



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207

Reserved on: 22.07.2024

Pronounced on: 30.08.2024

(1)

LPA-822-2015

M/s Haryana Breweries Ltd.

...Appellant

Versus

The Presiding Officer, Industrial Tribunal-cum-
Labour Court Panipat and another

...Respondents

(2)

LPA-823-2015

M/s Haryana Breweries Ltd.

...Appellant

Versus

The Presiding Officer, Industrial Tribunal-cum-
Labour Court Panipat and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE VIKAS SURI**

Present:- Mr. Pawan Kumar Mutneja, Senior Advocate with
Ms. Suverna Mutneja and Mr. V.S. Mahal, Advocates
for the appellant.

Mr. R. S. Malik, Advocate, for respondent No.2.

VIKAS SURI, J.

1. This judgment would dispose of two intra-court appeals under
Clause X of the Letters Patent, preferred by M/s Haryana Breweries Limited,
assailing the common judgment dated 22.04.2015 passed by learned Single



Judge, whereby CWP No.11444 of 2011 titled as *M/s Haryana Breweries Ltd. vs. Presiding Officer, Labour Court and another* and CWP No.11436 of 2011 titled as *M/s Haryana Breweries Ltd. vs. Presiding Officer, Labour Court and another*, were dismissed and the award passed by the Industrial Tribunal-cum-Labour Court, Panipat (hereinafter referred to as 'the Tribunal') for reinstatement of the workman with continuity of service and 50% back-wages from the date of demand notice, was upheld.

2. Both the appeals involve same question of law arising from similar facts, raising challenge to common judgment and with the consent of the parties, are being disposed of by common order. For convenience and reference, facts have been taken from LPA-822-2015.

3. The facts in brief culled out from the record, shorn of unnecessary detail, are that respondent-workman Suraj Mal (Karamveer Singh in LPA-823-2015) was in employment with the appellant-Company for 15 years upto 04.12.1996. The appellant (hereinafter referred to as 'the Management') is engaged in the manufacture of Beer at its factory situated at Murthal (Haryana). On account of prohibition of alcohol in the State of Haryana, it had to close down its factory in the year 1996. After the prohibition was lifted, an advertisement was issued by the Management in the year 1998, for its employees to re-join/come back in service. Various employees joined back in pursuance to the said advertisement and were given fresh appointment letters. The workman was taken back into service on his post as Setter Operator, on 09.05.2000. However, the wages were



given as per daily minimum wages, whereas other workers/employees were given wages which were being drawn by them prior to the closure.

3.1 The workman along with four other workers submitted their demand dated 07.01.2002 to the Management, for removal of the wage disparity. This is stated to be beginning of the controversy from which the present proceedings emanate. On 11.01.2002, when the workman wanted to rejoin after availing medical leave, he was refused to be taken on work or enter the factory. Thus, the management refused to take him back in service. It is alleged that the Management verbally terminated his services. The workman raised an industrial dispute through demand notice dated 13.06.2002 (Annexure P-1) and reference was made to the Tribunal under Section 10(1)(c) of the Industrial Disputes Act, 1945 (for short 'the Act').

3.2 On a statement suffered by the workman, the aforesaid demand notice was treated as the claim statement. The Management filed written statement thereto, opposing the demand/claim of the workman. It was conceded that the workman was given work on temporary and casual basis w.e.f. 09.05.2000. It was further pleaded that the workman was absent from duties without taking prior permission from the Management and the demand notice was based on false grounds. It was, thus, summed up that the workman was absent from duty and therefore, was not entitled to back-wages. It was also pleaded that services of the workman were never terminated by the Management and during conciliation proceedings before the Labour-cum-Conciliation Officer, Sonapat, the Management offered



empathy and the workman was afforded opportunity to report for work on temporary and casual basis but workman put a condition of prior payment of back-wages. During conciliation, two workers out of the four, compromised with the Management but the workmen in the present cases did not. On 18.07.2002, they served demand notice dated 13.06.2002 under Section 2-A of the Act, wherein termination of their services was alleged. Ultimately, the conciliation proceedings failed and the matter was referred to the Tribunal to decide the controversy of alleged termination.

4. The Tribunal, upon consideration of the pleadings and the evidence adduced on record, answered the reference in favour of the workmen, vide award dated 13.12.2010 (Annexure P-6). The Management unsuccessfully assailed the said award by way of Civil Writ Petition, which petitions were dismissed by common judgment dated 22.04.2015 and the same is under challenge in the instant intra-court appeals.

5. Learned counsel for the appellant has strenuously urged that the workman had not worked for 240 days as per Section 25-B of the Act and he failed to prove the same through cogent evidence before the Tribunal. It has further been argued that the workman has not pleaded to have worked for a period of 240 days and therefore, the impugned award passed by the Tribunal ought to have been set aside by the learned Single Judge. It is further contended that the nature of employment of the workman being temporary and casual, he is not entitled to the benefit of Section 25-F of the Act. Reliance has been placed on ***Range Forest Officer vs. S.T. Hadimani***,



(2002) 3 SCC 25; *Mohd. Ali vs. State of Himachal Pradesh and others*, (2018) 15 SCC 641; and *Manager, Reserve Bank of India, Bangalore vs. S. Mani and others*, (2005) 5 SCC 100.

