

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8642-1999 (O&M)

Date of Decision:-11.12.2017.

M/s Meham Cooperative Sugar Mill Ltd., Meham, Rohtak

.....Petitioner

Versus

Presiding Officer-cum-Labour Court, Rohtak and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. S.K. Verma, Advocate for the petitioner.

Ms. Harmanpreet Kaur, Advocate for respondent No.2.

P.B. BAJANTHRI, J. (Oral)

In the instant petition, petitioner has challenged the award passed by the Labour Court dated 13.11.1998/30.11.1998 (Annexure P-1).

Respondent Tej Bhan-workman joined petitioner Department as a Daily Wager on 14.04.1990. His services were dispensed on 28.03.1994 on the score that his work was not satisfactory. Thus, the respondent-workman raised an industrial dispute. Labour Court decided the Reference No.99 of 1995 in favour of the respondent-workman to the extent of passing award of reinstatement, continuity of service and 25 % back wages. Petitioner aggrieved by the award passed by the Labour Court dated 13.11.1998/30.11.1998 presented this petition.

Learned counsel for the petitioner raised two contentions that

the respondent-workman has not worked for 240 days before his services

were dispensed in support of the said contention, he relied on reported decision of the Hon'ble Supreme Court passed **M/s U.P. Drugs & Pharmaceuticals Co. Ltd. Vs. Ramanuj Yadav and others 2003(4) S.C.T.**

412. Para 11 reads as under:-

Learned counsel for the appellant, however, relies upon Mohan Lal v. Management of M/s. Bharat Electronics Ltd. [(1981) 3 SCC 225]. In that case, the Court was considering the scope of Section 25-B of the ID Act. It was observed that in order to invoke the fiction enacted in clause (2)(a) of Section 25-B, it is necessary to determine first the relevant date, i.e., the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within a period of 12 months, the workman has rendered service for a period of 240 days. It was held that if these three factors are affirmatively answered in favour of the workman pursuant to the deeming fiction enacted in clause (2)(a), it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F. In Mohan Lal's case, the appellant was employed with the respondent from 8th December, 1973. His services were abruptly terminated by letter dated 12th October, 1974 w.e.f. October 19, 1974. This Court said that it is not necessary for the purpose of clause (2)(a) of Section 25-B that workman should be in service for a period of one year. It was held that if he is in service for a period of one year and that service is continuous service within the meaning of clause (1), his services would be governed by clause (1) and his case need not

be covered by clause (2). Clause (2) envisages the situation not governed by clause (1). Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of 12 calendar months counting backward and just preceding the relevant date the date of retrenchment. These were the facts under which it was held as to how the period of 240 days was to be calculated. The decision in the case of Mohan Lal does not lay down that if a workman had worked for more than 240 days in any number of years and if during the year of his termination, he had not worked for the said number of days, he would not be entitled to the benefit of [Section 25-B](#). The question with which we are concerned was not under consideration in Mohan Lal's case. If the viewpoint propounded by the management is accepted, then in every year the workman would be required to complete more than 240 days. If in any one year the employer gives him actual work for less than 240 days, the service of the workman can be terminated without compliance of [Section 6N](#) of the UP Act, despite his having worked for number of years and for more than 240 days in each year except the last. Such an intention cannot be attributed to the [UP Act](#). In the present case, as already noticed, the finding of the labour court is that the respondents worked for more than 240 days in each year from 1983 to 1986 but not having worked for 240 days in the year of termination, the termination was held by the labour court not to be violative of [Section 6N](#). Reference may also be made to the decision in [Ramakrishna Ramnath v. The Presiding Officer, Labour Court, Nagpur & Anr.](#)

[(1970) 3 SCC 67] where this Court observed that the provision requiring an enquiry to be made to find out whether the workman has actually worked for not less than 240 days during a period of 12 calendar months immediately preceding the retrenchment does not show that a workman, after satisfying the test, has further to show that he has worked during all the period he has been in service of the employer for 240 days in the year. The interpretation propounded for the appellant is wholly untenable. The decision in [U.P. State Cooperative Land Development Bank Ltd. v. Taz Mulk Ansari & Ors.](#) [1994 Supp.(2) SCC 745] relied upon by learned counsel for the appellant has no applicability since that was a case of clause (a) of [Section 6N](#) and, therefore, [Section 2\(g\)](#) had no relevance.

Further it was contended that no junior to respondent-workman was continued. To that extent statement has been filed before the Labour Court. Therefore, Labour Court has erred in extending the benefit of Section 25-F and 25-G of the Industrial Disputes Act, 1947 (for short 'the I.D. Act).

Per contra, learned counsel for the respondent No.2 while resisting the petitioner's contention submitted that 240 days as on the date of retrenchment cannot be taken into consideration since respondent-workman has worked during the period from 1990 to 1994 for a period of 4 years. That apart on the basis of allegations, respondent-workman was removed from service. Thus, without resorting to domestic inquiry, respondent-workman's services have been dispensed on 28.03.1994. Labour Court has rightly held that there is a violation of Section 25-F and 25-G of the I.D. Act while appreciating the facts of the case. It was further submitted that

petitioner has accepted the finding of the Labour Court that there is violation of Section 25-G of the I.D. Act. The same is not challenged in the present petition.

Heard learned counsel for the parties.

Learned counsel for the petitioner's contention that respondent-workman Tej Bhan's services have been dispensed on 28.03.1994 on the score that his services were not satisfactory for which the petitioners have not resorted to holding of domestic inquiry before termination his services. In other words based on the allegations his services have been dispensed. The decision cited by learned counsel for the petitioner is distinguishable with reference to the facts of the present case for the reasons that Supreme Court in the Case of U.P. Drugs and Pharmaceuticals Company Ltd. cited *supra* interpreted Section 25-G of the I.D. Act read with Section 6 (n) of the Uttar Pradesh Industrial Disputes Act, 1947 (for short 'the U.P. Act'). The finding given in para 11 of the aforesaid decision is not applicable to the present case since the U.P. Act is not attracted in the present petition. Hence, it is distinguishable. Moreover, petitioners have failed to challenge the finding given in respect of violation of Section 25-F of the I.D. Act in particularly para 9 of the award in the present petition. Therefore, petitioners have not made out a case so as to interfere with the award passed by the Labour Court dated 13.11.1998/30.11.1998 (Annexure P-1).

Accordingly, petition stands disposed of.

However, award of the Labour Court is modified for the reasons that award dated 13.11.1998 was stayed by this Court and further there is a direction on 13.11.2004 to the extent that petitioner is liable to pay wages under Section 17-B of the I.D. to the respondent-workman. The

same is being paid from time to time as stated by learned counsel for the petitioner. In view of the fact that respondent-workman has worked from 14.04.1990 to 28.03.1994 and he is out of service from 28.03.1994 therefore, it is not feasible to reinstate the respondent-workman at this juncture. Consequently, award of the Labour Court dated 13.11.1998 (Annexure P-1) is modified to the extent that respondent-workman is entitled to compensation in view of the Supreme Court decision passed in **Bharat Sanchar Nigam Limited v. Bhurumal (2014) 7 SCC 177.** Respondent-workman is entitled to compensation of ₹ 2.5 lacs. The petitioners are hereby directed to pay compensation of ₹ 2.5 lacs within a period of 3 months from today failing which respondent-workman is entitled to interest @ 6% per annum from today.

(P.B. BAJANTHRI)
JUDGE

December 11, 2017.

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Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.