

CWP-18709-1996 (O&M)

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

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**CWP-18709-1996 (O&M)
Decided on: January 25, 2024**

Sadhu Ram

...Petitioner

Versus

Presiding Officer, Labour Court-II, Faridabad and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. J.S. Maanipur, Advocate,
for the petitioner.

Mr. P.C. Goyal, Additional Advocate General, Haryana.

SANJAY VASHISTH, J.

CM-13475-2019:

i) This application has been moved by the petitioner-workman for deciding the main petition, i.e. CWP-18709-1996, in terms of the decision dated 06.08.2018 (Annexure A-1), passed in CWP No. 14068 of 2015, titled as “Sumit Kumar v. Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T. Chandigarh and another”. It is further submitted that the said judgment was upheld in LPA No. 1436 of 2018, by a Division Bench of this Court (Punjab and Haryana High Court), vide judgment dated 27.11.2018 (Annexure A-2).

ii) Applicability of the aforementioned judgments, is disputed by learned State counsel by submitting that the facts and circumstances of the cited case, are entirely different to the case in hand. Thus, learned State counsel submits that the referred judgments passed by this Court in writ

petition as well as LPA, are of no consequence, to apply the same in the facts and circumstances of the present case.

iii) Taking note of the submissions, both the judgments, i.e. 06.08.2018 (Annexure A-1) and 27.11.2018 (Annexure A-2), are taken on record. However, their applicability to the facts and circumstances of the writ petition in hand, would be seen at the time of disposal of the case.

Accordingly, civil miscellaneous application stands disposed of.

CWP-18709-1996:

1. Present writ petition has been directed by the petitioner – Sadhu Ram (hereafter referred to as, ‘the workman’) impugning the award dated 03.04.1995, passed in Reference No. 665 of 1993, by learned Presiding Officer, Labour Court-II, Faridabad (hereafter referred to as ‘the Labour Court’), whereby reference referred under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short, ‘the Act’), has been answered against the workman by rejecting the claim raised by him in the demand notice.

2. Briefly stated, facts in concern, referred under Section 10(1)(c) of the Act, are that workman was employed with respondent No. 2, i.e. Engineer-in-Chief, P.W.D. (B&R) Haryana (Management) as Baildar on 01.02.1983. He served upto 02.03.1993, without any complaint ever against him, and worked to the satisfaction of the employer. However, w.e.f. 02.03.1993, he was terminated from his service without issuing any show cause notice, issuing of any charge sheet and holding of any inquiry. It was pleaded that there was complete violation of the provisions of law, i.e. Section 25-F of the Act. Thus, workman claimed his reinstatement with

continuity in service alongwith full back wages.

3. On the other hand, respondent No. 2-Management pleaded that workman was engaged as casual labourer and his services were utilized intermittently as and when required by the department. After January 1993, his services were discontinued as there was no work in the department to be done by the workman. Workman was advised to go to Rewari, where work was in progress in another sub-division, but he never joined there. Thus, plea of the relief claimed by the workman is controverted by the Management.

4. After framing of issues, Management built up its case before the Labour Court, by saying that there is no question of granting retrenchment compensation, as envisaged under Section 25-F of the Act, because the case falls under Section 2(oo)(bb) of the Act.

5. On the other hand, workman referred the duty period chart (Ex. M-2) to contend that he rendered his service for a period of 278½ days continuously during 12 calendar months preceding the date of termination of his service. The workman and his co-workers had filed CWP No. 2143 of 1989, wherein High Court restrained the respondents from terminating the services of the workmen during pendency of the writ petition. However, vide order dated 09.11.1992 (Ex. W-2), said writ petition was withdrawn, to enable them to approach to the Labour Court. There is an order dated 01.02.1993 (Ex. W-3), passed by the Executive Engineer, Provincial Sub Division No. 2, Faridabad, which shows that instructions were issued to respondent No. 2 to strike off the name of the workman and others from

temporary muster rolls, stating that their services were no more required in view of letter dated 17.12.1992, issued by the Chief Secretary to Government of Haryana, immediately after withdrawal of the writ petition on 09.11.1992. By referring to the said exhibited documents, workman argued that all this shows that motivated and revengeful orders were passed by the Administration/Management by terminating the services of the workman. It is further clarified that in regard to the advise to go and join the work at Rewari, the Management never issued any such letter. Thus, any such plea is in air only. As such, the workman claimed his reinstatement with continuity in service with back wages.

