(2008) 07 P&H CK 0119

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ. Petition No. 16084 of 2007

District Manager, Haryana Agro-Industries Corporation Ltd., Kaithal and Another		APPELLANT
	Vs	
Workman Bhira Ram and Another		RESPONDENT

Date of Decision: July 2, 2008

Acts Referred:

- Industrial Disputes Act, 1947 - Section 25G, 25H

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J; Ashutosh Mohunta, J

Bench: Division Bench

Advocate: Pankaj Gupta, for the Appellant; Gobind Dhanda, for the Respondent

Final Decision: Allowed

Judgement

Kanwaljit Singh Ahluwalia, J.

Present writ petition has been preferred by District Manager, Haryana Agro Industries Corporation Ltd., Jind Road, Kaithal and the Managing Director, Haryana Agro Industrial Corporation Ltd. S.C.O. No. 825-826, Sector 22-A, Chandigarh praying that impugned award passed by Labour Court, Ambala (Annexure P-1) be quashed; whereby Respondent-workman has been directed to be reinstated in service with continuity of service and full back wages.

Petitioner-management has stated that Respondent-workman was employed as Security Guard on daily wages on contract basis for watch and ward of the stocks of food-grains and other assets of the Corporation as per the availability of work at Kaithal. It is further stated that when no work was left, services of the Respondent-workman as Security Guard were terminated in the month of November, 2003.

2. Respondent-workman stated before the Labour Court that he was employed in 7/2000. Thereafter, he continuously/worked without any break upto November, 2003 and his services were wrongly terminated and while doing so persons junior to him were retained in services and fresh persons were also employed by the management after the termination of the Respondent-workman. Therefore, the same amounted to violation of provisions of Section 25-G and 25-H of the Industrial Disputes Act (hereinafter called the ''Act'').

3. The Labour Court returned finding of fact-that Respondent-workman had worked for 243 days, therefore, his termination without paying any compensation amounted to violation of Section 25-F of the Act. Labour Court further held that Petitioner-management has violated the provisions of Section 25-G and 25-H of the Act as they have not denied the assertions made by the workman in paras 4 and 6 of the claim statement to this effect. Labour Court concluded that there has been violation of Section 25-F to 25-H, workman is entitled to reinstatement and back wages.

4. We have heard the Counsel for the parties. Mr. Pankaj Gupta, Counsel for the Petitioner has relied upon a judgment of Hon''ble Apex Court in Jaipur Development Authority Vs. Ram Sahai and Another, wherein it has been held as under:

28. We would, therefore, proceed on the basis that there had been a violation of Sections 25-G and 25-H of the Act, but, the same by itself, in our opinion, would not mean that the Labour Court should have passed an award of reinstatement with entire back wages. This Court time and again has held that the jurisdiction u/s 11-A must be exercised judiciously. The workman must be employed by State within the meaning of Article 12 of the Constitution of India, having regard to the doctrine of public employment. It is also required to recruit employees in terms of the provisions of the rules for recruitment framed by it. The Respondent had not regularly served the Appellant. The job was not of perennial nature. There was nothing to show that he, when his services were terminated any person who was junior to him in the same category, had been retained. His services were dispensed with as early in 1987. It would not be proper to direct his reinstatement with back wages. We, therefore, are of the opinion that interest of justice would be subserved if instead and in place of reinstatement of his services, a sum of Rs. 75,000 is awarded to the Respondent by way of compensation as has been done by this Court in a number of its judgments. (See: State of Rajasthan v. Ghyan Chand 2007 (112) FLR 1066 (SC) : 2006 (7) SCC 755).

