

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

CWP No.18559 of 2012 (O&M)
Date of Decision:24.1.2019

Punjab State Electricity Board and another ... Petitioners

Versus

Presiding Officer, Industrial Tribunal & Another ... Respondents

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

Present: Mr.Y.P.Khullar, Advocate for the petitioners

Mr.Rishu Mahajan, Advocate for respondent no.2

RAJIV NARAIN RAINA, J.

1. In this petition, the petitioner-Board has assailed the award dated 29.5.2012 passed by the Industrial Tribunal, Gurdaspur granting re-employment to the 2nd respondent/workman from the date when the award comes into operation alongwith seniority from the date of demand notice i.e. 29.9.2008 or from the date when juniors to the workman were re-employed by the petitioner/Board, whichever is later.

2. The case of the petitioner-Management is that the workman had worked for 583 days from 1.3.1988 to 1.12.1993 with the Assistant Executive Engineer, Sub Division, Dehriwal. The dispute was raised for the first time after a lapse of 15 years through demand notice served on the Management in the year 2008 after inordinate delay on the ground that Section 25H of the Industrial Disputes Act, 1947 (for short “the Act”) was violated by the Management. Per contra, worker contended that since he had a preferential right of re-employment, notice should have been given to him, then he could have exercised his choice of re-employment

or to forego the offer. The Management did not comply with Rules 76 and 77 of the Industrial Disputes (Central) Rule, 1957 (for short “Rules of 1957”) framed under the Act. The reference deserves to be answered in his favour for non-compliance of Section 25H of the Act. The issue referred to the Tribunal was whether the workman is to be re-employed and if so, to what benefits the workman is entitled to.

3. Upon notice, the Management appeared before the Tribunal and objected that the reference was not maintainable as the workman had not applied for re-employment at the proper stage when applications were invited from the daily wage workers by the Management of the Board in September, 1997 and as such the workman had lost his preferential right for re-employment under Section 25H of the Act. Press notice was published in a number of leading English and Punjabi newspapers on 3.9.1997 vide which applications were invited from retrenched daily wagers for re-employment, but the workman did not apply for re-employment and as such he cannot claim any remedy at the belated stage invoking Section 25-H of the Act. A preliminary objection was taken that the reference was time barred with a passage of 15 years from the alleged termination and this unreasonable delay has not been explained by the workman. Another objection to maintainability was that necessary parties who are alleged to be junior to the workman and had been re-employed in 1997, had not been impleaded as parties to the reference who are likely to be affected.

4. On merits, the Management admitted that the workman was engaged as daily wager in September, 1991. He left service in December, 1993, without any information and prior permission from the JE/Incharge and continuously absented himself from duties thereafter. The press

notice was issued as a result of the demand by the various Unions of the Management Board for adjustment of retrenched workers. A Committee was constituted headed by the Chief Engineer for considering cases of re-employment of daily wagers. It was not disputed that workers who had 337 days of service were called for interview and re-employed by the Management. The case of the workman was that in compliance of Rule 78, notice was required to be sent to him by registered cover and not merely by publication in newspapers. It was later on that he came to know about the re-employment of some juniors. Then he approached the Management and offered himself for re-employment. When that had no effect, he raised the dispute regarding re-employment which was referred for adjudication. The justification given by the Board for publication in the newspapers was that there were a large number of retrenched employees having rendered service of more than 337 days.

5. The Management witness admitted in his cross-examination that registered notice was not served on the workman as required by Rule 78 which provides that at least 10 days before the date on which the vacancies are to be filled, the employer shall arrange for display on the notice board in a conspicuous place in the premises of industrial establishments, details of those vacancies and shall also give intimation of those vacancies by registered post to all the retrenched workers eligible to be considered, to the address given by them at the time of their retrenchment. The Tribunal held that this procedure had not been followed and this vitiates the action of non-consideration of the rights of the petitioner. A preferential right of re-employment is statutory in nature and accordingly, the procedure has to be meticulously followed and failure to do so will amount to non-compliance of Section 25-H of the

Act. Mere advertisement in newspapers will not amount to compliance. On this proposition, the Tribunal applied the judgment of a Division Bench of Gujarat High Court in *Gujarat State Machine Tools Corporation Ltd. vs. Dipak J. Desai*, 1994 (3) LLJ 848 decided on 8.9.1986.