6. In paragraph No. 11 of the award, learned Labour Court categorically observed that undisputedly the workman had rendered service for a period of more than 240 days in twelve calendar months, preceding the date of termination of his services. There is no denial by the Management that workman was never paid pay for the notice period, and compensation as envisaged under Section 25-F of the Act, was ever paid.

7. With the aforesaid background, learned Labour Court proceeded to examine whether the legal plea of applicability of Section 2(oo)(bb) of the Act, is genuinely available to the Management or not. Respondent No. 2 (Management) relied upon the photocopy of the letter dated 17.12.1992, issued by the Chief Secretary to Government of Haryana, whereby the department was instructed to review the actual requirement of daily wager/casual labourers and then to terminate their services immediately, if their services were no longer required.

8. Placing its reliance upon the instructions passed by the Chief Secretary, in its letter dated 17.12.1992, and subsequent follow up of the same by concerned offices, learned Labour Court held that termination of the services of the workman, is legal and justified and the workman is not entitled to any relief.

9. This Court has considered the plea taken by the workman and the Management before the Labour Court as well as before this Court. The record of the writ petition has also been examined.

10. Demand notice issued by the workman, appended as Annexure P-4 with the writ petition, shows that served the department from 01.02.1983 to 02.02.1993, i.e. complete period of 10 years. In the reply filed to the demand notice before the Labour and Conciliation Officer, Ballabhgarh Circle (Annexure P-5), Management took the plea that workman was appointed as daily wage worker/Baildar. However, there is no specific denial that for the period of 10 years, as stated in the demand notice, workman never worked.

11. In the written statement to the claim petition (Annexure P-6), also there is no denial of the work period of 10 years, devoted by the workman in the office of the Management, i.e. upto January 1993, and thereafter his services were discontinued, as there was no requirement of the department.

12. Thus, from the said pleaded facts, right from demand notice to the written statement filed before the Labour Court, it is almost admitted position that the workman worked with the Management from 01.02.1983 to

01.02.1993, i.e. for complete period of 10 years. When one official Lakhi Ram, Sub Divisional Engineer, appeared in the witness box as MW-1, he stated that the workman was appointed in April 1988 and was taken on daily wage muster roll. While explaining his working period with Manual’s copy (Ex. M-1), said witness explained the working of the workman as under:-

1988-89	195 days
1989-90	69 days
1990-91	118 days
1991-92	172 days
1992-93	278½ days

13. Said witness also deposed that on completion of work in January 1993, the workman was directed vide letter dated 02.02.1993 (Ex. M-3) to go to Sub Division No. 4, Rewari.

14. Surprisingly, at the first instance or at the time of filing of written statement before the Labour Court, there is no such averment taken by the Management that the workman was appointed in April 1988 and did not work since January 1983. How the said witness has taken a new and different stand while appearing in the witness box, i.e. without explaining the work done by the workman from February 1983 upto April 1988. When the said witness was asked about the muster roll relating to the working of the workman, he admitted that he has not brought the muster roll relating to the worker, and without seeing record he cannot tell that at that time how many workers were working.

15. After deeply examining the facts and circumstances, this Court

finds that after taking service from the workman in present case and his other co-workers, after disposal of the writ petition, as same was withdrawn, immediately thereafter one letter dated 17.12.1992, was issued by the Chief Secretary, Haryana, for terminating the services of workmen by suggesting an excuse that “*in case their services were no longer required*”. Obviously, issuance of the letter by the Chief Secretary is not only for one workman, as in the present case. In other words, there were other workmen also, who were working with the Management. Therefore, compliance of the principle “*first come last go*”, as envisaged in Section 25-G of the Act, is required to be mandatorily followed, before terminating the services of any of the workman. In the absence of the same, it would amount violation of the statutory provision of Section 25-G of the Act. However, there is no finding given by the Labour Court in its award to that effect.

