

(2014) 07 P&H CK 0836

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 16590 of 1992

The Block Development and
Panchayat Officer

APPELLANT

Vs

The Presiding Officer

RESPONDENT

Date of Decision: July 30, 2014

Acts Referred:

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

Citation: (2014) 176 PLR 773

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: S.S. Khaira, Advocate for the Appellant; Divya Godara, Advocate for the Respondent

Final Decision: Allowed

Judgement

K. Kannan, J.

The writ petition challenges the order passed purporting to terminate the services of the 3rd respondent in the year 1989. The details of employment admitted by the petitioner revealed that he had been working from the year 1986 till the year 1989 and he had in each year 240 days and more of service. The termination which was abrupt without serving a notice was the cause for a reference for an adjudication before the Labour Court. The Labour Court found that there had been adequate proof of his engagement for more than 240 days in every calendar year and particularly of the year immediately prior to the termination of service, found that there was a violation of statutory mandate of Section 25F and directed reinstatement.

2. The contention on behalf of the Panchayat is that there had been no written order of appointment and that he had been employed only as a daily rated worker under a scheme to provide for employment under Rural Landless Employment Guarantee

Programme and it was funded by the State Government and the work which was entrusted to various persons was reclamation of banjar/Kallar land pertaining to respective Panchayat Samitis. The petitioner would contend therefore that the employment which had been done and where in respect of fulfillment of a programme which in the very nature of things must be taken as the employment done on a contract for a particular purpose and the result of non-renewal of contract of employment on its expiry or of such contract being terminated under a stipulation in that behalf contained would not qualify for the expression retrenchment for application of notice and compensation u/s 25F of the Industrial Disputes Act.

3. I have no doubt in my mind that the 3rd respondent had been working for 240 days continuously for a year before the date when his services were terminated. It is not merely the working for a particular number of days and the manner of termination that would be relevant in order that a violation of mandate u/s 25F is applied. It has to be also seen that apart from the fact that a person had been working for 240 days the termination itself must come within the four corners of the definition of 2(oo) of the Industrial Disputes Act. The circumstances under which an employment is given would obtain relevance, for Section 2 contains four exceptions to the definition of retrenchment and for our purpose the exception No. 3 brought through an amendment of Act 49 of 1984 w.e.f. 18.08.1984 would obtain significance. Section 2(oo)(bb) is as follows:-

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulate in that behalf contained therein

4. This must be matched with the scheme under which the workman has been employed. The Director to the Government of Punjab, Rural Development and Panchayat Department, has in his communication dated 19.09.1986 to the Executive Officer of the Panchayat released a total value of Rs. 42,24,200/- by way of cash and kind, namely, quintals of wheat under Rural Landless Employment Guarantee Programme. In the communication, it is stated that it is centrally sponsored scheme for execution of work regarding reclamation of banjar and kallar land pertaining to the Executive Panchayat Samiti. The guidelines for the implementation of the project are also issued which are also brought to record as Annexure P-1. It says that the project would be implemented by the Gram Panchayat under the strict supervision of the Block Development ad Panchayat Officers and Engineering Wing of the Department and the concerned Gram Panchayat would be responsible for the maintenance of this project. The averment in the petition which is in some way repetition of the statement brought before the Labour Court was that the Government had withdrawn the scheme of providing sapling of safaida trees in August, 1989 and the work of planting of saplings of safaida trees which were

supplied to the Panchayat, consequently fell through. The services of the 3rd respondent along with other persons who had been employed from time to time as per need on daily wages were, therefore, dispensed with. On a plea by the workman that he had been employed as a Mali, the State would deny that there was any post of Mali with the petitioner and there was, therefore, no question of the workman staking any claim as though he was retrenched to whom the provisions of Section 25F would apply.

5. On a specific contention made that there was no post of Mali and the engagement of the workman in doing agricultural operations such as reclamation of land and development of social forestry by plating safaida saplings, unless it is brought out that there was separate cadre of Malis under any of the Rules of Gram Panchayat it is not possible to accommodate the claim of the workman that his termination was to be treated as retrenchment and that he would be entitled to notice and compensation u/s 25F. The Labour Court has failed to advert to the defence taken that there existed no post as Mali and the engagement was pursuant to the project the details of which are spelt out in the reply and also supported by document brought as Annexure P-1. The order directing reinstatement was under the circumstances erroneous and contrary to the application of the principles governing the situation which is an excepted situation of termination u/s 2(oo)(bb).

6. The impugned order cannot stand legal scrutiny and quashed. The writ petition is allowed.