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Court : Himachal Pradesh

Decided On : Jul-10-1995

Reported in : (1997)IIILLJ604HP

Judge : S.N. Phukan, C.J. and; Bhawani Singh, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2 and 25F

Appeal No. : C.W.P. No. 527/1994

Appellant : Mohinder Singh and anr.

Respondent : H.P. State Electricity Board and ors.

Advocate for Def. : R.S. Jamalta, Adv.

Advocate for Pet/Ap. : Ashok Sharma, Adv.

Judgement :

S.N. Phukan, C. J.

1. The present petition has been filed by two persons, namely, Mohinder Singh and Baldev under Article 226 of the Constitution for appropriate writ to the respondents, namely, H. P. State Electricity Board and its officials.

2. Mohinder Singh was engaged in the year 1986 by the respondents as daily rated Beldar, hut he was disengaged in the year 1987. He was again reengaged

and according to the petitioner continuously from November 21, 1986 to December 3, 1991. Thereafter, he was engaged off and on for short period and ultimately after June 21, 1994 he was not engaged at all. It has been stated that on December 3, 1990, he completed 240 days as an employee of the respondents.

3. Petitioner Baldev was also appointed as daily wage Beldar with effect from May 1, 1980 and according to him, he completed 240 days but subsequently he was not re-engaged. Both the petitioners filed representations but without any result. Hence the present petition.

4. In the reply-affidavit, it has been stated that the petitioners were engaged as daily rated Beldars and it was of casual nature and the services of the petitioners were utilized as and when works as well as funds were available. It has been denied that they completed 240 days continuous service. The period of work has been shown at Annexures RA-I and RA-II.

5. Heard learned Counsel for the parties.

It has been urged on behalf of the respondents that the petitioners never completed 240 days of continuous service and therefore, there was no violation of provisions of Section 25-F of the [Industrial Disputes Act, 1947](#). On the other hand, learned Counsel for the petitioners has urged that from Annexures RA-I and RA-II, if we count the period from December 1991 it would be clear that they have completed 240 days. In this connection, learned Counsel has placed reliance on various decisions of the Apex Court.

6. In *Surendra Kumar Verma and Ors. v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi and Anr.*, (1981-I-LLJ-386) the Apex Court held that 'continuous service' as defined in Section 2 (eee) means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal, or lock-out or a cessation of work which is not due to any fault on the part of the workman. It has also held that it is enough if the workman has worked for 240 days for a period of 12 months; it is not necessary that he should have been in the service of the

employer for one whole year.

7. In *Mohan Lal v. Management of Bharat Electronics Ltd.*, (1981-II-LLJ-70) (SC), it was held that it is necessary to determine first the relevant date, i.e., the date of termination of service which is complained of as retrenchment and after that date is ascertained move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days to invoke Section 25-F of the Industrial Disputes Act.

8. In *Management of Standard Motor Products; of India Limited v. A. Parthasarathy and Anr.*, 1985 4 SCC 78, it was held that under Section 25-B(2), where it is disputed that a workman is not in continuous service for a period of one year, he shall be deemed to be in continuous service for a period of one year, if the workman, during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days, even if the period of illegal strike is excluded, he will be entitled to get the benefit of Section 25-F of the Industrial Disputes Act.

9. In *Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation*, (1985-II-LLJ-539) (SC), it was held that Sundays and other paid holidays should be taken into account for the purpose of reckoning the total number of days on which the workmen could be said to have actually worked for the purpose of Section 25-F.

10. We may sum up the law laid down by the Apex Court for attracting the provisions of Section 25-F of the [Industrial Disputes Act, 1947](#), more particularly, for calculating the period of 240 days:

Firstly, the expression 'continuous service' as defined in Section 2 (eee) of the above Act, would mean uninterrupted service and also include services which may be interrupted on account of sickness or authorised leave or an accident or strike which is not illegal or lockout or a cessation of work which is not due to any fault on the part of the workman ;

Secondly, it would be sufficient if the workman has completed 240 days for a period of 12 months but it would not be necessary that he should be in the service of the employer for the whole year ;

Thirdly, the relevant date for counting the above period is date of termination of service and thereafter we have to move backward for a period of 12 months preceding the above date of retrenchment to ascertain whether within the above period the workman has rendered service for a period of 240 days ;

Fourthly, if the workman has completed 240 days during the period of 12 calendar months preceding the date of retrenchment, even if there is an illegal strike and it is excluded from continuous service, the workman shall be entitled to get the benefits of Section 25-F of the Act ; and

Fifthly, while making the above calculation of 240 days, Sundays and other paid holidays should also be taken into account for giving him the benefits of Section 25-F of the Act.

11. From Annexures RA-I and RA-II, we find that if we take the termination of service in the year 1994 and calculate backward from that date, the petitioners did not complete 240 days within the 12 calendar months. Therefore, they are not entitled to get the benefit of Section 25-F. So, the termination of services in the year 1994 cannot be said to be in violation of Section 25-F.

12. From the above annexures, it appears that their services were also disengaged in the year 1991 and if we calculate backward from the date of termination in the year 1991, they have completed 240 days during the period of 12 calendar months but subsequently they were disengaged and used to be given employment occasionally and from time to time.

13. Now, the allegation of the present petitioners is that they have been denied completely any work from 1994. The respondents have not stated in the reply-affidavit that no work can be assigned to the present petitioners. Only ground, as stated above, is that there is no fund and work available, and that is why, they have not been given any employment.

14. In view of the above facts, we are of the opinion that since the petitioners were given employment from time to time after 1991, they are now entitled to get some directions. We accordingly, direct the respondent-Board to maintain the list of seniority of daily rated Beldars before 1991 as during that period both the petitioners completed 240 days and as per the said seniority list the petitioners shall be given work as daily rated Beldars whenever any work is available with the respondents.

With the above directions, the petition is disposed of.

Costs on the parties.

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