

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.338 of 2017

Date of Decision: 13.1.2017

Devender Mohan

... Petitioner

Versus

The Presiding Officer Labour Court, Ambala & ors. ... Respondents

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

Present: Mr. JS Bedi, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.(Oral)

Even if the Labour Court ought not have been influenced by the designation of the petitioner-workman as Junior Supervisor as person not falling in the definition of “workman” under Section 2(s) of the Industrial Disputes Act, 1947 [for short the “Act”], assuming the employee to be on the side of management, but still it did not commit any palpable error or occasioned injustice in upholding the retirement order dated October 5, 2013 in finding that the same did not amount to “retrenchment” within the meaning of Section 2 (oo) of the Act. Therefore, compliance of procedure in Section 25F of the Act was excused by the exceptions in the law. The order dated October 5, 2013 reads as follows:-

“Since you not in a position to deliver goods according to the expectations of the management, you are hereby retired from service of the company in terms of clause no.8 of above cited letter.

You may receive your dues from the Accounts Branch/ Time Office on surrendering no dues certificate from all the sections of the factory.”

Mr. Bedi for the workman-petitioner submits that

notwithstanding the order dated October 5, 2013, which was referred for adjudication on its justification as an order of termination, it was passed when the petitioner was 57 years and 4 months of age and this seems an odd way to send the petitioner home. Furthermore, it is canvassed that the order is stigmatic in nature as it touches upon the work and conduct of the petitioner when it records that the petitioner was not in a position to deliver goods according to the expectations of the management.

I do not see how there is any stigma attached in the words used in the order. The expression “expectations of the management” is in the domain of subjective satisfaction of the management which demand of maintenance of standards expected might differ from business to business and organization to organization depending on goods and services produced and therefore, it cannot be said that the standards required in the respondent-management would be the same in the next job the workman might seek. The words are more comparative in nature when they in fact say nothing more than, that according to management the employee ceased to deliver what was expected. Assessing the continued utility of an employee is a management function. This retirement notice-letter would not be read against the petitioner in future employment as it does not touch upon the character or behaviour of the petitioner and the argument I think is only an over reaction. I would, therefore, reject the argument of Mr. Bedi that the impugned order is stigmatic and penal in character and interference is called for in the award. Moreover, the impugned order has been passed by resort to power under Clause 8 of the terms and conditions of the appointment letter which is binding on the parties, which provision reads as follows:-

“8. That you shall be liable to retirement on

attaining the age of fifty five years and should your services be extended, you will be liable to be retired any time thereafter.”

The age of retirement in the private organization i.e. the respondent management is 55 years. Service beyond 55 was extendable but employee was liable to be retired any time thereafter. When the age of retirement is fixed, it becomes a condition of service; then, it is no argument to contend that the petitioner was only 57 years and 4 months when he was retired from service and had a right to extension in service. After attaining the age of 55 years the petitioner could be retired anytime thereafter. The respondent is a private management and the service under it is not statutory in nature and remains dependent on the contract of service which the appointment letter dated February 27, 1981 spells out. The management did not transgress its power in retiring the petitioner at the age they have without casting stigma or slur on him to render him unfit for future service, in case he seeks one. They acted within their dictates to suit their business when they found the employee had outlived his utility.

I would, therefore, not interfere with the well reasoned award of the Labour Court even assuming that the petitioner was a workman within the definition in Section 2(s) of the Act, still the present litigation will yield him no relief when the outer limits of extensions beyond 55 years are not codified in writing and claimable as a matter of right.

Accordingly, the petition is dismissed in *limine*.

13.01.2017

Monika

**(RAJIV NARAIN RAINA)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes
No*