

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

1404

CWP-3161-1998 (O&M)

Date of decision:13.12.2017

Punjab State Electronics Development and Production Corporation Limited

....Petitioner

Versus

The Presiding Officer, Labour Court, Patiala and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Gurdip Singh, Advocate and
Mr. Chanderdeep Singh, Advocate for the petitioner.

Mr. Sanjay K.Guevera, Advocate and
Mr. Manvinder Singh Sidhu, Advocate for respondent No.2.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has challenged the award passed by the Labour court dated 16.09.1997 (Annexure P-5).

2. Respondent No.2 was stated to have been appointed as a Senior Scale Stenographer on 18.08.1988. On 17.05.1991 Government took decision to transfer services with the Notified Area Committee of Mohali due to which workers service conditions have been disrupted while abolishing 22 posts on 27.01.1992. One of the post abolished and consequently respondent-workman service was retrenched. Thus, petitioner raised a demand notice in the month of July, 1993 and thereafter, reference was made. The labour court proceeded to pass award in favour of the respondent-workman. Hence present petition in challenging the award of

the labour court.

3. Learned counsel for the petitioner submitted that labour court has erred in not appreciating sub-Section 2 of Section 25J of the Industrial Disputes Act, 1947 (for short I.D.Act). In support of his contention learned counsel for the petitioner relied on two decisions reported in 1978 Lab I.C.1267 titled as ***Nand Lal versus Union of India*** paras 5 and 6 and ***Bhaskaran versus Sub-Divisional Officer*** reported in 1982 ILLJ 248 paras 6 and 20. The aforesaid contention has been taken with reference to the fact that para 3.1.12 of Punjab State Electronics Development and Production Corporation Limited Service Rules which were issued w.e.f. 01.04.1979 read with the Punjab State Reservation Policy are not applicable in the present case since labour court has relied on aforesaid provisions read with the reservation policy.

4. Per contra, learned counsel for respondent No.2 while resisting petitioner's claim he is relying on proviso 2 to Section 25J of the I.D.Act that respondent-workman case would fall under proviso 2 Section 25(J) and not 25(2) . He has further relied on Rules, 1979 read with State of Punjab Government Reservation Policy issued from time to time (Annexure R1).

5. Heard learned counsel for the parties.

6. Crux of the matter in the present petition that respondent-workman is reserved candidate who has been appointed as a Senior Scale Stenographer on 18.08.1988. Before retrenching his services petitioners were required to obtain permission of the Chief Secretary of the Welfare and General Branch (Punjab) or not? Counsel for the petitioner relying on

Sub-section 2 of Section 25J of the I.D.Act may not hold good for the reasons that services of an employee in the present case is governed by the Rules, 1979 read with reservation policy or orders issued from time to time by the Punjab Government. The Supreme Court in the case of ***Nair Service Society versus Dr. T. Beermasthan and others*** reported in (2009)5 SCC 545 in para 48 held as under:-

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

7. The present case is relating to service matter of the respondent-workman therefore, whatever service/rules by which post held by respondent-workman governed is 1979 Rules, read with reservation policy of the State of Punjab. Therefore, reliance of Sub-Section 2 of Section 25 would not hold good in view of the decision rendered by the Supreme Court in ***Dr. T.Beermasthan's*** case (supra). Labour court rightly considered the relevant statutory rules governing the post held by the respondent-workman read with Annexure R1 in particularly para F which reads as under:-

“Members of the Scheduled Castes, Scheduled Tribes and Backward Classes, who are in service and are otherwise qualified and suitable and against whom

there are no complaints should not ordinarily be brought under reduction or retrenchment so long as their total strength does not exceed the prescribed limit. No retrenchment should be made without first obtaining the orders of the Chief Secretary in the Welfare and General Branch (Punjab Government letter No. 4368-PG-50/2951, dated the 3rd April, 1950 and No.4153-WG-51/2409, dated the June, 1951 and No. 48-WG-52/4164, dated the 21st August, 1952.

It may, however, be made clear that a member of Scheduled Castes, Scheduled Tribes and Backward Classes in Government Service will be entitled to this preference only when a non-scheduled caste employee is senior to him by not more than one year. In other words, a member of Scheduled Castes, Scheduled Tribes and Backward Classes in Government Service should not be retrenched, even though he may be the junior most employee in the office or department concerned, if at the time of the proposed retrenchment there are other temporary employees not more than one year senior to the Scheduled Castes. Scheduled Tribes and Backward Classes Employees concerned. In such a case, the junior most non-Scheduled castes, scheduled Tribes and Backward Classes employees senior to the Scheduled castes, Scheduled Tribes and Backward Classes employee by not more than one year may be retrenched and the Scheduled Castes, Scheduled Tribes and Backward Classes employee should be retained. (Punjab Government letter No. 3555-WG-53/94027, dated the 14th December, 1953)."

8. In view of the Rules, 1979 read with reservation policy of the

State of Punjab so also principle laid down by the Supreme Court in **Dr. T.Beermasthan's** case (supra) petitioner has not made out a case so as to interfere with the labour court award dated 16.09.1997 (Annexure P-5).

9. Accordingly, CWP stands dismissed.

10. At this stage, learned counsel for the petitioner submitted that the respondent-workman has retired on 31.01.2017 so the question of reinstatement of respondent at this stage do not arise. Learned counsel for the petitioner further submitted that respondent raised demand on 19.07.1993 after period of 15 months from the date of his termination i.e. on 01.02.1992 and he is not entitled for any back wages. He remained idle for 15 months. In view of the judgment passed by the Supreme Court in the case titled as **GM, Haryana Roadways versus Pawan Kumar** reported in 2006 SCC (L&S) 702 respondent is entitled for back wages from the date of demand notice. Hence petitioner is hereby directed to calculate back wages from 19.07.1993 till respondent retired as if he was in service. The aforesaid exercise shall be carry out and disbursed back wages within a period of three months from today.

13.12.2017

pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No