

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

LPA No.1876 of 2015

Date of Decision : 7.4.2016

Kuldeep Singh

....Appellant

Versus

Presiding Officer, Industrial Tribunal,
Amritsar and others

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MRS.JUSTICE LISA GILL

....

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

...

Present: Mr.Amarjit Singh, Advocate
for the appellant.

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MAHESH GROVER.J.

The appellant is in appeal against the judgment of the learned Single Judge dated 5.11.2015.

We may notice the following facts in brief :-

The appellant was in employment of respondent No.2 and according to him, his services were terminated in September 1998, upon which he claimed a reference questioning the legitimacy of the termination. Evidence was adduced and one of the witnesses of the management testified that the workman had

abandoned his services and it was not a case of termination. Subsequently, some other employee, namely, Iqbal Singh was appointed in his place. It is at this stage after recording the evidence that the workman chose to withdraw his reference to file his claim under Section 25-H of the Industrial Disputes Act to plead that since another person had been taken in employment without notice to him, he would be entitled to employment in terms of the said provisions i.e. Section 25-H of the Act. The Labour Court declined to interfere and its order was challenged in writ proceedings where the learned Single Judge also negated the claim of the workman.

Learned counsel for the appellant contends that once it is admitted by the witness of the management that no notice was issued to the workman before someone else was appointed in his place, there would be a clear violation of Section 25-H of the Act entitling him to re-employment.

Section 25-H may be extracted herebelow :-

“25H. Re-employment of retrenched workmen.--

Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-

employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons.”

We are of the opinion that Section 25-H proceeds with a presumption of retrenchment and subsequent employment of a person in replacement of services of the retrenched employee thus mandating a notice to him. But if the case is of abandonment of services, then in such eventuality the provisions of Section 25-H in our considered view would not be attracted. The workman had a choice of contesting the claim of abandonment when he had initially preferred a reference questioning the act of the management which according to him was of termination/retrenchment. After having abdicated his claim and without inviting findings of the Labour Court on his claim he cannot now rake up the plea of Section 25-H when particularly there is no material to the effect that the services of the workman were retrenched.

We thus do not find any reason to interfere with the impugned judgment and dismiss the appeal.

(MAHESH GROVER)
JUDGE

7.4.2016

(LISA GILL)
JUDGE