

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

LPA No.1138 of 2015

DATE OF DECISION: 4th MAY, 2022

JASWINDER SINGH

.....APPELLANT

VERSUS

PUNJABI UNIVERSITY PATIALA AND ANOTHER

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.
HON'BLE MR. JUSTICE SANDEEP MOUDGIL.**

Present: Mr. Vikas Singh, Advocate for the appellant.

Mr. Abhishek Kaushik, Advocate for
Mr. Vipul Jindal, for the respondent No.1.

SANDEEP MOUDGIL, J.

In the present appeal, the appellant is aggrieved of the order dated 04.05.2015, passed by the learned Single Bench, vide which the writ petition filed by respondent No.1 has been allowed and the award dated 11.02.2013 granting reinstatement with continuity of service without back wages, by the Labour Court, Patiala has been set-aside.

2. The facts leading to the present appeal are that a Reference under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act of 1947') was invoked by the appellant with the averments

that he joined respondent No.1 on 08.08.1997 as Assistant Pump Driver on daily wage basis. His services had been alleged to be terminated without any notice, charge-sheet, enquiry or compensation. At that point of time the appellant was drawing Rs.1768/- per month. It was pleaded that after the termination of his services, juniors to the appellant were retained and thus, his termination was in violation of Section 25-F, 25-G and 25-G of the Act of 1947.

3. In response to the reference, respondent No.1 filed written statement, contesting the claim by raising preliminary objection of Reference being highly belated. On merits, it was pleaded that after 31.08.1998, the appellant never offered himself for work. It was also submitted that the appellant did not possess the minimum required qualification for the post of Water Pump Driver, which was matric with two years ITI Diploma in Electrician trade. Further it was also submitted that the appellant had not completed 240 days of service in the preceding calendar year and as such, was not entitled to any relief as prayed for, as his termination was not retrenchment.

4. The Presiding Officer, Industrial Tribunal, Patiala, vide its award dated 11.02.2013, allowed the reference filed by the appellant. The operative paragraph 21 of the award dated 11.02.2013 is reproduced hereunder:-

“In view of the above discussion, the only conclusion that can be drawn that since the workman completed 240 days in the year immediately preceding the date of termination and at the

time of his termination, no compensation was paid to him no notice or pay in lieu in notice was given, no enquiry was held, the termination of services of the workman is in non-compliance of Section 25-F of the I.D.A., 1947. Resultantly, it is held that the workman is entitled to be reinstated in service with continuity of service, but without back wages. As the case of the workman is proved and as the industrial dispute was referred to this Court by the appropriate Government, the reference is maintainable. Accordingly, all these issues are answered against the respondent and in favour of the workman.”

5. Aggrieved of the award, respondent No.1 challenged the same by way of filing CWP No.15844 of 2013, which was allowed by the learned Single Bench, vide judgment dated 04.05.2015 while holding that in the case of a daily wager, Sunday and other holidays were not to be counted as he is not entitled to the wages for those days. Further it was held that since the appellant was a daily wager, as such, the non-compliance of Section 25-G and 25-H of the Act of 1947 would not entitle him to reinstatement but for compensation.

6. Aggrieved against the judgment dated 04.05.2015, passed by the learned Single Bench in Civil Writ Petition No.15844 of 2013, the present appeal has been preferred.

7. Learned counsel for the appellant vehemently contended that since the appellant was being paid daily wages having been calculated by including the wages of weekly/substituted rest days, as such, the finding recorded by the learned Single Judge as regards non-counting of Sunday and other holidays for the purposes of 240 days, as required under Section 25-F

of the Act of 1947, was against law. It was further submitted that the writ court under Article 226 while dealing with an Award passed by the Industrial Tribunal in a writ of certiorari, could not have usurp the powers of an appellate authority by revisiting the entire evidence, unless any perversity in the award was pointed out.

8. On the other hand, learned counsel for respondent No.1 has supported the judgment passed by learned Single Bench while contending that the appellant had failed to prove on record having worked for 240 days in preceding calendar year before his termination for the purpose of invoking Section 25-F of the Act of 1947. It was also submitted that the appellant being a daily wager, could not have drawn the benefit of Section 25-G and 25-H of the Act of 1947.

9. We have heard learned counsel for the parties and have gone through the records of the writ petition as well as the impugned judgment, passed by the learned Single Bench. We find merit in the contentions raised by learned counsel for the appellant herein.

