(2011) 04 P&H CK 0313

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 5208 of 1992

Haryana Agricultural University		APPELLANT
	Vs	
Presiding Officer, Industrial Tribunal-cum-Labour Court and Another		RESPONDENT

Date of Decision: April 28, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Industrial Disputes Act, 1947 - Section 10, 25B, 25F, 25G

Citation: (2011) LLR 1218

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mehinder Singh Sullar, J.

The crux of the facts, culminating in the commencement, relevant for the limited purpose of deciding the core controversy, involved in the instant writ petition and emanating from the record, is that Hem Raj son of Sham Sunder, workman-Respondent No. 2 (for brevity "workman") was stated to have been appointed as a messenger, by the management of the Petitioner-Haryana Agricultural University, Hissar (for short "management"), by virtue of appointment order dated 7.1.1986. Since then, he was working honestly and to the best of his ability till 1.4.1988. On 2.4.1988, the workman was not allowed to work in the campus school of the management, without any reason. His services were dispensed with by the management, without assigning any reason or affording any opportunity of being heard and without payment of any retrenchment compensation to him under the provisions of The Industrial Disputes Act, 1947 (hereinafter to be referred as "the Act").

2. The workman claimed that as the management has violated the mandatory provisions of Section 25F of the Act, therefore, he issued a demand notice dated 19.4.1988 (Annexure P3) to it (management). It replied to the demand notice, by way of reply (Annexure P4), depicting therein that the appointment of workman was contractual upto 31.3.1988.

3. Finding no alternative, the workman raised an industrial dispute u/s 10 of the Act, which was referred to the Presiding Officer of the Industrial Tribunal-cum-Labour Court for adjudication by the appropriate Government. The workman submitted his claim before the Labour Court and prayed for his reinstatement with continuity of service, back wages and all other benefits.

4. The management contested the claim of the workman and pleaded that his appointment was contractual. The management denied the other allegations contained in the claim petition and prayed for its dismissal.

5. In the wake of pleadings of the parties, the Presiding Officer of the Labour Court framed the following issues for adjudication of the case:

1. As per terms of reference.

2. Relief.

6. The parties to the lis, in order to substantiate their respective stands, produced the evidence on record. Taking into consideration the entire material on record, the Labour Court accepted the claim of the workman, set aside his termination, reinstated him with continuity of service, full back wages and other consequential benefits, by means of impugned award dated 3.3.1992 (Annexure P7).

7. The Petitioner-management did not feel satisfied and preferred the present writ petition, challenging the impugned award (Annexure P7), invoking the provisions of Articles 226 and 227 of the Constitution of India in this regard.

8. Having heard the learned Counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the instant writ petition in this context.

9. Ex facie, the argument of learned Counsel for management that since the engagement of workman was on contractual basis, so, he was not entitled for any retrenchment compensation at the time of his dis-engagement, is not only devoid of merit but misplaced as well.

10. As is clear, Section 25F of the Act postulates that "no workman employed in any industry 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 one month''s 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;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days'' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

11. Sequelly, the period of continuous service has been defined u/s 25B for the purpose of Chapter VA, which posits that (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.

(2) where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a 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 two hundred and forty days.

12. In other words, once the workman had completed 240 days in continuous service within a period of one year as defined u/s 25B, then he cannot legally be retrenched without complying with the mandatory provisions as contemplated u/s 25F of the Act.

13. As is evident from the record that workman had worked from 7.1.1986 to 31.3.1988. He has so reiterated and proved while appearing as his own witness as WW 1. In that eventuality, the alleged contractual agreement Ex. M-1 will not override the mandatory provisions of Section 25B of the Act. Therefore, the contrary arguments of learned Counsel for management "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances.

14. Moreover, the Labour Court has rightly negatived the claim of the management, by virtue of impugned award Annexure P7, which, in substance, is as under:

The version of the management, according to the written statement is that the Petitioner has worked intermittently from 7.1.86 to 31.3.88. If the Petitioner was already in service with effect from 7.1.86, the terms and conditions of his service could not be changed by the management by getting the agreement deed Ex. M-1 from him nearly after about 21 months of his actual service. Had this document Ex. M-1 been taken from the very beginning from 7.1.86 it would have governed the rights of the parties from the very beginning of the service of the Petitioner with the

management. The Petitioner had already served for about 21 months and had completed actual work for more than 240 days as is evident from Ex. W-X, when deed Ex. M-1 was obtained from the workman. Such a deed could be obtained from a serving employee under some type of pressure. The workman having already completed work for more than 240 days, was protected under the provisions of the Act and the management could not change the conditions of service of the Petitioner so as to terminate his service on a particular day on the happening of a particular event. The document Ex. M-1 and the acceptance given by the workman on it is nothing but a waste paper, having no bearing on the already vested rights in the Petitioner. The Management, therefore, could not terminate his service without compliance of the provisions of Section 25-F and 25-G of the Act.

15. Meaning thereby, the Labour Court having considered and appreciated the entire relevant material/evidence brought on record by the parties in the right perspective, has recorded the valid reasons and rightly reinstated the workman with full back wages and continuity of service. Such award containing valid reasons, cannot possibly be interfered with, while exercising the extraordinary writ jurisdiction of this Court, unless and until, the same are illegal and perverse. As no such patent illegality or legal infirmity has been pointed out by the learned Counsel for the management, therefore, the impugned award deserves to be and is hereby maintained in the obtaining circumstances of the case.

16. No other point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

17. In the light of the aforesaid reasons, as there is no merit, therefore, the instant writ petition is hereby dismissed as such.