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Court : Punjab and Haryana

Decided On : Aug-12-2009

Reported in : (2009)156PLR289

Judge : K. Kannan, J.

Appellant : Tarsem Lal

Respondent : Haryana Land Reclamation and Development Corporation Limited and ors.

Disposition : Petition dismissed

Judgement :

K. Kannan, J.

1. The petitioner challenges the dismissal of reference sought at his instance complaining that the alleged termination of service on 11.09.1990, was illegal.

2. The workman complained that he had been appointed as an Accounts Clerk on 14.05.1990 on ad hoc basis for a term of 89 days. After his appointment, a person by name Jarnail Singh had been appointed on 16.07.1990, but while retaining the services of Jarnail Singh, he had been terminated on 11.10.1990. According to

him, the termination was illegal and arbitrary, more particularly by virtue of the fact that the workman who had been appointed later was retained and therefore, there had also been a violation of Sections 25G and 25H of the Industrial Disputes Act.

3. Before the Labour Court; it was contended on behalf of the management that Jarnail Singh had been appointed on regular basis and therefore, he could not compare himself with him, he being a person who was appointed on ad hoc basis for a specific period of 89 days and before the completion of the period, the workman had petitioned for extension which was granted to him on 20.08.1990 on a specific stipulation that he shall be retained till a regular appointee had been made and since regular appointment had also been made, his services were no longer required. According to the management, the termination itself did not amount to retrenchment and was excepted under Section 2(oo)(bb) of the Industrial Disputes Act.

4. The Labour Court found during the course of trial that even apart from Jarnail Singh, there was another person by name Surender Kumar, who had joined on 16.07.1990 and while his services were retained, the workman had been terminated from service. Even while securing evidence of the same, the Labour Court reasoned that there had been no pleading either in the demand notice or in the claim statement about Surender Kumar's employment and the alleged violation of Section 25H on that account. The Labour Court, therefore, refused to examine the contention of the workman as regards violation of Section 25H and finding that the workman had not admittedly completed 240 days, rejected the reference.

5. The learned Counsel appearing on behalf of the workman lays emphasis only on the fact that whatever is the term of employment, the workman cannot be expelled so long as a junior workman, who had joined in service later, is retained and Section 25H admits of no exception. The learned Counsel refers to a decision of this Court in *Sardar Masih v. The Presiding Officer, Labour Court, Amritsar* 2004(1) S.L.R. 386, that even though a workman may not have worked for 240 days in a calendar year, the employer was bound to comply with the rule of 'last-come first go' enshrined in Section 25G of the Industrial Disputes Act. The same principle finds affirmation even in earlier rulings in *State of Punjab and Anr. v.*

Jaspal Singh and Anr. 1997(3) R.S.J. 128; and State of Punjab through its Secretary Labour Punjab, Chandigarh and Anr. v. Jaswant Singh and Anr. 2004(5) S.L.R. 113. Referring to the rejection of the Labour Court that Surender Kumar's case had not been pleaded and therefore could not be taken up for consideration, the learned Counsel relies on the judgment of the Hon'ble Supreme Court in Om Parkash Batish v. Ranjit @ Ranbir Kaur and Ors. (2008-3)151 P.L.R. 422, where the Hon'ble Supreme Court was laying down a proposition in relation to the provisions of the Workmen's Compensation Act that the power of the Commissioner to lay down his own procedure for arriving at the truth by placing reliance on documents produced before it can not be fettered.

6. I do not think that any of the decisions will come to the aid of the petitioner in view of the fact it is not merely a case of a workman who though had not completed 240 days had been retrenched in violation of the principle enshrined in Section 25H. In order the said provision is applied, first of all it should be proved that the workman had been 'retrenched'. In this case, the order of appointment is for a specific period of 89 days and the extension which he obtained on his written request specifically provided that further extension was given only till the appointment of another regular person. Such a regular person namely Jarnail Singh had been appointed, is admitted even by the workman. Section 2(oo)(bb) is an exception to the term 'retrenchment' when it states that it shall not include 'termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein...'. I have already pointed out that the extension was given to him on a specific stipulation that the re-engagement was being done only till a regular employee was appointed. This stipulation is specifically excepted under the proviso contained in Section 2(oo)(bb) and therefore, the workman cannot assert any right under Section 25H of the Industrial Disputes Act. This situation is squarely covered by a decision of the Hon'ble Supreme Court in Punjab State Electricity Board v. Darbara Singh : (2006)1 S.C.C. 121. In order that the workman is attracted to the provisions of Section 25H, he shall be a person who is retrenched and if the termination of service of a workman results otherwise than by such retrenchment, there is no scope for an adjudication that the termination was

bad in law.

7. The award of the Labour Court, under the circumstances, is perfectly justified. There is no merit in the writ petition and the same is, accordingly, dismissed.

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