applicability of the provision and it basically being a question of fact could not be entertained. In the absence of requisite pleadings having been raised and documents having been brought on record, it was held by their Lordships that they were not persuaded to entertain the plea.

According to the learned counsel for the appellants, there is evidence on record to show that the respondent-Corporation had more than 100 workers.

This argument is not tenable, for the reason that in the absence of the pleadings, the evidence is not to be looked into. The plea of Section 25 N of the Act, was not raised on the basis of factual foundation by making necessary pleadings in this regard so as to attract the applicability of the said provision. The learned Single Judge, in the circumstances rightly held the reinstatement of the workmen to be invalid. However, as the workmen had been working for the past 17 years in view of the interim order, it was held that the workmen would not be entitled

to back-wages from the retrenchment/notice of retrenchment dated 09.11.1989 till the passing of the award.

We find no infirmity with the order passed by the learned Single Judge and consequently no merit in the appeal. In the circumstances, the appeal is dismissed.

Since the appeal has been dismissed on merits, the questions regarding delay in filing the appeal and in re-filing the appeal, are only academic and the applications seeking condonation of delay in filing the appeal and re-filing the appeal, are also dismissed.

(S.S. SARON)
JUDGE

26.05.2015
yogesh/A.Kaundal

(RAMENDRA JAIN)
JUDGE