IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 19.01.2017

CWP No.15130 of 1994 (O&M)

Bhakra Beas Management Board & another ...Petitioners

Vs.

Vipin Kumar & another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Amit Jhanji, Advocate, for the petitioners.

Mr. S.P.Thukral, Advocate, for respondent No.1.

RAJIV NARAIN RAINA, J.

The fundamental flaw in the award made by the Central Government Industrial Tribunal -cum- Labour Court, Chandigarh (hereinafter referred as 'the Tribunal') is that it has gone beyond the terms of reference and directed the Bhakra Beas Management Board (for short 'the Board') to absorb respondent No.1-workman in service "according to seniority and Rules".

The industrial dispute, which was referred, was; whether the action of the authorities in retrenching the workman on 01.10.1983 is legal and justified and, if not, what relief he is entitled to. The issue of compliance of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as 'the Act') is discussed cursorily in the award and there is no dispute regarding completion of 240 days of continuous service but no finding have been returned in the summing up. The Tribunal has not set aside the termination/retrenchment in express words, but has found a way to replace it by the greater relief with the direction of absorption in Board and held the workman entitled to 50% back wages for the period subsequent to 23.10.1989 till further appointment. Therefore, the direction is to absorb respondent No.1-workman while reinstatement is inherently consequential.

The Tribunal though has rightly rejected the plea of the Board that the case falls under Section 2(oo) (bb) of the Act because on the date of termination i.e. 01.10.1983, Section 2(oo) (bb) has not been brought on the statute book. That came later by amending the Act 49 of 1984 w.e.f. 18.08.1994 therefore the Section could not be applied retrospectively. To this extent, the Tribunal was right. However, it has drawn a distinction between 'completion of work' and 'closure of undertaking'. If it was a case of completion of work, then the line of thinking adopted would be that the workman could be adjusted from the shutting-down office of the SDO, Store & Transport, Sub Division, Beas Project, Nangal to the other ongoing projects at the time when the Beas Construction Board (BCB) managed four Sub Divisions i.e. Bilaspur, Slapper, Nangal (Store & Transport) and Nangal Tower Line Sagging and Commissioning (TLSC).

The BCB was closed down on 31.03.1991 and the project came within the purview of the Board (BBMB). In the additional affidavit dated 19.09.2016 filed by a senior officer of the BBMB Bhiwani, Haryana, it has been affirmed that it was the Sub Division in which the workman was recruited initially on 01.05.1981 as a skilled *mazdoor* where after he was raised in status to a work-charged T-Mate on 01.09.1982 and worked as such till 30.09.1983, when his services were terminated which became subject matter of adjudication in the reference proceedings. The total period of service rendered by the respondent – workman in the said Sub Division of BCB was 2 years & 5 months. It is informed in the affidavit that the office of SDO, S&T (Store & Transport), Sub Division, Beas Project, Nangal was closed in the year 1983. Subsequently, the office of the Executive Engineer, Dehar Power House/Tower Line Sagging and Commissioning, Division, Beas Project, Slapper was also closed down in the year 1990 due to completion of work. These were supervening events, which respondent–workman could not take advantage of as the Tribunal ordered absorption in 1994 by the impugned award by transportation to other projects which remain unspecified in the order.

When the Tribunal dwelt on the distinction between 'completion of work' and 'closure of undertaking', it looked to Column 8 of the Discharge Certificate issued by the Sub Division Nangal to the workman, which recorded retrenchment caused by reason of completion of work. If it was completion of work, then Section 25-F had to be complied with and the case could not be treated as one of closure under Section 25-FFF of the Act. Besides, the Board in its written statement before this Court has pleaded the defense of Section 25-FFF where closure compensation could be paid later on and not at the time of retrenchment. I would also not like to go into the question of importing the concept of Section 25-FFF, if it was not a plea taken before the Tribunal.

