

Neutral Citation No:2024:PHHC: 062511
CWP-24372-2017 1
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

242 **CWP-24372-2017**
Date of Decision: 02.05.2024

UTTAR HARYANA BIJLI VITRAN NIGAM LTD. AND ANR
.... Petitioners

Versus
FAQUIR CHAND AND ANR
....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. G.S. Madaan, Advocate for the petitioners.

Mr. Neeraj Goel, Advocate
for respondent No.1.

SANJAY VASHISTH, J.(Oral)

1. Petitioners (being Management) has filed the instant writ petition, challenging the award dated 25.01.2017(Annexure P-2), passed by learned Industrial Tribunal-cum-Labour Court, Ambala, whereby reference No.R/45/2016, under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947'), has been answered in favour of the workman.

While holding that the termination of the workman is in violation of Section 25-G, 25-H of the Act of 1947, learned Labour Court set aside the termination and held the workman entitled for reinstatement in service with its continuity alongwith 50% back wages.

2. Pleaded case of the Workman-Faquir Chand was that he joined services as Daily Wage Worker on 12.05.1980 under the administrative control of the petitioners (Management) and continuously worked till 24.05.1984. Due to the shortage of material and paucity of work, his services were retrenched illegally and in gross violation of the mandatory provisions of Section 25-F, 25-G and 25-H of the Act of 1947. Even the employees junior to the workman, were retained in service, who have now been regularized.

3. On the other hand, the petitioners(Management) in the written statement filed by them have pleaded that the workman was appointed as daily wage worker and his services were retrenched vide retrenchment notice dated 23.04.1984. In the year 1988, when fresh daily wagers were recruited, an opportunity was given to the workman-Faquir Chand, to appear for interview, but he could not clear the same and was not found suitable for the job because of not possessing ITI Diploma, which was mandatory for being eligible to work on daily wages basis. Thus, as per Management, it is admitted position that the workman was there in service from 12.05.1980 to 24.05.1984. Pleading of the workman that the junior employees, namely, Chhedi Lal, Satish Kumar and Prabhat Kumar, were retained in the service was confirmed by the Management witness-Smt. Poonam Rathi, UDC (MW1), posted in the office of XEN (operation) UHBVN, Ambala, as she admitted the same in her cross-examination.

Infact, all these workmen were ordered to be reinstated in service, because of the award pronounced by the Labour Court, Ambala (Mark 'K').

4. In the writ petition filed by the workman-Faquir Chand before this Court, High Court asked for the seniority list from the Management, but the defence was taken that the seniority list of the workmen has already been destroyed due to the flood. Whereas, as a matter of fact, through the certified copy of the order passed by the Labour Court, Ambala, said seniority list could have been produced. When the LPA was filed by the workmen, Division Bench of this Court (Punjab and Haryana High Court) directed to seek the remedy of reinstatement through the Labour Court. It is thereafter on the basis of the evidence available on record, Labour Court observed that there appears to be no dispute that the workman has rendered his services from 12.05.1980 to 24.05.1984 and thus, the relationship of Employer and employee is well established and proved.

5. Another noticeable fact from the impugned award is that as per award dated 27.11.1992 (Mark 'K'), another junior employee, namely, Prabhat Kumar was reinstated in service after the decision of the High Court. Thereupon, observations made in paragraph Nos.12 and 13 of the award are required to be referred and the same are reproduced herebelow:

“12. In the present case the workman has worked for more than 240 days with the respondents and relationship of employer and employee so proved. In the present scenario the respondent has terminated the services of the workman without observing the mandatory provisions of sections 25-G & 25 H of the Act as junior persons namely Chhedi Lal, Satish Kumar and Prabhat Kumar have been retained by the respondents in service after the termination of the services of the workman and have been regularized. For this reliance can be placed upon the authority in case Harjinder Singh versus Punjab State SPadousing Corporation 2010(1) SCT 725 ichas been held in this ase tha termination was challenged by claimant u/s 25-F of I.D. Act, 1947 as persons junior to him were retained in service, workman reinstated with 50% back wages. It was further held that Industrial Dispute Act and other similar legislative instruments are social welfare legislations and such legislation should be interpreted in view of the goals set out in Constitution, which mandate that State should secure a social order for the promotion of welfare of the people, ensure equality and also ensure that the workers get their dues-AIR 1958 SC 923, 1972(2) SCC 108; 2001(1) R.C.R.(civil) 324 (SC) relied upon.

Constitution of India, 1950, Articles 16, 14, 226 and 227 statutes of social welfare court has a duty to interpret statutes with social welfare benefits in such a way as to further the statutory goal and not to frustrate it, court should make an effort to protect the rights of the weaker section of the society in view of the clear constitutional mandate without being mislead by glitz and glare of globalization.