16. To check the follow up of the principle of ‘first come last go’, this Court has gone through the statement of workman – Sadhu Ram (MW-1), who stated in his examination-in-chief that “*My service is approximately for 10 years. Since my removal, I am unemployed and my juniors are working. I was removed illegally, and may be taken on duty with back wages and continuity of service.*”

In cross-examination done by the management, a fact was stated by the workman that “*When I was removed then there was approximately 60 persons were working and some of them were junior to me.*”

17. This Court feels that to rule out any arbitrariness or bias, it was morally, ethically and judiciously expected from the management to produce

the record alongwith its seniority list to show compliance of the principle of 'first come last go', as enshrined under Section 25-G of the Act.

18. Moreover, the Management cannot run away from its responsibility, once continuous working of 10 years by workman is admitted and with one stroke of pen, he has been terminated from service. The witness appearing on behalf of the Management, namely, Lakhi Ram, S.D.E. (MW-1), has clearly stated in his deposition before the Labour Court that there was no requirement of serving of the notice because provisions of the Act are not applicable. Thus, admittedly there is no compliance of the provisions of Sections 25-F and 25-G of the Act.

Admittedly, no notice, charge sheet or any inquiry was ever conducted prior to termination of the services of the workman. Even no pay for the notice period or any retrenchment compensation has been paid. Thus, this Court has no hesitation in observing that there is complete violation of the provisions of Sections 25-F and 25-G of the Act.

19. Not only this, respondent-Management has completely failed in placing on record any sort of evidence that what kind of time bound project was being got done through the workmen, when it started and after how much time the same was accomplished. In the absence of any pleadings, with other required specifications of the contractual work taken from the workman, just on saying unilaterally by the Management, it cannot be termed that the workman was appointed 10 years back, to the date of his removal from service, and now out-rightly project is over and he is ousted from service without any such explanation available on record in the form of

pleading and same being supported. Thus, the defence of Section 2(oo)(bb) of the Act, would not be available to the Management.

20. Before concluding, this Court has also gone through the judgements dated 06.08.2018 (Annexure A-1) and 27.11.2018 (Annexure A-2), placed on record alongwith CM-13475-2019, and cited by the petitioner/workman, and finds that the same have no applicability to the facts and circumstances of the present case, inasmuch as, the facts of the case pleaded in the cited judgements are entirely different and distinguishable.

21. In view of the findings and reasoning recorded by this Court hereabove, the impugned award dated 03.04.1995, passed by the Labour Court, is hereby set aside. Termination of the petitioner-workman is held to be illegal on two counts i.e. (a) there is total violation of Section 25-F of the Act; and (b) principle of 'first come last go', as envisaged under Section 25-G of the Act, has not been adhered to by the Management.

22. Now while coming to the issue of reinstatement in service with continuity and back-wages etc., this Court is informed that as on day, the petitioner/workman has crossed the age of 60 years, therefore, he would not be entitled for actual benefit of reinstatement. It is pleaded case of the workman that he continuously worked with the management from 01.02.1983 to 02.02.1993. He is fighting litigation for the last about three decades. In these circumstances, and to meet out the ends of justice, this Court deems it appropriate to grant compensation of Rs.3,00,000/- to be paid to the petitioner/workman, by the management within three months from

today, failing which the lumpsum amount of Rs.3,00,000/- shall carry interest at the rate of 6% per annum, to be calculated from the date of passing of the award dated 03.04.1995, till its realization. Ordered accordingly.

23. Writ petition stands allowed in the above terms.

(SANJAY VASHISTH)
JUDGE

January 25, 2024
Pkapoor

Whether speaking/reasoned?	✓ Yes / No
Whether reportable?	✓ Yes / No