

(2011) 03 P&H CK 0607

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 8901 of 1999 (O and M)

State of Haryana and Others

APPELLANT

Vs

Raghbir Singh

RESPONDENT

Date of Decision: March 15, 2011

Acts Referred:

- Factories Act, 1948 - Section 2
- Industrial Disputes Act, 1947 - Section 10, 25F, 25H, 25L, 25N
- Mines Act, 1952 - Section 2(1)
- Plantations Labour Act, 1951 - Section 2

Citation: (2011) 131 FLR 499 : (2012) 1 LLJ 647 : (2011) 163 PLR 737

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Mahesh Grover, J.

The petitioner is aggrieved by the Award (Annexure P-7) dated 25.09.1998 passed by the Labour Court, Ambala. The respondent-workman claimed the reference under the provisions of Section 10(1)(c) of the Industrial Disputes Act (hereinafter called the "Act") which was to the following effect:

Whether the termination/retrenchment of services of the workman Raghbir Singh is valid and justified if not so to what relief is he entitled?

2. He had set up a case that he was employed as Clerk on daily wage basis on 23.04.1985 and his services were terminated erroneously on 30.11.1987 without complying with the provisions of the Act. In the claim statement, he initially pleaded that there was violation of provisions of Section 25(F) & 25(H) of the Act. Subsequently, in the demand notice, he took up the plea that there was violation of Section 25(N) of the Act and thus, pleaded that his termination be set aside. The

stand of the petitioner was that the respondent-workman was employed as "clerk" on daily wage basis and his services were terminated after giving him proper notice and after complying with the provisions of Section 25(F) of the Act. The Labour Court dismissed the reference initially vide its award dated 28.07.1994 against which the petitioner went up in civil writ petition No.9233 of 1995. A plea was raised that the labour court" had gone wrong as the issue of violation of Section 25(N) of the Act had not been answered.

3. It is pertinent to mention here that the labour court had dismissed the reference by holding that there was compliance of provisions of Section 25(N) of the Act.

4. A Division Bench of this Court vide its order dated 17.04.1996 remanded the matter back to the Labour Court, Ambala with a direction to reconsider the same in the light of the plea raised by the petitioner that there was non-compliance of provisions of Section 25(N) of the Act.

5. The Labour Court thereafter went into the matter afresh and decided the issue by virtue of the impugned order holding that there was violation of provisions of Section 25(N) of the Act and for the said reasons accepted the plea of the respondent-workman and set aside his order of termination and ordered for his reinstatement in service with continuity of service and 40% back wages.

6. Aggrieved by the findings recorded by the Labour Court in the impugned award, Mr. Sunil Nehra, Sr. DAG appearing for the State of Haryana has contended that Section 25(N) of the Act was not attracted to the establishment, which is Haryana Roadways. He further contended that the establishment, which had employed the respondent-workman, could not be considered as an industrial establishment so as to attract the provisions of Section 25(N) of the Act and once that is established, the termination of the respondent workman working on daily wage basis was absolutely justified. He further contended that in view of the fact that the respondent workman was working on the daily wage basis, there was no occasion to order his reinstatement in service and also to grant him back wages.

7. The contention has been resisted by the learned counsel for the respondent-workman, who has contended that in view of the findings recorded by the labour court there is no infirmity in the impugned order/award. He contended that the petitioner clearly fell within the term of industrial establishment and thus, the prayer of the petitioner cannot be accepted. He prayed for dismissal of the writ petition.

8. I have heard learned counsel for the parties and perused the impugned award and also the record of the case.

9. To appreciate the controversy, "it would be appropriate to extract the provision of Section 25(N) of the Act. The relevant portion of Section 25(N) is mentioned herein: "25N. Conditions precedent to retrenchment of workmen -

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(a) the workman has been given three months" notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate government or such authority as may be specified by that government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) to (9)-

10. The court is now required to see as to whether the respondent-workman was employed in an industrial establishment as this would be the primarily requirement to attract the provision of Section 25(N) as incorporated in Chapter 5(B) of the Act Section 25(L) of the Act is also extracted herein:

25 L. Definitions - For the purposes of this Chapter, -

(a) "industrial establishment" means-

(i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948

(ii) a mine as defined in clause (j) of Sub-section (1) of Section 2 of the Mines Act, 1952; or

(iii) a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951;

(b) notwithstanding anything contained in sub clause (ii) of clause (a) of Section 2,

(i) in relation to any company in which not less than fifty one per cent of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation [not being a corporation referred to in sub clause (i) of clause (a) of Section 2] established by or under any law made by Parliament, the Central Government shall be the appropriate Government.

11. It is thus, clear that an industrial establishment means a factory defined in clause (m) of Section 2 of the Factories Act, 1948.

12. Clause (m) of Section 2 of the Factories Act, 1948 is as below:

(m) "factory" means any premises including the precincts thereof -

(i) whereon 10 or more workers are working, or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon 20 or more workers are working, or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

13. A perusal of Section 2(m) of the Factories Act, 1948 dare out the emphasis on manufacturing process of a factory, which is extracted herein:

(k) manufacturing process" means any process for -

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance; or

(iii) generating, transforming or transmitting power, or

(iv) composing types for printing, printing by letterpress, lithography, photo-gravure or other similar process or book-binding;

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels,

(vi) preserving or storing any article in cold storage;

14. It is thus to be seen as to whether such manufacturing process was carried out by the petitioner so as to bring it within the definition of factory as given in Section 2(m) of the Factories Act, 1948.

15. The aforesaid questions can only be determined on the basis of material that may have come on record as these are dependent on facts, to be established only by way of cogent evidence. Considering the definition of manufacturing process, a Division Bench of this Court in Haryana Land Reclamation & Development Corporation Ltd. v. Pawan Kumar (1994-1) 106 PLR 107 held as follows:

11. The definition of the word "manufacturing process" is very wide and whether a particular factory is carrying on the process which would be termed as a manufacturing process is also a question of fact which can only be determined on the basis of facts, which come on record after the parties get an opportunity of leading evidence, if it is not admitted.

16. On examination and due consideration of the entire record and the evidence adduced by the respondent-workman, there is not a word which he has uttered regarding the petitioner being an industrial establishment or factory engaged in manufacturing process. No material has been produced by him to establish this fact. Even witnesses produced by the petitioner have not been put to. any such question in this regard.

17. In the absence of any evidence to this effect, I am of the opinion that the findings recorded by the Labour Court on this issue are purely imaginary and based on conjectures and thus, unsustainable.

18. Once it is held so there is no question of any violation of Section 25(N) of the Act and the plea of the respondent necessarily has to fail. For the said reasons, the impugned award is set aside and the petition is allowed.