However, the question whether the respondent – workman was entitled to relief when the closure of BCB had taken place subsequently, is an issue, which has not been examined threadbare by the Tribunal and in the proper perspective. BCB had four work components in one of which the respondent was employed as a skilled manual worker and then as work-charged T-mate. Therefore, the completion of each of the four projects would be an end of employment when the objects of the work are served and done with. Then no employee can claim continuation of employment as a matter of enforceable right in a court of law. When the construction and works of Beas Project were completed, retrenched workers would have no right to be transferred as employees in one of the remaining Sub Divisions of BCB or to the BBMB to which the remaining workers were transferred with the BCB dissolved and merged in the Board (BBMB) as who were in service.

Mr. Amit Jhanji appearing for the Board has placed strong reliance on the ruling of the Supreme Court in Jaswant Singh & others Vs. Union of India & others, AIR 1980 SC 115; (1979) 4 SCC 440, where the question fell for consideration of the Supreme Court in a similar dispute. The case involved the fate of hundreds of employees of the BCB, whether they had a right to be transferred to the Board (BBMB). The issue was raised and decided in the backdrop of the Industrial Disputes Act, 1947; The Punjab Reorganisation Act, 1966 and the Central Civil Services (Temporary Service) Rules, 1965. One of the questions was; whether the BCB was a body incorporated with an independent statutory existence or whether it was merely a limb of the Central Government. Section 80 (1) of the Punjab Reorganisation Act, provided that notwithstanding anything contained in the Act or in any other law, the construction and completion of any work of the Beas Project shall be undertaken by the Central Government on and from November 1, 1966. The Supreme Court found no substance in the contention of the Union Government that the petitioners were employees of BCB and not of the Central Government on a thorough examination of the statutory frame-work. Mr. Jhanji refers to para.30 in *Jaswant Singh's* case, where the Supreme Court held as follows:

> "30. A branch of the same argument is that under Section 80(S), components of the Beas Project the construction of which has been completed after November 1, 1966 have to be transferred to the Bhakra Management Board and thereupon

> the provisions of section 79 come into operation as if the transferred works were included in clauses (a) to (g) of section 79(1). It is urged that if any completed component of the Beas Project is transferred to the Bhakra Management Board as required by section 80(S), as has been done in the present case on May 15, 1976, the petitioners would become the employees of the Bhakra Management Board, since the work in connection with which they were employed is transferred to that Board. There is no warrant for this submission because, though section 80(S) requires a completed work of the Beas Project to be transferred to the Bhakra Management Board, it does not provide that persons who were employed in connection with such a work should also be transferred as employees of the Bhakra Management Board. In the very nature of things there could be no such provision because if any persons were employed for the Beas Project only, their employment would normally cease on completion of that Project. In fact, the petitioners were taken in employment on temporary posts for the purpose of completing the Beas project. On the completion of that Project or any other works for which they were employed their employment would normally come to an end, especially since the statute from which their rights are said to flow does not protect that employment."

The Supreme Court ruled that work-charged employees whose wages and allowances are chargeable to 'works' and they belong to separate sub-head of the estimated costs of the work, then these work-charged employees are industrial workers and are entitled to the benefits of the provisions contained in the Industrial Disputes Act. The Court ruled that their rights flow from that special enactment under which even contracts of employment are open to adjustment and modification. The work-charged employees, therefore, are in a better position than temporary servants like the other petitioners who are liable to be thrown out of employment without any kind of compensatory benefits. In Para.44, while dealing with a specific writ petition in the bunch of appeals involving hundreds of workers, the Court held as follows:

> "44. The record of Writ Petition No.4505 of 1978 shows that offers of alternative employment were made to the work-charged employees and many of them have accepted those offers. The rule of 'last come, first go' has also been consistently adopted while retrenching the work-charged employees. In fact the work-charged employees possess a unique right as industrial employees since, by reason of section 25J(1) of the Industrial Disputes Act, the provisions of Chapter VA, "Lay-off and Retrenchment", have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act, 1946."

