

(2011) 06 P&H CK 0049

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 6404 of 1990

Punjab State Electricity Board

APPELLANT

Vs

Presiding Officer, Labour Court,
Bathinda and Another

RESPONDENT

Date of Decision: June 6, 2011

Acts Referred:

- Industrial Disputes Act, 1947 - Section 25F, 33, 33A

Citation: (2012) 1 ILR (P&H) 868

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Gurmeet Singh Sandhawalia, Deepak Sabharwala, N.L. Pruthi, for the
Appellant; Parminder Singh, Amicus Curiae, for the Respondent

Final Decision: Dismissed

Judgement

K. Kannan, J.

The issue for consideration in the writ petition is the effect of termination of service after due notice in the manner required u/s 25F, even while a petition for adjudication before the Labour Court for an earlier order of termination, was claimed by the workman in violation of the provisions of the Industrial Disputes Act. The petitioner was employed on daily wage basis with Punjab State Electricity Board in June, 1986 and was retrenched from service on 30th April, 1987. This retrenchment was a subject of challenge through a reference before the Labour Court. Even the proceedings were pending, the workman was re-employed on 1st November, 1988 and was retrenched again on 25th August, 1989 after serving him a notice as required u/s 25F of the Industrial Disputes Act. Before the Labour Court, the Punjab State Electricity Board sought to contend that he had been subsequently terminated after due notice. The Tribunal still directed reinstatement finding that it cannot traverse beyond the reference and the reference was related to the validity of the retrenchment order made on 30th April, 1987.

2. Before this Court, at the time when interim orders were sought, the Division Bench had ensured that the petitioner was paid the wages for the period when the Labour Court had held that the petitioner had suffered an illegal and unlawful retrenchment by the order dated 30th April, 1987 till he was properly retrenched on 25th August, 1989.

3. Learned counsel appearing for the Punjab State Electricity Board argues that since he was lawfully terminated, subsequently there is no scope for reinstatement. This argument contains an inherent flaw, since the action of Electricity Board in terminating the services, is violative of Section 33 of the Industrial Disputes Act. The Section enacts a fundamental rule that during the pendency of proceedings before an Industrial Tribunal, no employer shall alter to the prejudice of the workmen any matter which is connected to the dispute. A Constitution Bench of the Supreme Court "Jaipur Zila Sahakari Bhoomi Vikas Bank versus Ram Gopal Sharma and others, (1) settled the controversy that existed on the interpretation of Section 33 of Industrial Disputes Act and held that a dismissal or discharge effected by the Management without taking permission from the Labour Court or the Industrial Tribunal becomes ineffective from the date when it was passed and not merely from the date of non-approval of the order of dismissal. The Supreme Court underscored that workman ought to be deemed never to have been dismissed or discharged and would be deemed to remain in the service of the employer. It is not even necessary that the workman to make a complaint u/s 33A to this extent and earlier decision of the Supreme Court in "Punjab Beverages Private Limited, Chandigarh versus Suresh Chand and another, (2) was overruled. In this case no permission was obtained and admittedly the order of retrenchment relied on by the Management had been passed when there was a reference before the Labour Court for adjudication. The reference had been made in this case and instituted before the Labour Court on 18th July, 1989 and the alleged retrenchment which the Management was relying was on 25th August, 1989. The subsequent retrenchment is illegal and unlawful being violative of Section 33. No attempt was made by the Punjab State Electricity Board to sustain the validity of the earlier order of retrenchment passed on 30th April, 1987. The present writ petition is, therefore, dismissed.