

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

Date of decision: 31.05.2017

CWP No.9497 of 2001 (O&M)

State of Haryana

...Petitioner

Vs.

Ram Phal & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.T.Redhu, DAG, Haryana, for the petitioner.

Mr. Praveen Chander Goyal, Advocate, for respondent No.1.

RAJIV NARAIN RAINA, J. (ORAL)

1. The period of continuous and uninterrupted service put in by the respondent claimant as a part time Sweeper as well as on alleged full time basis was from 01.03.1984 to 10.05.1998, when lastly his services were terminated while his junior in service, namely, Suresh Kumar was retained in service. The third issue framed by the Labour Court was; whether the applicant was not a 'workman' being a part time Sweeper. The question; whether a part time employee falls within the definition of 'workman' under the Industrial Disputes Act, 1947 (for short 'the Act') was settled in Simla Devi Vs. Presiding Officer, Labour Courts, (1998) 119 PLR 173 and finally by the Supreme Court in Divisional Manager, New India Assurance Co. Ltd. Vs. A. Sankaralingam, (2008) 10 SCC 698.

2. The petitioning State disputed the assertion of the workman that at the time of termination, he was a regular hand. Be that as it may, even if

he was part time employee, he still would have the protection to industrial rights including under Section 25F of the Act. On evidence, the Labour Court held that the termination was illegal since it had been brought about without following the mandatory procedure of notice, notice pay and payment of retrenchment compensation. As far as relief is concerned, the finding recorded by the Court below is that the claimant workman had not been gainfully employed elsewhere after termination when his version was believed.

3. The second objection, other than claimant being a part time employee, was that he had filed a civil suit, which was dismissed and the appeal was rejected by the learned Additional District Judge, Karnal on the same issue. The objection was overruled by the Labour Court rightly holding that the jurisdiction of the Civil Court is barred when claim is based on industrial principles while dealing with disputes falling under Section 2(k) and 2-A of the Act referable under Section 10 of the Act. The Labour Court relied on the judgment of the Supreme Court in The Rajasthan State Road Transport Corporation & another Vs. Krishana Kant etc., 1995 LLR 481 to fortify itself. [For more as to when and when not bar operates vis a vis Civil Suit vs. IDR see: The Premier Automobiles Ltd. Vs. Kamlakar Shantaram Wadke & others, (1976) 1 SCC 496; Rajasthan State Road Transport Corporation & others Vs. Zakir Hussain, (2005) 7 SCC 447; Rajasthan SRTC & others Vs. Mohar Singh, (2008) 5 SCC 542 & Rajasthan State Road Transport Corporation & another Vs. Bal Mukund Bairwa, (2009) 4 SCC 299.

4. Hence, the claimant was well within his rights to raise a dispute and seek a reference to the Labour Court after visiting the civil court

unsuccessfully for determining the validity of the termination order on principles of Section 25F and 25G of the Act. It is not disputed that Suresh Kumar was retained in service leading to violation of the principles of 'last come first go' in Section 25G. On these premises, the Labour Court, Panipat vide award dated 11.01.2001 has answered the reference in favour of the workman holding him entitled to reinstatement to service with continuity and full back wages while striking down the illegal and void termination/retrenchment. The arrears of back wages stand quite appropriately restricted from the date of demand notice i.e. 16.05.1998.

5. I have heard Mr. R.T.Redhu for the petitioner – State and Mr. Praveen Chander Goyal, representing the respondent workman. Having heard them on their respective cases and on perusing the record with their assistance, I find no legal infirmity in the impugned award to interfere in writ jurisdiction. There is no error apparent on the face of record. The conclusion is eminently possible and within the confines of law.

6. The petition is accordingly dismissed and the award is upheld as legal and valid. There has been infraction of rights under Sections 25F & 25G of the Act.

7. It may be noted, before parting, that there was no stay was granted against the award by this Court at the admission stage. The award remains active. Thus, in case the award is not implemented within three months from the date of receipt of certified copy of this order, not only would interest run from the date of failure to implement it at the rate of 9% per annum till amount is realized and the workman would also be at liberty to apply to the Labour Commissioner to proceed against the management under Section 29 read with Section 34 of the Act, notwithstanding the

petitioner being a department of Government, apart from taking recourse to any other remedy available in law such as the one that lies in Section 11(9) of the Act.

31.05.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>