5. Counsel for the Petitioner has further placed reliance upon a Division Bench judgment of this Court rendered in The District Manager, Haryana Agro Industries Corporation Ltd. and Anr. v. Workman Multan Singh and Anr. C.W.P. No. 13054 of 2006 decided on 28th August, 2007, wherein it has been held as under:

It is not in dispute that the Respondent-workman was a daily wager. He had not been taken in service against sanctioned post in accordance with the statutory provisions or the rules framed thereunder. The appointment was not in consonance with Articles 14 and 16 of the Constitution of India. The rights of persons, such as the Respondent-workman have been considered by a Division. Bench of this Court in Tek Chand v. The Presiding Officer and Ors. C.W.P. No. 18587 of 2004 decided on 20.7.2007), while relying on Municipal Council, Samrala Vs. Sukhwinder Kaur, . and Manager (Now Regional Director) R.B.I. Vs. Gopinath Sharma and Another, . and it has been held that even if the workman had completed 240 days of service, the nature of employment being on daily wages, Section 25-F of the Act will not be attracted. Rather Sub-section (bb) of Section 2(oo) of the Act will be attracted to the case of a daily wager when employer is governed by statutory provisions.

In Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others, while considering the claim of daily wage employees in public employment who called in question their termination, it has been held that every department of the, Government cannot be treated to be ''industry''. When the appointment are regulated by the statutory rules, the concept of ''industry'' to that extent stands excluded. Once it is found that such employees are not appointed to the posts in accordance, with the rules and were engaged on the basis of need of the work, they are employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be retrenchment under the Industrial Disputes Act. The concept of ''retrenchment'' cannot be stretched to such an extent as to cover these employees.

In Gangadhar Pillai Vs. Siemens Ltd., the Hon''ble Supreme Court held that on completion of 240 days of continuous service for a year, the employee cannot be held to be entitled for regularization of his services and/or a permanent status.

In State of M.P. and Others Vs. Lalit Kumar Verma, the distinction between irregular appointment and illegal appointment has been defined. It has been held that in the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is a State within the meaning of Article 12 of the Constitution of India, the recruitment would he an illegal one.

In State of Madhya Pradesh and Others Vs. Yogesh Chandra Dubey and Others, it has been held that once a person is appointed without there being a sanctioned post of notification of vacancies, in disregard to statutory rules, regularization cannot follow as it would tantamount to appointment and would result in back door appointment which does not have legal sanction.

In M.P. Housing Board and Another Vs. Manoj Shrivastava, , it has been held by the Hon''ble Supreme Court that a person with a view to obtain status of ''permanent employees'' must be employed in terms of statutory rules. It is one thing to say that

a person was appointed on ad hoc basis or as a daily wager but another thing to say that he was appointed against a sanctioned post lying vacant upon following the due procedure prescribed therefore. A daily wager does not hold the post unless he is appointed in terms of the Act and rules framed thereunder and therefore, does not derive any legal right. Such an appointment is clearly illegal.

In Branch Manager, M.P. State Agro Industries Development Corpn. Ltd. and Another Vs. Shri S.C. Pandey, after framing the issues in Para 7 thereof, in paras 17 and 18 it has been held that:

(1) When the conditions of service are governed by two statutes, one relating to selection and appointment and the other relating to the terms and conditions of service, an endeavour should be made to give effect to both the statutes;

(2) A daily wager does not hold a post as he is not appointed in terms of the provisions of the Act and rules framed thereunder and in that view of the matter he does not derive any legal right;

(3) Only because an employee had been working for more than 240 days, that by itself would not confer any legal right upon him to be regularized in service; and

(4) If an appointment has been made contrary to the provisions of statute, the same would be void and the effect thereof would be that no legal right would be derived by the employees by reason thereof.

6. In view of nature of appointment of the Respondent-workman, as noticed hereinabove, we find that the Respondent-workman cannot be directed to be reinstated. No such person can be taken in service or his services regularized when public employment is involved.

7. Accordingly, this petition is allowed and the impugned award is hereby quashed.

8. From the orders passed during the pendency of the petition, we find that the Respondent-workman has already received a cheque amounting to Rs. 19,053/- in compliance of provisions of Section 17-B of the Act, from the date of filing of writ petition i.e. 11.10.2007 till 16.5.2008. Therefore, we intend to award no compensation to the Respondent-workman. In case any dues are left u/s 17-B of the Act, the same shall be paid by the Petitioner within 30 days from today.