(2012) 04 P&H CK 0189

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No''s. 17820 of 2005 and 8766 of 2006

Malkiat Singh, Ex-Security Guard		APPELLANT
	Vs	
Presiding Officer, Industrial Tribunal and Others		RESPONDENT

Date of Decision: April 17, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Industrial Disputes Act, 1947 - Section 1(c), 36

Citation: (2012) 134 FLR 824

Hon'ble Judges: Rajiv Narain Raina, J

Bench: Single Bench

Advocate: Anuj Raura for the workman in CWP No. 17820 of 2005, for the Appellant; Anuj Raura for Respondent No. 1 in CWP No. 8766 of 2006 and Ankit Goel for PSEB in CWP No. 17820 of 2005 and for workman in CWP No. 8766 of 2006, for the Respondent

Final Decision: Allowed

Judgement

Rajiv Narain Raina, J.
This order will dispose of CWP Nos. 17820 of 2005 and 8766 of 2006 as both the writ petitions arise out of a common award dated 24.3.2005 passed by the Presiding Officer, Industrial Tribunal, Punjab, Chandigarh.

The brief facts giving rise to the filing of these writ petitions are that Malkiat Singh who is petitioner in CWP No. 17820 of 2005 (for short "the workman") was appointed as Daily Wage Security Guard with the petitioner in CWP No. 8766 of 2006 and respondents No. 2 and 3 in CWP No. 17820 of 2005 i.e. Punjab State Electricity Board (for short "the Board") on 8.1.1988 (for short "the Board"). The services of the workman were regularized w.e.f. 15.3.1993. He retired from the services of the Board as regular Security Guard on 31.10.2000. He has been denied the benefit of service rendered on daily wages for the purpose of pensionary benefits. The dispute

of the workman was espoused by the Consumer Welfare Association, Sujanpur, Pathankot by passing a resolution dated 5.2.2000. It is the case of the Board that on the date when the resolution was passed by the aforesaid Union, the workman was not a member of the said Union. However, the workman became member of the said Union on 12.3.2000. A demand notice with regard to grant of pensionary benefits was also served by the workman on the Board on 2.3.2000. Since the Conciliation proceedings failed, the Labour Commissioner, Punjab, Chandigarh made a reference of the dispute for adjudication to Labour Court vide notification dated 2.8.2001 being Reference No. 92/2001 that whether it is justified to count the service of the workman-Malkiat Singh rendered by him as daily wager Security Guard for pensionary benefits. Both the parties led their respective evidence before the Tribunal. Vide award dated 24.3.2005, the Tribunal has held the services rendered by the workman as daily wages as liable to be counted for the purpose of pensionary benefits, but the Tribunal denied the said benefit on the ground that the workman was not a member of the Union on 5.2.2000 the date on which the resolution was passed by the Union for espousal of the cause of the workman. Thus, both the parties i.e. the workman and the Board have challenged the aforesaid award dated 24.3.2005 (Annexure P-1) by filing these petitions filed under Articles 226/227 of the Constitution of India.

I have heard learned Counsel for the parties and perused the record.

Learned Counsel for the workman submits that although the Tribunal has held that the services rendered by the workman as daily wager is liable to be counted, but the Tribunal has erred in holding that the espousal of the cause of the workman is not proper and thus, the workman has been denied the grant of pensionary benefits. The statute does not give any mandate that the dispute of a workman must be espoused by workers'' Union only. Section 36 of the Industrial Disputes Act, 1947 (for short "the Act") deals with the representation of parties which reads as under:--

36. Representation of Parties--(1) A workman who is a party to dispute shall be entitled to be represented in any proceeding under this Act by--

(a) any member of the executive or other office-bearer of a registered trade union of which he is a member;

(b) any member of the executive or other office-bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated.

(c) where the worker is not a member of any trade union, by any member of the executive or other office-bearer of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorized in any such manner as may be prescribed.

2. Undisputedly, the workman was not a member at the time of passing the resolution by the Trade Union espousing the cause of the workman vide Ex. W-7

dated 5.2.2000. It is also not disputed that the workman later became member of the Union on 12.3.2000 vide Ex. W/6. It is also not denied by the respondent-Board in the written statement filed before this Court that the workman also made a demand notice dated 2.3.2000 which was served upon the respondent-Board. From the perusal of provisions contained in section 1 (c) of the Act, it is crystal clear that when a workman is not a member of any trade union, even the cause of the said workman can be espoused by any member of the executive or other office-bearer of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorized in any such manner as may be prescribed. In this view of the matter, the Tribunal was not justified in denying the pensionary benefits to the workman on such technical and flimsy ground that the workman was not a member of the trade union at the time of passing of resolution which espoused the cause of the workman. The cause of a workman can be espoused not only by the Trade Union, but also by any member of the executive or other office bearer of any trade union connected with or by any other workman employed in the industry in which the worker is employed. Not only this, the workman even made a demand notice dated 2.3.2000 himself raising the dispute, which fact is also not disputed in the written statement filed by the respondent-Board. The Tribunal has even failed to take into consideration the validity of the reference that the reference in question was made by the appropriate government on 2.8.2001 i.e. after the workman became member of the said Trade Union on 12.3.2000. It is settled proposition of law that the validity of a reference must be judged on the facts as they stand on the date of reference. While dealing with the question of validity of a reference, in the case of The The Bombay Union of Journalists and Others Vs. The ''Hindu'', Bombay and Another, the Hon''ble Supreme Court has held as under:--

.....In each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute the test is whether at the date of the reference the depute was taken up as supported by the Union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen. If Venkateswaran or Tiwari had prior to the date of the reference supported the cause of Salivateeswaran, by their subsequent affidavits the reference could not have been invalidated. But as we have already observed there was, in fact, no support to the cause of Salivateeswaran by Venkateswaran or by Tiwari and therefore the dispute continued to remain an individual dispute....

