

Neutral Citation No:2024:PHHC:058393
CWP-10793-2012(O&M) 1
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

209 **CWP-10793-2012(O&M)**
Date of Decision: 29.04.2024

THE CHIEF ENGINEER, GENERATION, BHAKHRA BEAS
MANAGEMENT BOARD, NANGAL, DISTRICT ROPAR
.... Petitioner

Versus
THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH AND ANR
....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Dinesh Ghai, Advocate for the petitioner.

Mr. Suram Singh Rana, Advocate for respondent No.2.

SANJAY VASHISTH, J.(Oral)

1. Present writ petition has been filed by petitioner-The Chief Engineer, Generation, Bhakhra Beas Management Board, Nangal, District Ropar (being Management), challenging the award dated 28.03.2011 (Annexure P-10) passed by the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh, whereby issue No.3 i.e. right of re-employment of a retrenched employee, has been answered in favour of respondent No.2-Sh. Rattan Lal(workman).

2. Admittedly, workman rendered his services to the Management-Bhakhra Beas Management Board, Nangal, District Ropar (for short 'BBMB') on the post of Fitter w.e.f 01.01.1987 to

04.05.1993, the day when he was retrenched. The workman was again employed with the Management on 16.01.1995 to 31.05.1995 i.e the date of retrenchment from service.

3. On raising the Industrial Dispute by the workman and making reference of it to the Labour Court, the following four issues were framed by it:

“1. Whether the retrenchment notice dated 22.12.1992 had become infructuous on 04.05.1993 i.e. the date of retrenchment of workman and the termination of his service on 04.05.1993, is not just and legal?”

2. Whether workman was in the employment of the management from 16.01.1995 to 31.05.1995 as daily wager Grind Man and the termination of his services on 31.05.1995 is legal and justified?

3. Whether subsequent to the termination of the workman the vacancies of Fitter arose in the Management and the latter was justified in not engaging the workman against those vacancies?

4. To what relief is the workman entitled?”

4. Issue No.1 and 2 were answered in favour of petitioner-management and the finding recorded qua the said issue were never assailed by the said workman. However, issue No.3 has been answered in favour of the workman.

For convenience, the relevant part is reproduced here below:

“Issue No.3.

The next question is whether subsequent to the termination of the workman the vacancy of the fitter arose in the management and the later was justified in not engaging the workman against those vacancies

According to the workman regular vacancies of Fitter existed at the time of termination of his services but they were filled up

from other categories and management filled the posts of Fitters by promotion of helpers, while the post should have been filled up from the retrenches and the management has violated the provisions of Section 25H of the Act.

Regarding this, the argument of the management is that the workman had been retrenched as a daily - wager hence, he has no right to claim any vacancy of Fitter and no daily rated worker has been promoted to the rank of Fitter. Promotion in BBMB are made as per provisions of the relevant regulations and Section 25H of the Act does not give any legal right to the retrenchees for appointment on the posts, which are required to be filled up from promotion from the lower feeder of categories.

Management also argued that since the workman in his second stint had not completed one year service, hence he was not entitled to the benefit of Section 25H of the Act.

I do not subscribe to this argument. Benefit of Section 25H is available to all the retrenchees irrespective of their length of service. Moreover the right of reemployment in present case emanates from the retrenchment made as per provisions of Section 25N of the Act.

In this regard it may be noted that Government of India while according permission for the retrenchment of the workman had specifically noted in his letter dated 15-04-1993 Annexure-V that the workman will be engaged by the management as and when vacancy of Fitter arise. There was no exception to this condition. Therefore, the workman was entitled to re-employment on arising of vacancy of Fitter irrespective of the regulations of the management providing the filling up of vacancy by promotion from lower cadre.

The AR of the workman in this regard has also placed reliance in a judgment of the Hon'ble High Court of Judicature Punjab in Muller & Phipps (India) (Private) Ltd. Versus their employees' Union & Others 1967 II LLJ 222 in which the Hon'ble High Court held that the whole purpose of Section 25H would be foiled if the management is given discretion to make promotion from lower cadres to vacancies which should under Section 25H of the Act be filled by the retrenched employees.

It is therefore clear that management was not justified in not engaging the workman against the vacancies of Fitter and in filling those

vacancies by promotion from lower cadre. Issue No. 3 therefore, is decided in favour of the workman and against the Management.”

5. During the course of hearing, Mr. Suram Singh Rana, Advocate, representing respondent No.2, referred to the letter dated 15.04.1993(Annexure P-4) and submits that the workman has a right of priority for employment on the vacancy, in the capacity of retrenched employee. Learned counsel for respondent No.2, also submits that infact during the proceedings before the officers of the Ministry of Labour, the Management had given assurance that workman would be given preference in the matter of employment, as and when any new work is started by the Management in that division.

For convenience, letter dated 15.04.1993 (Annexure P-4) issued by Ministry of Labour, is reproduced herebelow:

“
No.L-42025/1/93-IR (DU)
Government of India
(Bharat Sarkar)
Ministry of Labour

.....
New Delhi, dated the 15th April, 1993

To
The Resident Engineer,
D.P.H. Division,
Bhakra Beas Management Board, (Power
Wing),
Slapper (H.P.)-174403

Sir,
I am directed to refer to your letter No. 2225/26 dated 2nd March, 1993 on the above subject and to say that as required under Sec. 25 N (3) of the Industrial Disputes Act 1947, a hearing was taken by the Labour and Employment Adviser, Ministry of Labour on the 30th March, 1993. The

representatives of the management as well as the workman made their submissions.

The matter has been examined in all its details in the light of the submissions and statements made by the parties concerned. It was noted that the management of the DPH Division of Bhakra Beas Management Board (Power Wing), Slapper will be forced to refrench Shri Rattan Lal on account of completion of the work for which he was employed. The representatives of the management assured during the hearing that the affected workman would be given preference in the mater of employment as and when any new work is started by the management in that Division. In view of the above and havin regard to the genuineness and reasonableness of the reasons advanced by the management, the Central Government has no objection to the retrenchment of Shri Rattan Lal on the following conditions-

- i) that the workman will be engaged by the management as and when vacancy of Fitter arises;*
- ii) that the provisions of Section 25-N of the Industrial Disputes Act will be adhered to and all dues as per rules paid to the workman.*

*Yours Faithfully,
Sd/-in English
(K.V.B. Unny)
Desk Officer*

CC

6. After going through the reasons assigned in the impugned award and after seeing the undertaking of the Management already recorded by the officers of Ministry of Labour, regarding the right of preference of the workman, this Court does not find any reason to interfere with the impugned award dated 28.03.2011 and the present petition is hereby dismissed.

[SANJAY VASHISTH]
JUDGE

April 29, 2024
rashmi

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no