

(2014) 07 P&H CK 0571

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition Nos. 15809 and 15794 of 1992 (O&M)

The Additional Deputy
Commissioner

APPELLANT

Vs

Prabhu Singh

RESPONDENT

Date of Decision: July 21, 2014

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2(oo)(bb), 25-F, 25-FF

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Shailendra Jain, Senior Advocate, Gaurav Aggarwal, Advocate and D.D. Gupta, Additional Advocate General, Haryana, Advocate for the Appellant

Final Decision: Allowed

Judgement

K. Kannan, J.

Both these writ petitions relate to the orders passed by the Labour Court directing reinstatement of the first respondent-workman. Two writ petitions are filed at the instance of the District Rural Development Agency (called as "DRDA") in CWP No. 15809 and by the State in CWP No. 15794 of 1992 in relation to the same workman. It so happened that the workman had been employed with DRDA for a period of 77 days as Beldar and later his services were utilized by the State for a period of 133 days. The contentions taken by the employer on a reference to the Labour Court was that the workman had not completed 240 days of continuous service and he was therefore not entitled to complain of retrenchment and notice u/s 25-F of the Industrial Disputes Act. It was also the contention that even the termination did not operate as retrenchment since his own engagement had been for a specific period for a particular assignment undertaken for a purpose by the respective employers and, therefore, the termination was effective from the date when the project was completed and consequently, the termination was an excepted from the definition of "retrenchment" u/s 2(oo)(bb) of the ID Act.

2. The Labour Court rejected the contentions in defence and found that the petitioner had not been issued with notice and paid the compensation as required u/s 25-FF of the ID Act. The learned senior counsel appearing on behalf of the petitioner-DRDA submits that this scope of activity engaged by DRDA has itself been a subject of adjudication in [State of U.P. and Others Vs. Arun Kumar Singh](#), where the Supreme Court has held that the DRDA does not come within the definition of "industry" and the termination of service of an employee does not attract Section 25-FF of the ID Act. This court has had an occasion to also consider a similar issue raised by the same agency for the case of yet another employee Jagjiwan Ram while challenging the order passed by the Labour Court in CWP No. 2091 of 1998. The court has followed Arun Kumar Singh's case, referred to above and the order of the Labour Court has been set aside. I will not, therefore, examine the other objections taken by the Management as brought out in the above paragraphs in the writ petition filed by DRDA, but would find the decision of the Supreme Court referred to above itself as concluding the issue to hold that the termination could not have been complained of before the Labour Court. CWP No. 15809 of 1992 is, therefore, allowed and the order of the Labour Court is set aside.

3. What would apply for consideration of whether DRDA is an "industry" cannot still conclude the issue for the State. Its own defence therefore would require a consideration of whether the petitioner had completed a continuous period of one year in the service to complain of notice u/s 25-F of the ID Act. The facts brought out in defence and secured in the writ petition reveal that the workman was in service only for a period of 133 days and there was no dispute about the actual number of days which he had worked. Without reference to the period of engagement in DRDA also, there was no question of the workman having 240 days of continuous service. If the engagement in DRDA cannot count for his status for a workman in an industry for the reasons set out above in the other writ petition, the same ought to apply a fortiori to this case as well that his own engagement with the State service must be taken into reckoning without counting the number of days of service in DRDA. The case would fail against the State also at the instance of a person who had not the requisite number of days of service for complaint of violation u/s 25-F of ID Act. The writ petition at the instance of the State is allowed quashing the order of the Labour Court directing reinstatement.

4. Both the writ petitions are allowed on the above.