3. While relying on the aforesaid observations of the Hon''ble Supreme Court, a Division Bench of the Patna High Court in the case of Workmen of Jamadoba Colliery of Tata and Steel Company Ltd. Vs. Jamadoba Colliery of Tata Iron and Steel Company Ltd. and Another, , has observed as under:--

On these principles, there seems no special reason why, in this case, it could not be held that the dispute regarding the validity of dismissal of workman Tulsi became an

industrial dispute on 19.12.1963, the date on which the reference was made. Before that date a union of the workers of Jamadoba Colliery had come into existence, the dismissed workman had become a member of the union and his cause had been espoused by the union. I am unable to find any principle in support of the view taken by the tribunal that the union itself must have been in existence prior to the date of dismissal, and that the workman should have been a member of that union prior to that date. If such a view be taken, the growth of trade union movement on healthy lines will be somewhat adversely affected.

4. The aforesaid proposition of law has not been taken into consideration by the Tribunal. The Tribunal has erred in holding that the espousal of the cause of the workman is not proper. The fact that the workman became member of the Trade Union after espousal of the cause of the workman by it and before the reference made by the appropriate government, has not been rightly considered by the Tribunal. In the present case, the workman became the member of the Trade Union much before making reference by the appropriate Government and thus, the validity of espousal of the cause of the workman and the reference made by the appropriate government cannot be questioned.

5. In another writ petition i.e. CWP No. 8766 of 2006, the Board has submitted that the workman has not rendered 10 years of qualifying service on regular basis from 15.3.1993 to 31.10.2000 and the services rendered on daily wage basis from 8.1.1988 to 15.3.1993 cannot be counted for the purpose of grant of pension. Learned Counsel for the Board has relied on the case of Punjab State Electricity Board and Others Vs. Jagjiwan Ram and Others, , to the effect that service rendered as temporary, ad hoc or work-charged basis cannot be counted. The submission of the learned Counsel is misconceived. In the aforesaid case, the issue before the Hon''ble Supreme Court was whether the service rendered by an employee on work-charged basis could be clubbed with the service rendered by him after regularization for the purpose of determining his eligibility for time-bound promotional scale/increments on completion of 9/16/23 years of service. The Hon''ble Supreme Court answered the issue in negative. This judgment is not applicable to the facts and circumstances of the present case. In the present case, the workman is seeking counting of his daily wage service for the purpose of grant of pensionary benefits. The workman is not seeking any promotional scales/increments as was the issue involved before the Hon''ble Supreme Court in the case of Punjab State Electricity Board and others (supra). As such, the said judgment rendered by the Hon''ble Supreme Court is clearly distinguishable. The issue with regard to counting of daily wage service for the purpose of pension issue is no more res integra. A Division Bench of this Court in the case of Kashmir Chand v. Punjab State Electricity Board 2005 (4) SCT 298 (P & H) (D.B.), wherein it has been observed as under:--

9. In view of the above, we are of the opinion that services rendered by the petitioner on daily-wage or work charge basis should be counted as qualifying service for pensionary benefits. The petitioner was working as a whole time employee and was paid wages on monthly basis. The respondents have not disputed that there was no wilful absence from duty by the petitioner. In such circumstances, the period of service of 6 years and 29 days rendered by the petitioner on daily wage basis has to be reckoned while computing the pensionary benefit of the petitioner.

6. In another Division Bench judgment of this Court in the case of Hanumant Singh and others v. State of Haryana and others 2008 (4) RSJ 756, it has been held as under:--

22. Therefore, in view of the above discussion, question No. 1, referred to above, stands answered against the workmans whereas question Nos. 2 and 3 stand answered in favour of the workmans and against the respondents and it is held as under:--

(a) ad hoc/work charged service followed by regular service shall not be counted for the purposes of grant of higher pay scale/benefit of Assured Career Progression Scheme on completion of 8/18 or 10/20 years of service.

(b) Ad hoc/work charged service followed by regular service shall be counted for the purposes of grant of additional increment in the running scale on completion of 10/20 or 8/18 years of service.

(c) Ad hoc service followed by regular service shall be counted for the purposes of pension and seniority.

7. In the present case, the findings of the Tribunal are that there is no break in service from the date of workman''s initial appointment as daily wage basis till the date of his regularization. In such circumstances, the services rendered by the workman as daily wager from 9.1.1988 to 16.3.1993 can be computed for the purpose of grant of pensionary benefits, in view of the aforesaid observations of two Hon''ble Division Benches of this Court. In this view of the matter, I hold that the workman is entitled to grant of pensionary benefits by counting his services rendered as daily wager. Consequently, CWP No. 17820 of 2005 filed by the workman-Malkiat Singh is allowed and the award dated 24.3.2005 (Annexure P-1) passed by the Presiding Officer, Industrial Tribunal, Punjab, Chandigarh is hereby quashed. The Board is directed to release the pensionary benefits to the workman by counting his services rendered as daily wager from 9.1.1988 to 16.3.1993. Let the pensionary benefits be released from the date of superannuation of the workman and the arrears thereof be paid to the workman within a period of one month from the date of receipt of a certified copy of this order. In view of the allowing of the writ petition filed by the workman, the writ petition (CWP No. 8766 of 2006) filed by the Punjab State Electricity Board is dismissed with no order as to costs.

Copy of this order be placed on record of each concerned file.