Moreover, it is settled law that attracting the applicability of section 25-G of the Act, the workman is not required to prove that he had woked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment the employer violated the rule of last come first Te vihout any tangible reason.

*In **Ramon Services (P) Limited versus Subhash Kapoor 2001(1) R.E.R. Civil) 324: (2001) 1 SCC 118** in which it has been held that after independence the concept of social justice has become a part of our legal system. This concept*

gives meaning and significance to the democratic ways of life and of making the life dynamic. The concept of welfare state would remain in oblivion unless social justice is dispensed. Dispensation of social justice and achieving the goals set forth in the Constitution are not possible without the active, concerted and dynamic efforts made by person concerned with the justice dispensation system.

In LIC of India versus Consumer Education and Research Centre and others 1995(4) SCT 678: (1995) 5 SCC 482 in which it has been held that social justice is a device to ensure life to be meaningful and livable with human dignity. The state is obliged to provide to workmen facilities to reach minimum standard of health, economic security and civilized living. The principle laid down by this law requires courts to ensure that a workman who has not been found quality cannot be deprived of what he is entitled to get. Obviously when a workman has been illegally deprived of his device then that is misconduct on the part of the employer and employer cannot possibly be permitted to deprive a person of what is due to him. The doctrine of Laissez faire was rejected in Glaxo Laboratories (India) Limited versus Presiding Officer (1984) 1 SC 1, in the following words:-

*In the days of laissez-faire when industrial relation was governed by the harsh weighted law of hire and fire the management was the Supreme master, the relationship being referable to contract between unequal and the action of the management traded almost sacrosanct. The developing notions of social justice and the expanding horizon of socio economic justice necessitated statutory protection to the unequal partner in the industry namely, those who invest blood and flesh against those who bring in capital. Moving from the days when whim of the employer was *suprema fex*, the Act took a modest step to compel by statute to which employment is given. The Act was enacted as its long title shows to require employers in industrial establishments to define with to make the said conditions known to workmen employed by them. The movement was from status to contract, the contract being not left to be negotiated by two unequal persons but statutorily imposed. If this socially beneficial Act was enacted for ameliorating the condition*

of the weaker partner, conditions of service prescribed there under must receive such interpretation as to advance the intendment underlying the Act and defeat the mischief”

.....Of late, there has been a visible shift in the courts approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalization are fast becoming the raison d'être of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman-employee was contrary to some of the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The Courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer public or private”.

13. *In the catena of aforesaid authorities given by Hon'ble Supreme Court, the Apex Court has rejected and negated doctrine of Laissez faire and theory of hire and fire. In the present case also the respondents have adopted theory of hire and fire. Accordingly issue No.1 is*

decided in favour of workman and against the respondents. ”

6. Undoubtedly, the impugned award is primarily based upon the violation of Section 25-G and 25-H of the Act of 1947 and there is no answer with the Management as to how it can come out of the facts which are well established and proved on the record as it is settled proposition of law that the senior cannot be placed at an inferior status without any substance, as it may cause a lot of humiliation to the senior employee. Three of the employees/workmen, who are discussed in the award are already found to be junior, therefore, on this score alone, I do not find any illegality in the impugned award which is otherwise also based on the judicial pronouncements.

7. Otherwise also, there is another aspect which requires consideration that the Management has acted totally in arbitrary manner, which has resulted into the termination of service of the workman-Faquir Chand, who remained out of service for about 38 years. In the judgment, titled as, **‘Jeetubha Khansangji Jadeja Vs. Kutchh District Panchayat’, 2022 (4) S.C.T. 211, Law Finder Doc Id #2039067**, Hon’ble Supreme Court held that where the termination is not because of any fault of workman and lot of humiliation has been suffered by him because of being out of service, the Management

must be made to understand and realize the pain and agony suffered by the workman.

The relevant paragraph No.14 of the said judgment is reproduced herebelow:

“14. In the present case, this court finds no perversity or unreasonableness on the part of the Labour Court and the single judge in directing the appellant's reinstatement. **Had the respondent management chosen to accept the verdict, the appellant would have been spared the agony of waiting for more than 10 years. In such circumstances, the denial of back wages, has resulted in punishing him, although the delay is attributable to the judicial process. However, the respondent management cannot be absolved of the primary responsibility in its litigative proclivity. In these circumstances, the appellant shall be entitled to backwages for a period of two years immediately preceding, i.e., from 01.01.2020 to 01.01.2022”**

The said judgment has already been followed by this Court in CWP No.17272 of 2017, titled as **‘Hari Chand Vs. Presiding Officer, Labour Court-I, Faridabad and another’**.

8. Therefore, in view of the aforementioned circumstances, this Court does not feel any necessity to cause any kind of interference in the relief clause of the impugned award and thus, by maintaining the same, the writ petition stands dismissed.

May 02, 2024
rashmi

[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no