(2006) 08 P&H CK 0183

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 17988 of 2005

Waryam		APPELLANT
	Vs	
Presiding Officer Labour Court and Others		RESPONDENT

Date of Decision: Aug. 10, 2006

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Industrial Disputes Act, 1947 - Section 25B, 25F , 25G, 25H

Citation: (2007) 112 FLR 261 : (2007) 2 LLJ 157 : (2006) 144 PLR 638

Hon'ble Judges: J.S. Narang, J; Arvind Kumar, J

Bench: Division Bench

Advocate: Rajesh Moudgil, for the Appellant; Ajay Chaudhary, DAG, for the Respondent

Final Decision: Dismissed

Judgement

1. In this petition filed under Articles 226/227 of the Constitution, the petitioner-workman has questioned the legality of the award dated 24.1.2005 passed by the Labour Court by virtue of which his claim for re-instatement with continuity of service and back wages has been dismissed.

2. The petitioner, at one point of time, was workman of respondents No. 2 to 4-department. He raised an industrial dispute alleging therein that he had served the department as a "Mali" from the year 1990. His services were illegally terminated on 18.9.1999. He had completed 240 days of continuous service when his services were terminated. The department retained persons junior to him besides recruiting fresh hands after the termination of his services. Thus, violation of the provisions of Sections 25F to 25H of the Industrial Disputes Act, 1947 (for short the Act) was pleaded. On the other hand, the department contested the claim of the petitioner-workman by submitting that the services of the petitioner were engaged as labourer on daily wages, as per the requirement of the work and not as a Mali, as

alleged. The petitioner never completed 240 days of continuous service with the department. Further, the allegations of retaining persons junior to the petitioner and that of recruitment of fresh hands were denied.

3. The Labour Court after analyzing the oral as well as documentary evidence adduced by the parties, vide the impugned award dated 24.1.2005 held that the petitioner had not completed 240 days of service in the twelve preceding months. He has failed to prove that any worker junior to him was retained or fresh recruitment was made by the department after his termination. Accordingly, the Labour Court, as said above, dismissed the claim of the petitioner. Therefore, the petitioner has knocked the doors of this Court.

4. Upon notice of the petition, respondents No. 2 to 4 filed their joint written statement taking the plea that the petitioner had only worked up to 31.8.1998 and thereafter he abandoned his services. Preceding 12 months thereto, the petitioner had not completed 240 days of continuous service. Thus, dismissal of the instant petition has been sought. We have heard learned Counsel for the parties at length and have gone through the paper-book carefully.

5. The grievance of the petitioner is that he had completed 240 days of service preceding the date of his termination and after the termination of his services, persons junior to him were retained and fresh hands were appointed by the department. Thus, there was blatant violation of the provisions of Sections 25-F 25-G and 25-H of the Act. In order to qualify himself for protection of Section 25-F of the Act, the petitioner-workman is required to prove that he had completed 240 days of continuous service in 12 calendar months preceding the date of his termination. Section 25-B of the Act contemplates procedure for calculating 240 days which has to evaluated during twelve calendar months preceding to the date of termination. In order to invoke the fiction enacted in Section 25-B of the Act, it is necessary to determine first the relevant date, i.e., the date of termination of service which is complained of as retrenchment. After ascertaining the date, move backward to a period of twelve months just preceding the date of retrenchment and then ascertain whether within a period of 12 months, the workman has rendered service for a period of 240 days. These facts, if answered affirmatively in favour of the workman, it will have to be assumed that the workman is in continuous service for a period of one year. Thus, he would be taken to have satisfied the eligibility qualifications enacted in Section 25-F of the Act. In the instant case, the plea of the department is that the petitioner had worked with them up to August 1998 though the petitioner has claimed to have worked up to September 1999. A bare perusal of details of working of the petitioner (Annexure R-2) placed on record by the management and not rebutted by the petitioner, reveals that the petitioner had not worked even for a single day in the year 1999 rather he had worked with the department up to August 1998. Therefore, the period from September 1997 to August 1998 has to be taken into consideration. It is elicited out from Annexure R-2 that the petitioner had not

worked for 240 days in the afore-stated period. No doubt, the petitioner has worked for 260 days in the year 1997 but the service rendered earlier to 12 calendar months preceding the date of termination is inconsequential in determining the continuous service. Thus, Section 25-F of the Act does not come to his rescue.

6. Moreover, there is only a bald plea that the persons junior to petitioner were retained in service and fresh hands were recruited. The management has completely denied it. The onus was on the petitioner workman to prove by leading cogent evidence as to which juniors were retained and who were appointed after his alleged termination. There is categoric finding of the Labour Court that the petitioner-workman has failed to substantiate the said pleas by leading cogent evidence. Moreover, nothing has been shown to us to take a contrary view in this regard.

7. For the reasons aforementioned, we find no infirmity with the impugned award of the Labour Court, which is just and reasoned. The petition is wholly without merit and the same is dismissed accordingly. No costs.