

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

LPA No.1195 of 2016 (O&M)

Date of Decision : 08.08.2017

Satish Kumar

....Appellant

Versus

State of Punjab and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI

...

Present: Mr.Jatinder Singh Gill, Advocate
for the appellant.

...

MAHESH GROVER, J. (Oral)

CM No.2481-LPA of 2016

Delay of 82 days in re-filing the appeal is condoned.

C.M.stands allowed.

LPA No.1195 of 2016 (O&M)

This appeal is directed against the judgment of the
learned Single Judge dated 19.11.2015.

The appellant is a workman, engaged as Pump
Operator on daily wages. His services were dispensed with in the
year 1996 and he claimed a reference in 1997 which was
answered in 2001 against the workman which led to a writ
petition and SLP, both of which met the same fate as the
reference before the Labour Court. The workman then raised

another dispute in the year 2002 alleging violation of Section 25-H of Industrial Disputes Act and took a plea that number of persons were employed as Pump Operator in the year 1998 and since the appellant was a retrenched employee, offer ought to have been made to him with a preferential claim to employment. The Labour Court accepted the plea of the appellant but the learned Single Judge negated on the ground that reliance placed upon the decision in *Gulab Singh v. Barara Cooperative Marketing and Processing Society Limited, Barara and another*, 2004(4) RSJ 521 was misplaced. While drawing a distinction it relied on the testimony of Balbir Singh, SDO to negate the claim of the appellant. This witness had categorically stated that the appellant's initial entry into service was not in accordance with the accepted public mode of employment, whereas the employees who gained entry into service in 1998 were requisitioned through the employment exchange. The appellant would contend that this was never the case set up by the respondents and it is a new twist given to the entire controversy. The learned Single Judge drew a distinction on this aspect by concluding that character of employment insisted upon by a workman while enforcing the provisions of Section 25-H of the Industrial Disputes Act has necessarily to be similar to the one from where he was disengaged. In this regard the learned Single

Judge further observed that the engagement of the workman was not from the public mode of employment and thus no parity could be drawn when the workmen were engaged after requisitioning the names through the employment exchange. The evidence on record before the Tribunal clearly indicates the correctness of the observation made by the learned Single Judge. In a span of two years the appellant had served only for 159 days, the details of which are extracted herebelow :-

“1.9.1994 to 29.9.1994

1.12.1994 to 29.12.1994

17.5.1995 to 30.6.1995

1.12.1995 to 29.12.1995

1.4.1996 to 29.4.1996

1.5.1996 to 29.5.1996”

It is the own case of the appellant that he was engaged on daily wages and if the aforesaid period is to be construed, evidently it was not an appointment to the cadre of a Pump Operator as was the case of the workmen employed in the year 1998 after requisitioning the names through the employment exchange. The plea of Section 25-H was thus rightly negated by the learned Single Judge. We are also of the opinion that the reference qua Section 25-H was also claimed by the appellant belatedly in the year 2003 when the cause concededly accrued to

him in the year 1998 and there is no justification offered for this and, therefore, the plea of ignorance raised would be inconsequential to the appellant considering that he was already in litigation with the respondents for a sufficiently long time and it is difficult to accept the lack of knowledge as a ground to justify the inordinate delay of 5 years in raising a dispute.

No ground to interfere.

Dismissed.

(MAHESH GROVER)
JUDGE

08.08.2017
dss

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No