6. Per contra, learned counsel for respondent No.2-workman has argued that the period of employment has not been denied in the written statement and neither has the appellant-Management brought any evidence on record to prove that the workman was absent from duty. It was further urged that the Management has not even pleaded the date, on which the workman is alleged to have absented. The burden of initial onus shifted upon the management when the claim of the workman was not specifically denied to the effect that he was taken on work w.e.f. 09.05.2000 on temporary and casual basis, till 24.12.2001, when he is alleged to have absented from his duties. In support of his submissions, reliance is placed upon *Anoop Sharma vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana)*, (2010) 5 SCC 497 and *Mohan Lal vs. Management of M/s Bharat Electronics Ltd.*, (1981) 3 SCC 225.

7. We have heard learned counsel for the parties and have perused the record with their able assistance.

8. The first contention urged before us that the workman had not worked for 240 days as per Section 25-B of the Act, in the relevant year and failed to prove the same, has been discussed in detail by the learned Single Judge, while also re-appraising the evidence on record before the Tribunal. The conceded case of the management is that the petitioner was given work



on temporary and casual basis w.e.f. May, 2000 and he was absent from duties without taking permission from the management. The management's witness deposed that service of the workman has not been terminated rather he had not been reporting for his duties and the management is still ready to take him on duty but without back wages. The said witness, however, admitted in his cross-examination that he used to work for the appellant-company before its closure. On the aforesaid basis, it was urged on behalf of the management that the services of the workman have not been terminated and, therefore, the management has not violated any provision of the Industrial Disputes Act.

9. A perusal of the record shows that the witness of the management admitted that the workman was given work w.e.f. May, 2000 and that from 24.12.2001 he absented from duty, without taking prior permission from the management. In view of the aforesaid admission, learned Single Judge held the workman is deemed to have rendered service for a period of 240 days within 12 calendar months preceding the date of retrenchment/alleged absenteeism/non-joining of duties. Moreover, in view of the case setup by the management as noticed hereinabove, the onus shifted upon it to prove that the number of days the workman actually worked, did not satisfy the requirement under Section 25-B of the Act.

10. In ***Anoop Sharma vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana)*** (supra) the Apex Court laid down that if the workman is retrenched by an oral order of termination or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of clauses (a) and (b) of



Section 25-F of the Act. It was further held that the termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of the provisions of Section 25-F of the Act, has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated. The workman cannot be retrenched without payment at the time of retrenchment, i.e. compensation computed in terms of Section 25-F(b) of the Act.

11. To appreciate the second contention with regard to temporary and casual nature of employment of the workman, it would be useful to refer to the dicta in ***Mohan Lal vs. Management of M/s Bharat Electronics Ltd.*** (supra), wherein the Apex Court has laid down that termination simpliciter of services of a temporary workman, not falling within the exempted or excluded categories mentioned in Section 2(oo) of the Act, would amount to 'retrenchment'. It was further held that if immediately preceding the date of termination of service, such workman has worked for not less than 240 days within a period of 12 months under the employer, he will be deemed to be in 'continuous service' for one year under Section 25-B(2)(a)(ii) and, therefore, would be entitled to retrenchment compensation under Section 25-F of the Act. It was further held that termination of services without complying with Section 25-F would render such action void *ab initio* entitling the workman for continuation in service with full back wages. It was also laid down that termination by the employer of the service of a workman, for any reason whatsoever, would constitute retrenchment under Section 2(oo) except in cases excepted in that section itself. Thus, the aforesaid argument is



misconceived.

12. In the present case, it has not been pointed out from any material on record that termination of the workman would fall within the cases excepted under Section 2(oo) of the Act. On the contrary, the stand taken by the management is that the services of the workman were not terminated by them. As discussed by the learned Single Judge, the witness of the management admitted the workman having worked on temporary basis between the period May, 2000 and December, 2001. The management also brought the record of attendance register for the month of December, 2001 and February, 2002 before the Tribunal, without offering any explanation for not bringing the record for the relevant period. In the light of the aforesaid, it has been correctly observed by the learned Single Judge that for the categorical admission made by the management's witness, the requirement under Section 25-B(2) stood satisfied in view of the ratio decidendi in ***Mohan Lal's case*** (supra). Further, the onus to prove compliance in terms of Section 25-F of the Act was upon the management. Reference in that regard can also be made to ***Anoop Sharma's case*** (supra).

13. It is noteworthy, that though in exercise of power under Article 226 of the Constitution of India, judicial review would be confined to the limited point where the quasi judicial authorities apparently commit illegality, perversity or conduct itself with material irregularity that would occasion miscarriage of justice. In the case at hand, the learned Single Judge at the instance of the management has re-examined the evidence and thereafter, reiterated the finding of fact recorded by the Tribunal.

14. During the course of hearing, nothing has been pointed out



from the record to show that the findings recorded by the Tribunal and affirmed by the learned Single Judge, suffer from any patent illegality or perversity as such. In the instant case, the management has not made any serious endeavour to justify the case setup in its written statement, by adducing evidence in support thereof before the Tribunal. At the cost of repetition, it is notable that the best evidence, i.e. the attendance record for the relevant period, has not been produced on record by the Management without any explanation.

- 15. No other the point was argued.
- 16. As a conspectus of the above discussion, finding no merit in the instant Letters Patent Appeals, the same are dismissed.

(SHEEL NAGU)
CHIEF JUSTICE

(VIKAS SURI)
JUDGE

August 30, 2024
Harish

Whether speaking/reasoned : Yes / No
Whether Reportable : Yes / No