

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23263 of 2012

Date of Decision: 1.05.2017

Raj Kumar

... Petitioner

Versus

Presiding Officer, Industrial Tribunal and
Labour Court, Union Territory, Chandigarh & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sandeep Vermani, Advocate,
for the petitioner.

Mr. PK Mutneja, Advocate,
for respondents No.2 & 3.

RAJIV NARAIN RAINA, J.(Oral)

This order disposes of the above-mentioned first case as well as the connected writ petitions* tabulated at the foot of the order, as common questions of law and fact are involved in them which can conveniently be decided by a common order.

No satisfaction is there in all these cases on evidence that any of the workmen had completed 240 days of service with respondent-Pfizer Limited in the 12 preceding calendar months of the retrenchment counted as per Section 25-B of the Industrial Disputes Act, 1947. This essential jurisdictional fact is missing from this bunch of cases. The petitioner(s) were engaged as Operator in place of regular workers against leave vacancies. At one point of time the respondents relented accepting the demand of Badlis, like the petitioners, for consideration of their cases for making them regular hands by calling them to compete in a trade test and those who qualified the

test were absorbed as permanent workers while those who did not, were either continued as Badlis or their services were dispensed with, till ultimately, respondent-Pfizer packed up closing its business in Chandigarh. When the industry is closed reinstatement would be far cry. Even assuming that the petitioner(s) had developed industrial rights, even then the test of 240 days is not met. For want of essential ingredient of foundational fact missing they are denuded of industrial rights, they cease to be “workmen” for the purposes of Industrial Disputes Act, 1947 losing the guarantees the working classes have who fall within the meaning of Section 2(s) of the ID Act. In Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, (1980) 2 SCC 593, the Supreme Court held that if 240 days were not completed the result will be that no industrial rights arise. Per Krishna Iyer, J. in para. 157 of the report remarked: “The policy of the Act draws a distinction between those with service of 240 days and more and others with less. The casuals with less than nine months’ service are 57 in number and we do not think that this fugitive service should qualify for reinstatement especially when we find a number of intermediate recruits, with longer though untenable service, have to be baled out. We decline reinstatement of these 57 hands. The other 74 must be reinstated although notionally but wrongly they are shown as casual. In the “life” sense, all mortals are casuals but in the legal sense, those with a record of 240 days on the rolls, are a class who have rights under industrial law.”

When this is the ground level factual position regarding non-completion of 240 days of uninterrupted and continuous service the reference itself is doubtful in its maintainability. The Labour Court has returned a

positive finding of fact in each of the cases on the number of days worked by the claimants in the previous years after appreciating the evidence and looking to the record of attendance which was brought on record by the parties, and which finding is not to be carelessly disregarded.

In view of this, I have no option but to dismiss all these cases. Once industrial rights have not developed in the claimants then it will be difficult to hold that the cases can be brought within the purview of compensation in lieu of reinstatement, since petitioning workers have been unable to cross the first important step towards relief. For these reasons, I would turn down these petitions and dismissed them. No costs.

However, if in any of these cases having regard to the Labour Court's record [which is available only in one CWP 23263 of 2012] any one of them have put in the requisite number of days required by Section 25B of the Act, they may apply for reconsideration of relief.

1.05.2017
monika

(RAJIV NARAIN RAINA)
JUDGE

<i>Sr. No.</i>	<i>Case No.</i>	<i>Parties Name</i>
1	CWP-23264-2012	RAMESH BISHT V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
2	CWP-6407-2013	RAJINDER KUMAR KAUNDAL V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
3	CWP-23265-2012	SWARN SINGH V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
4	CWP-23266-2012	JATINDER SINGH V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.

<i>Sr. No.</i>	<i>Case No.</i>	<i>Parties Name</i>
5	CWP-23267-2012	KISHAN LAL V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
6	CWP-23268-2012	VIVEK KUMAR SHARMA V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
7	CWP-23269-2012	MANGO RAM V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
8	CWP-23270-2012	KRISHNA V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
9	CWP-23271-2012	RAMAN MONGA V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
10	CWP-23272-2012	RINKOO GHOSH V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
11	CWP-23273-2012	SUNIL SINGH V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
12	CWP-23274-2012	SUBASH CHAND V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
13	CWP-23275-2012	SH. HARISH KUMAR V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
14	CWP-23276-2012	KAILASH SHARMA V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
15	CWP-23277-2012	HITENDER CHAUHAN V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
16	CWP-23278-2012	SANJAY KUMAR V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
17	CWP-23279-2012	NIRMAL SINGH V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
18	CWP-23280-2012	SANJAY KUMAR V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
19	CWP-23281-2012	JAGJIT SINGH V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
20	CWP-23284-2012	RAM PYARA VERMA V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.

<i>Sr. No.</i>	<i>Case No.</i>	<i>Parties Name</i>
21	CWP-23297-2012	KAPOOR SINGH PANWAR V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
22	CWP-23313-2012	MADAN SINGH RAWAT V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.
23	CWP-23349-2012	ASHOK KUMAR V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND LABOUR COURT, UNION TERRITORY, CHANDIGARH & ORS.

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monika

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned Yes
Whether reportable No