

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

LPA No. 1715 of 2015 (O&M)

Date of decision: 29.01.2019

District Education Officer and another

.....Appellants

Vs.

Raj Pal and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Randhir Singh, Additional Advocate General, Haryana.

Mr. Sandeep Singh, Advocate for respondent No.1.

Harnaresh Singh Gill,J.

C.M. No. 3661-LPA of 2015

1. This is an application under Section 5 of the Limitation Act, 1963 read with Section 151 of the Code of Civil Procedure for condonation of delay of 41 days in filing the appeal.

2. For the reasons mentioned in the application and after hearing learned counsel for the parties, the delay in filing the appeal is condoned. CM stands disposed of.

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3. The appellants have filed the present Letters Patent Appeal under clause X of the Letters Patent against the judgment dated 4.9.2005 passed by learned Single Judge.

4. A few facts relevant for the decision of the controversy involved as available on the record may be noticed. Respondent No.1-workman Raj Pal was appointed by the Headmaster, Government High School, Dharana, District Jhajjar on 4.9.2003 in compliance to the order passed by the District Education Officer, Jhajjar vide order dated 18.8.2003 as part-time Water Carrier. According to the respondent-workman, during his service period, his work and conduct was satisfactory. However, all of sudden on 1.3.2005, his services were terminated by the appellant-management without assigning any reason. Further, the respondent-workman asserts that, neither any notice was served upon him nor he was paid any compensation. No charge sheet was served upon him nor any inquiry was conducted inspite of his completing 240 days of continuous service in the preceding 12 months. It was claimed that his termination was illegal, null and void and against the provisions of Section 25F of the Industrial Disputes Act, 1947 (in short, “the Act”). The stand of the appellant management was that part time employee was engaged to work only for two to three hours daily which was for 10 months in a year with break of two months due to vacations every year in the school and part time class IV employee was engaged on year to year basis and on the sanction of the post. Further, sanction of the post of part time Water Carrier was not taken since 1.3.2005 and thus, the workman was relieved. The Labour court after examining the entire evidence on record ordered reinstatement of the workman alongwith continuity of service and 50 percent back wages from the date of demand notice. Reliance was placed on the evidence of WW2 Prem Singh who was an official of the appellant school and who had brought the record to the effect that the workmen had worked continuously from 6.9.2003 to 28.2.2005. It was further recorded that at the time of termination of service of the workman, no notice or retrenchment

compensation was paid to him. The post had not been abolished and that a full time water carrier was working on it. Aggrieved by the award, the appellants filed Civil Writ Petition No.16487 of 2012 in this Court challenging the award. Vide judgment dated 4.9.2015, learned Single Judge dismissed the writ petition. Hence the instant appeal by the appellants.

5. We have heard learned counsel for the parties.

6. Before adjudicating the controversy involved in the present appeal, it would be apposite to reproduce the relevant statutory provisions i.e. Sections 25B, 25F and 25G of the Act, which read thus:-

“25B. Definition of continuous service- For the purposes of this chapter –

(1) xxxxxxxxxxxx

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.”

“25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous

service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

“25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.”

7. A plain reading of Section 25B(2) of the Act shows that where a workman is not in continuous service within the meaning of clause(1) of Section 25B of the Act for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period of one year, if the workman during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. Section 25F of the Act provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until one month's notice in writing has been

given to him or retrenchment compensation has been given to him. Section 25G of the Act prescribes procedure for retrenchment i.e. principle of 'last come first go'.

8. It has been categorically recorded by the learned Single Judge that the Labour Court after examining the record came to the conclusion that the workman had completed 240 days of service in the 12 calendar months preceding the date of termination. WW2 Prem Singh, official witness of the appellant management admitted that the workman had put in 240 days of service. Further, the termination was made without compliance with the procedure and statutory protection provided under Section 25F of the Act. The post of Water Carrier from which the workman was retrenched, had not been abolished and rather one Smt. Bala Devi was working as Water Carrier on full time basis. Consequently, the findings recorded by the Labour Court were upheld and the writ petition filed by the appellants was dismissed. The relevant findings recorded by the learned Single Judge read thus:-

“The workman complained that the provisions of Section 25F of the Industrial Disputes Act, 1947 (for short, “the Act”) were not complied with and he was neither served notice before retrenchment nor was paid 30 days wages in lieu of notice nor any retrenchment compensation was paid at the time of termination of service. The employer was not a private organization. It was a department of the State of Haryana and it was expected to comply with the statutory mandate of the Act.