Accordingly, it appears that the rights of the work-charged employees fell in Section 25J(1) of the Act and the provisions of Chapter VA relating to "Lay-off and Retrenchment" have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act, 1946. There is no doubt as Mr. Jhanji submits that the case has a bearing on this case in the principles involved and laid down by the Supreme Court. What follows from the judgment to my mind is that on completion of work, the case should fall squarely under Section 25-F of the Act. Section 2(oo)(bb) is ruled out as said earlier. Notice and payment of retrenchment compensation was not a precondition to discharge respondent on completion of works. He had no right to be transferred in view of *Jaswant Singh's* case. The right to payment and recovery via Section 25-J(2) would be in accordance with Chapter VA, but in this case since there were not less than 100 workers, then Section 25-K would come into application and, therefore, Chapter VB and on closing down of part of undertaking, the workers would have at best be entitled to compensation equal to an amount specified in Section 25-F of the Act, but it will not be a condition precedent to retrenchment. But at the same time, operation of Section 25 FFF cannot be ruled out and even if not specifically raised by the Board in the written statement, the power is still traceable to the provision. This is the thorny side of the case with the award offering no enlightenment on the subject-issue.

On the aspect of completion of work, Mr. Jhanji would refer to a Division Bench judgment of this Court in Kuljit Singh Vs. Presiding Officer, Labour Court, Patiala & others, 1993 (3) PLR 287 holding that in a case where service is dispensed with on completion of work (World Bank Scheme), the provisions of Section 25 FFF would be applicable and not those of Section 25-F. He would refer to another ruling of a Division Bench in Sukhdev Raj Vs. Bhakra Beas Management Board, 1994 (3) SCT 80 involving employees of BBMB itself relying on *Jaswant Singh's* case (supra). The Division Bench dealt with a case of work-charged employees discharged from service on completion of the Beas Project. On completion of Beas Project, components of Beas Project were to be transferred to BBMB. The petitioners sought their transfers to the Board along with its components. However, the prayer was negatived in view of *Jaswant Singh's* case holding that mere transfer of project does not confer a right on persons to be transferred to the BBMB. The two rights were different in their aims and purposes and, therefore, on completion of project or any other works for which a workman is employed, the employment would come to an end. Such a worker would have no right to reinstatement.

Applying the law, the direction issued by the Tribunal to absorb the respondent – workman in the BBMB was not warranted. It was a direction in excess of jurisdiction vested in the Tribunal and, therefore, the impugned award is not sustainable in law and deserves to be set aside.

There is another angle which requires consideration is the issue of delay and laches. The respondent-workman was discharged from service in 1983. After about 4 years, he woke up and filed an application under Section 33 C (2) of the Act on 13.04.1987 claiming notice pay, back wages, ex-gratia compensation and unearned leave from BCB. The respondent-workman specifically pleaded in the application that he served in the capacity of work-charged T-Mate till 30.09.1983 and his services were retrenched due to completion of work. [*See* Annexure R-2, which is Annexure P-3 on the file] The total amount claimed by him as money due was in a sum of ₹11,650/- from the Management of the BCB. In 1989, the respondent withdrew the claim and raised an industrial dispute after delay of six years, which dispute was referred to adjudication by the appropriate government in Industrial Reference No.174 of 1989 titled 'Vipin Kumar Vs. Executive Engineer, DPH/TLSC Division, Beas Project, Slapper (H.P.)'. The award was passed on 28.02.1994 against which the Board has approached this Court challenging the award as unsustainable on the grounds taken in the petition. Though there is no limitation provided under Section 10(1)(C) of the Act, but Courts have held that a dispute should be raised within reasonable time. Raising a dispute after six years cannot be easily held to be seeking legal redress within reasonable time. There is sufficient judicial opinion that delay can sometimes be fatal even in a Labour law dispute. [*See* - The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty & others, (2000) 2 SCC 455, Executive Engineer Vs. Shivalinga, (2002) 10 SCC 167 and State of Karnataka Vs. Ravi Kumar, (2009) 13 SCC 746].

In seeking reinstatement to public service paid by Government and governed by rules and regulations, the issue of limitation, delay and laches has necessarily to be viewed active and differently where the rights of other recruited and promoted employees are settling all the time not easily open to be disturbed by a lateral entry into service through an order of reinstatement after inordinate delay. I have no doubt that in the present case, the respondent – workman could not claim reinstatement as a matter if right. The Tribunal fell in error in granting the relief of absorption, meaning thereby, permanency on appointment and such a direction would not be warranted by law.