10. In the facts and circumstances of the present case, wherein admittedly the appellant was being paid daily wages including the payment of rest days as per the cross-examination of MW-1 Arvinder Singh, the findings recorded by the learned Single Bench regarding non-counting of Sundays and rest days for the purpose of 240 days, as required under Section 25-F of the Act of 1947, is uncalled for.

11. We have perused a notification dated 15.11.2012, issued by the Department of Labour, Government of Punjab, in exercise of powers

conferred by clause (b) of sub section (1) of Section 5 read with sub section (1) of Section 3 of the Minimum Wages Act, 1948, whereby the minimum wages have been revised in the State of Punjab in respect of all scheduled employments, which includes respondent No.1, as it can be subsumed in entry at Serial No.61 of the Schedule. A reading of clause 14 of the Notification dated 15.11.2012 makes it crystal clear that while determining the minimum daily rates of wages, a weekly/substituted rest days are taken care of as the daily minimum wage is calculated after dividing the monthly minimum wage of that category by 26. The relevant clause 14 of the Notification dated 15.11.2012 is reproduced hereunder:-

“14. The daily minimum wage has been calculated after dividing the monthly minimum wage of that category by 26. In case due to absence of an employee, wages for a day are to be deducted from the salary of an employee, the daily wage shall be calculated by dividing the monthly wage of that category by 30. The minimum daily rates of wages of employees include the wages of weekly/substituted rest day.”

12. Thus, once the daily wages are determined by including the wages of weekly/substituted rest days, it means that a daily wager is actually paid wages for weekly/substituted rest days as well and as such, while determining 240 days for the purposes of Section 25-F of the Act of 1947, Sundays and other holidays are to be counted. This view also finds supports from the view judgment by the Apex court in **Workmen of American Express International Banking Corporation Vs. Management of American**

Express International Banking Corporation, 1986 AIR (Supreme Court)

458. Relevant para No.5 of the aforesaid judgment is reproduced hereunder:-

“5. Section [25F](#) of the Industrial Disputes Act is plainly intended to give relief to retrenched workmen. The qualification for relief under Section 25-F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Section [25B](#) of the Industrial Disputes Act. In the present case, the provision which is of relevance is Section 25-B(2)(a)(ii) which to the extent that it concerns us, provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service 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. The expression which we are required to construe is 'actually worked under the employer'. This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders, etc. The learned counsel for the Management would urge that only those days which are mentioned in the Explanation to Section 25-B(2) should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. We do not think that we are entitled to so constrain the construction of the expression 'actually worked under the employer'. The explanation is only

clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. If the expression 'actually worked under the employer' is capable of comprehending the days during which the workman was in employment and was paid wages - and we see no impediment to so construe the expression - there is no reason why the expression should be limited by the explanation. To give it any other meaning then what we have done would bring the object of Section 25-F very close to frustration. It is not necessary to give examples of how Section 25-F may be frustrated as they are too obvious to be stated."

13. We are therefore convinced that once the daily wages are calculated by including the wages of weekly/substituted rest days/Sundays are also to be included while calculating 240 days for the purposes of Section 25-F of the Act of 1947. In view thereof, the findings in this regard recorded by the learned Single Judge, deserve to be set-aside.

14. While examining other issue with regard to the question of re-visiting the entire evidence as an Appellate Authority by the learned Single Judge while testing the award passed by the Tribunal below in exercise of powers of Under Article 226 of the Constitution of India in a writ of certiorari, there is no doubt that unless any perversity, such as misreading or non-consideration of the evidence is pointed out, the writ court cannot substitute its own opinion on the same evidence. Reference can be drawn to the judgment rendered in **Director Steel Authority of India Ltd. v. Ispat Khadan Janta Mazdoor Union**, 2019 (7) SCC page 440. Relevant portion of para No.47 of the said judgment is reproduced hereunder:-

“.....in absence of the finding of fact recorded being perverse or being of no evidence and even if there are two views which could possibly be arrived at, the view expressed by the Tribunal ordinarily was not open to be interfered with by the High Court under its limited scope of judicial review under Article [226/227](#) of the Constitution of India and this exposition has been settled by this Court in its various judicial precedents.”

15. As such, in view of the discussion made hereinabove, the findings recorded by the Industrial Tribunal, vide its award dated 11.02.2013 to the extent that the appellant has completed 240 days of work in the last year preceding the date of his termination and his services were terminated in non-compliance of Section 25-F of the Act of 1947, are upheld and the instant Intra Court Appeal is allowed.

Ordered accordingly in the aforesaid terms.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

4th MAY, 2022
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No