6. The contention of the Management before the Division Bench of the Gujarat High Court was that mere advertisement in the newspapers will not in any way offend Section 25H, but on the other hand, it should be taken as invitation for the discharged workman to apply and get himself reinstated. This argument was not accepted by the Division Bench. Hence failure to give registered notice is fatal to the argument advanced by the Management as regards compliance of Section 25H is concerned. The Tribunal was correct in coming to the conclusion that there was violation of Section 25H and on that ground also the workman was reinstated in service. The same principle has been applied by our Court in *State of Punjab vs. Parvesh Kumar*, 1994 (3) RSJ 37 that violation of Section 25H is fatal and the preferential right in Section 25H comes to the rescue of the workman in case procedure of service of notice is not followed. Other than the judgments noticed in the award of the Tribunal, the respondent-workman has relied on *Jasmer Singh vs. State of Haryana and another* (Civil Appeal No.346 of 2015 decided by the Supreme Court on 13.1.2015 that Section 25-F, Clauses (a) and (b), 25G and 25H of the Act stand on the same footing in case of non-compliance of those provisions. There can be no quarrel with the legal principle laid down in the judgments that Section 25H is mandatory and has to be complied with by the Management in case outsider is taken on the same job after termination of service of aggrieved person.

7. However, notwithstanding the above legal position, the basic premise on which Section 25H of the Act is built is “termination”/”retrenchment” of the employee and the need for engaging persons on the same job, the need arising later and right of ex-employees to be informed individually that recruitment is to be made so that they may come forward in case they are interested. The retrenchment was in 1993. The demand notice was raised in 2008. In the cases noticed above, there was no unreasonable delay from retrenchment to the rights of preferential consideration coming into existence as against the humongous delay in the present case. In this case the Management may not be wrong to plead in their written statement that although it is true and there is no limitation of time for referring a dispute of employment, but it does not mean that workman can wake up from slumber at any time and raise an industrial dispute. In such cases where a workman raised a dead or stale dispute after over a decade, it causes a great inconvenience and grave prejudice and hardship to the Management to locate the record for preparing written statement and expect production of record in evidence in order to substantiate the plea taken in the written statement. Besides, the workman failed to explain any cogent and sufficient reason which was beyond his control, in the demand notice which deterred him to raise the demand notice for re-employment at such a belated stage. In such a case relief may not be available for the asking.

8. Another factor which refrains me from granting relief to the respondent-workman is that necessary parties alleged to be junior to the workman in the demand notice and said to be re-employed by the Management in 1997 have not been made parties to the reference and the

rights of such junior workers may be affected for the purpose of seniority et. in case the workman succeeds in the reference case.

9. There is still another factor which works against the respondent-workman when it is pleaded that he left service in December, 1993 without any intimation and prior permission from his JE/Incharge and, thereafter, continuously remained absent from duty indefinitely. There is no rebuttal to this pleading. This leads to pragmatic inference that the respondent abandoned his job from 1993 onwards showing up his face for the first time in 2008. In such circumstances, there is no termination or retrenchment which is the necessary ingredient of Section 25H of the Act. Admittedly, there is no termination order in existence in the present case. If this is so, then it is highly doubtful whether the provisions of Section 25H of the Act are attracted as his name may not be in a live list of terminated employees who would have preferential right to re-employment. This vital aspect has been completely over-looked by the Tribunal. All the cases cited by the workman are built on termination and right to re-employment on proposed induction of outsiders. Keeping in view all this in mind, I am unable to support the award of the Tribunal on re-employment to a person who has abandoned his job. And much more on ante-dated seniority from 2008. Principles of Section 25H of the Act are well known as enunciated in the precedents. But the application of those principles to the facts of this case appear to lead to different results and, if granted, it may cause avoidable chaos in the department in case the workman is allowed to be reinstated at this belated stage on a public post and, therefore, this Court in the special facts and circumstances reaches the conclusions, as discussed above, to deny relief

awarded by the Tribunal.

10. In view of the above, this writ petition is allowed and the award dated 29.5.2012 passed by the Industrial Tribunal, Gurdaspur is set aside. No costs.

24.1.2019
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No