The Labour Court has come to the conclusion that the workman has completed 240 days of service in the 12 calendar months preceding the date of termination. There could be no better admission than the deposition of WW2 Prem Singh who was none other than an official witness of the management summoned by the workman to depose to facts. WW2 Prem Singh

admitted that the workman had put in 240 days of service. He admitted that the termination was brought about without compliance of the mandatory procedure and statutory protections provided under Section 25F of the Act. The post of Water Carrier from which the workman was retrenched, has not been abolished rather one Smt. Bala Devi is working as Water Carrier on full time basis. In the face of this admission, the jurisdictional facts of 25F and 25G have been established on record and there appears to be no valid reason to accede to the submission of Ms. Vibha Dhiman, learned AAG, Haryana that the impugned award is onerous and is not called for since the services of the workman were for a fixed tenure which were less than 1-1/2 years. If the argument of the learned counsel for the State is accepted, then it would be putting a premium on dereliction of duty in the department to have not complied with the procedure laid down in the Act. In any case, interference with the impugned award of the Labour Court is restricted to the guidelines laid down in the Constitution Bench decision of the Supreme Court in *Syed Yakooob vs. K.S.Radhakrishnan*, AIR 1964 SC 477 where interference would only be if there is a fundamental flaw or error in applying the law or misapplying the evidence and facts which should all put together amount to an error apparent on the face of the record. I find nothing in the impugned award that would vitiate it for any of the reasons adopted by the Labour Court in coming to the conclusion that it was a fit case of reinstatement. The Labour Court has exercised its discretion by reducing back wages to 50% which is substantial relief to the petitioner-management and takes care of the argument raised by Ms. Dhiman, learned counsel for the petitioner that the workman was on part time basis in a school which had to close down during summer and winter breaks. Exclusion of payment of salary during vacations period was firstly castigated by the Supreme Court in *Rattan Lal and others vs. State of Haryana and others*, (1985) 4 SCC 43. In that case, it was held that the lecturers appointed on ad hoc basis were entitled to the benefit of the salary during the period of vacations which they could not be

deprived of. Besides, the principle of calculation of 240 days of service is indicated in a judgment of the Supreme Court rendered in ***Workmen of American Express International Banking Corporation vs. Management of American Express International Banking Corporation***, AIR 1986 SC 458 and in computing 240 days. Saturdays, Sundays, paid holidays etc. are to be included in the 240 days. Therefore, on both the principles of Labour and Service Law, the workmen have eminently put in 240 days of qualifying service as referable under Section 25B of the Act.

I would, therefore, find neither any jurisdictional error in the decision of the Labour Court and nor is it found vitiated by an error of law apparent on the face of record. The findings of the Labour Court are neither perverse nor irrational. Findings of fact recorded by the Labour Court are not open to be disturbed in writ jurisdiction under Articles 226/227 of the Constitution of India.”

9. Further, in ***Incharge Govt. Hider Flaying centre and another vs. Rama Ram and another***, (2003) 9 SCC 163, while interpreting the provisions of Section 25F of the Act, the Apex Court held as under:-

“3. So far as the other question is concerned, each of the employees have worked for more than 240 days and their services were sought to be put to an end to without following the due procedure under Section 25F of the Industrial Disputes Act. This finding of fact cannot be seriously assailed. However, it may be pointed out that in the evidence adduced before the Tribunal, the claimants before the Tribunal established that they were seniors to those who have been continued in service and were described to the regular employees and that position is neither challenged nor rebutted. Thus, the principle of last come first go was given a go bye. In these circumstances we think that the order of the Tribunal as affirmed by the High Court is just and proper and we do not think it appropriate to interfere with the same. The appeal thus stands dismissed.”

Similar view was taken by the Apex Court in *Director, Fisheries Terminal Division vs. Bhikubhai Meghajibhai Chavda*, AIR 2010 SC 1236.

10. Learned counsel for the appellants has not been able to point out any error or illegality in the findings recorded by the learned Single Judge or to show any decision contrary to the law laid down by the Apex Court in the above mentioned decisions. Consequently, finding no merit in the appeal, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

January 29, 2019
Pooja saini/‘gs’

(Harnaresh Singh Gill)
Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes