

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

[1]

CWP No.18021 of 2019
Date of Decision : 15.07.2019

Vidyadeen

....Petitioner

v/s

Presiding Officer, Industrial Learned Tribunal, Ludhiana,
District Courts, Ludhiana and another

....Respondents

[2]

CWP No.18650 of 2019

Krishan Pal and others

....Petitioners

v/s

Presiding Officer, Industrial Learned Tribunal, Ludhiana,
District Courts, Ludhiana and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. Ravi Gakhar, Advocate for the petitioner(s)
 in both the petitions.

B.S. Walia, J.

[1] This order shall decide CWP No.18021 of 2019 and CWP No.18650 of 2019, as identical issues are involved. Facts of the case are being taken from CWP No.18021 of 2019.

[2] Learned Counsel contended that the petitioner-workman (hereinafter referred to as the workman) was employed as Power Loom Machine Operator @ Rs.6100/- per month with the management from 01.02.1992 to 10.01.2013 and his services were illegally terminated on 10.01.2013 without notice, notice pay or retrenchment compensation, while juniors were retained in service, besides, workmen were

appointed in the same category after termination of the workman's

services, thereby violating Section 25-F, 25-G & 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). Learned Counsel also contended that the management had wrongly taken up the stand that it had not terminated the services of the workman and that it was the workman who had stopped coming for duty despite letter dated 15.01.2013 to rejoin, besides the workman had not served for 240 days in the 12 months preceding the alleged date of termination. Learned counsel contended that the stand of the respondent-management (hereinafter referred to as the management) that the workman had worked intermittently from 26.03.2012 till 08.01.2013 was highly suspicious and thereby the management had tried to mislead the Industrial Tribunal, Ludhiana (hereinafter referred to as the 'Tribunal') by creating bogus documents to show that the workman was appointed w.e.f. 01.01.2012. Secondly, the management had closed the firm in connivance with the father and brothers of the proprietor of the management just to exploit the workers and lastly, there was no evidence on the record to show that the management had the permission to close down the establishment as per the provisions of Section 25-N and 25-O of the Act, as also without giving closure compensation as per Section 25-FFF of the Act.

[3] I have considered the submissions of learned counsel for the workman.

[4] Learned Tribunal, on the basis of evidence led before it, held that the workman had failed to prove that he had worked under the management for 240 days in the 12 months preceding the date of termination or that any worker had been retained in violation of Section

of Section 25-H while making fresh appointment, therefore, there was no violation of Section 25-F, 25-G or 25-H of the Act respectively. The Tribunal also held that there was no requirement for the management to comply with the provisions of Chapter V-B of the Act and to seek prior permission from the competent authority to close down the establishment as the workman failed to prove employment of 100 or more workers in the establishment in the 12 months preceding the date of closure i.e. 01.06.2017. Accordingly the reference was answered against the workman.

[5] Admittedly, the workman failed to lead any evidence to prove having worked for a period of 240 days in the 12 months preceding the date of alleged termination i.e. 10.01.2013. The workman, did not place any documentary evidence on record in support of his having worked for 240 days in the 12 months preceding the date of his alleged termination apart from filing his affidavit. Mere bald self serving statement of the workman of his having worked for 240 days in the 12 months preceding the date of his termination would not suffice. Consequently, the finding of the learned Tribunal that the petitioner failed to establish having worked with the respondents 240 days in 12 months preceding date of termination does not warrant interference in view of the decision in 'Surendernagar District Panchyat and others versus Jethabhat Pitamberbhai', 2005(6) Service Law Reports 774, 'Municipal Corporation, Faridabad versus Siri Niwas', 2004 (4) SCT 211, 'Bhavnagar Municipal Corporation etc. versus Jadeja Govubha Chhanubha and another', 2015(2) Supreme Court Cases (L&S) 513, 'Rameshwar Dayal versus The Presiding Officer, Labour Court No.VI,

versus Ghanshyam and others', 2013(18) SCT 276 (Delhi), 'Bhartiya Dak Tar Mazdoor Mach through its President versus General Manager, Kalyan Telecom District', 2003(99) Factories & Labour Reports, 457 (Bombay). Consequentially, the finding recorded against the workman on said point by the Tribunal do not call for any interference especially since learned counsel has not referred to any material on record to show the workman had completed 240 days in the 12 months preceding the alleged date of termination i.e. 10.01.2013 nor has any evidence been referred to show that a workman junior to the petitioner workman was retained while terminating the services of the workman or of any worker having been engaged after the alleged termination of the workman. In the circumstances, plea of violation of the provisions of Section 25-F, 25-G & 25-H of the Act is without any basis.

[6] The plea that closure of the establishment was illegal as no permission was taken by the management under Section 25(O) of the Act to close the establishment as also on account of non payment of closure compensation as per the provisions of Section 25-FFF of the Act, it needs mention that as per affidavit Ex. MB of MW-1 Jatinder Pal, as also documents Ex.M-17 to Ex. M-24, the establishment was permanently closed w.e.f. 01.06.2017 under intimation to the ESI Corporation, Employees' Provident Fund Organization, Labour Commissioner, Punjab besides the proprietor had surrendered vacant possession of the premises, and sold the machinery of the establishment in scrap. Learned Counsel failed to refer to any evidence to show that not less than 100 workmen were employed in the establishment on an average per working day for the preceding 12 months prior

the requirement to comply with the provisions of Sections 25-O and 25-FFF of Chapter V-B of the Act.

[7] Admittedly, closure stands acknowledged in paragraph 6(viii) of the writ petition though it is stated that the establishment was closed very cleverly. In 'Pottery Mazdoor Panchayat versus The Perfect Pottery Co. Ltd. And another', 1979(3) Supreme Court Cases 762, Hon'ble the Supreme Court held that the Tribunal had no jurisdiction to enquire into the propriety of the closure or whether the closure was genuine or otherwise. Likewise, Hon'ble Bombay High Court in case titled as 'Chandrabhushan Ramchandra Garu and Others versus State of Maharashtra and others', 1997-II Labour Law Journal 1072, held that the obligation to apply for prior permission under Section 25-O was only upon such employer in whose industrial establishment not less than 100 workmen were employed on an average per working day for the preceding 12 months prior to date of closure of the undertaking. No evidence has been referred to by learned counsel to prove that the workman had served for the requisite period or that requisite number of workers were engaged in the establishment so as to attract the provisions of Section 25-FFF/ 25-O of the Act respectively. Admittedly, provisions of Chapter V-B of the Act are applicable to an establishment only where not less than 100 workmen were employed on an average per working day for the preceding 12 months prior to date of closure of the undertaking. Accordingly, in the absence of it having been established that not less than 100 workmen were employed in the establishment on an average per working day for the preceding 12 months prior to date of closure of the undertaking, the provisions of

management would not be required to comply with the provisions of Section 25-O and Section 25-N of the Act.

[8] Since the workman failed to establish to be in continuous service in the establishment in terms of Section 25-B immediately before its closure, no notice was required to be given nor compensation payable u/s 25-FFF of the Act. Likewise, in the absence of reference to any evidence to show employment of 100 or more workman in the establishment on an average per working day for the preceding 12 months, or that the workman served for 240 days in aforesaid period prior to the alleged termination, neither the provisions of Section 25-N are applicable nor is prior permission of the appropriate government or competent authority required.

[9] In the light of the position as noted above, no circumstances exist warranting interference with the award of the Tribunal. Accordingly, finding no merit in the writ petition, the same is ***dismissed in limine***.

(B.S. Walia)
Judge

July 15, 2019
'Rajneesh'

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