There is a third issue raised by the respondent – workman before the Tribunal based on discrimination which requires a few words. It was pleaded before the Tribunal that there were persons junior to the respondent – workman, who had been retained in service when the petitioner was left idle and those were S/shri Mohinder Singh, Ashwani Kumar, Kalia Ram and Gian Chand, who were appointed for the first time in 01.01.1983 while the petitioner was in service till 30.09.1983. In the written statement filed by the Board before the Tribunal, there was no specific reply to Para.3 where workman pleaded discrimination. To clarify the position, this Court passed an order on 23.07.2016 calling for response of the Board. The Court raised a query from the Management whether persons identical to the respondent have been retained, regularized and absorbed or not. The Management was directed to file an affidavit and produce material to show that similarly situated persons like the respondent had been dispensed with or such persons continued to serve and were regularized, in order to appreciate the award. This is how, the additional affidavit has been filed, which has been adverted to above. It is stated that approximately 1100 persons were retrenched on completion of work while some other persons were subsequently retrenched on closure of the BCB in the year 1991, who were appointed in the BBMB on fresh appointment and on new terms and conditions on a settlement arrived at between the parties to restore peace and harmony, which have been noticed and considered by the Supreme Court in *Jaswant Singh's* case.

The list of those persons is attached with the additional affidavit. The list attached is of those work-charged employees whose services were retrenched on 31.03.1982. These workers were employed in TLSC, Bilaspur. Employees serving in Dehar Bhiwani Line were retrenched in the year 1987 on account of completion of work. That list is also attached. There is, however, no clarity on file as to the services of the persons mentioned in Para.3 of the statement of claim. But at the same time, the respondent – workman does not say that they were employed on work-charged basis in his Sub Division. The Tribunal in its award has mentioned the names in the narration of facts pleaded by the workman, but thereafter, there is no discussion on the issue nor has finding been returned bringing the point to a dead end. Therefore, it would be reasonable to infer that the issue was not debated or entered into by the Tribunal and, therefore, it cannot be taken for the first time in writ jurisdiction, which prohibits new plea to be raised without justification. I would, therefore, not enter upon any further discussion on the question of discrimination without there being facts or evidence to support the plea.

Lastly, the plea of estopple raised by the Management before the Tribunal was a wholesome defence. Since the workman filed an application under Section 33-C(2) of the Act claiming computation of money due by failing to raise grievance of reinstatement and consequential benefits before the proper forum. Once the respondent – workman had confined his relief in his application dated 13.04.1987 to money due, then he was barred by constructive estopple and by Order 2 Rule 2 of the CPC to agitate the matter de novo, when he withdrew his application in 1989 on his own volition, then it was too late in the day for him to successfully change the track and claim reference that he had been wrongfully retrenched in violation of law. The gaps between termination in 1983 and filing of application after four years and thereafter raising a dispute in 1989 would not bring him the desired relief of reinstatement on a cadre post. Thus, the respondent – workman is barred by both principles of estoppel by record and estoppel by conduct. At best, he can limit his claim to the relief sought in application under Section 33-C (2) in a sum of ₹11,650/-.

There can be no doubt that payment of compensation was his right known either as retrenchment compensation or closure compensation and, therefore, the right subsists and can still be claimed under Section 33-C (2) of the Act, as there was is no limitation in presenting such an application, even though it would be a different matter that leave was not taken while withdrawing the application. But the workman's act in withdrawing his application to claim a larger relief should not be a ground to punish him and leave him without the payment claimed in the application in search of fresher pastures.

Therefore, while allowing this petition and setting aside the award, the Management is directed *ex debito justitiae* to reconsider the case of the respondent – workman for payment of sums of money as claimed in the application under Section 33-C(2) of the Act and grant the workman what is his legal due, if any. In case, the amounts claimed in the defunct Section 33-C(2) application are due and payable even after long passage of time, those amounts deserve to be considered for awarding to the workman since there was no decision on merits. If workman still presses monetary claims he can be duly compensated by payment of principal with interest at the current rate notified by the Nationalized Banks on fixed deposits from the date of demand notice till payment. This, in my view, would balance out the interests of both the parties in a fair, just and equitable manner, no matter it was not an issue in this petition.

Except as above, the petition is allowed and the impugned award is set aside.

19.01.2017 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *No*