**SUPREME COURT OF INDIA**

Sonepat Cooperative Sugar Mills Ltd.

Vs.

Rakesh Kumar

C.A.No.4460 of 2005

(Arijit Pasayat and R.V. Raveendran JJ.)

16.12.2005

**JUDGMENT**

**R.V. RAVEENDRAN, J.**

This appeal is by an employer is against the order of dismissal dated 11.9.2003 passed by the High Court of Punjab & Haryana in C.W.P. No.14355 of 2003 wherein it had challenged the award dated 2.4.2003 in Ref. No. 417/2000 made by the Industrial Tribunal-cum-Labour Court, Panipat.

The appellant employed the respondent on daily wages in its computer section on 1.7.1998. According to the appellant, such appointment was made after obtaining sanction from the appropriate authority for employing the Respondent between the period 1.7.1998 and 31.8.1999. His services were terminated on 31.8.1999.

Feeling aggrieved by the termination, the Respondent served a demand notice dated 4.1.2000 for reinstatement with back wages and continuity of service, alleging that he was illegally terminated on 29.9.1999 without any prior notice or notice pay or retrenchment compensation, in violation of Section 25F of the Industrial Disputes Act, 1947 (for short `the Act'). The State Government referred the dispute to the Labour Court under Section 10(1)(c) of the Act. In its reply filed before the Labour Court, the appellant contended that the respondent was engaged on daily wage basis on 1.5.1998, that as he actually worked only from 1.7.1998 he was paid salary from that date, and that he did not complete 240 days of service in a year and, therefore, there was no need to comply with the requirements of Section 25F of the Act.

By award dated 2.4.2003, the Labour Court allowed the claim and held that the respondent is entitled to reinstatement to the post of Computer Programmer with continuity of service and full back-wages from 4.1.2000. The Labour Court, after considering the evidence, in particular, the attendance register for the period 1.7.1998 to 31.8.1999 produced by the appellant and the admission by appellant's witness, held that the respondent had worked continuously for more than 240 days in the period of 12 months prior to his termination. Consequently, it held that the termination of service of respondent without notice, notice-pay and retrenchment compensation was violative of Section 25-F of the Act.

The appellant challenged the said order by filing C.W.P. No.14355 of 2003 which was dismissed by the High Court at the stage of admission itself without notice to the respondent. The said order is

challenged in this appeal. Two contentions are urged by the appellant:

(i) The termination of the service of the respondent was on account of non-renewal of contract of employment. Having regard to the definition of the term retrenchment in section 2(oo)(bb) of the Act, which excluded contracts of employment for specific periods, the termination did not amount to retrenchment and therefore, there was no obligation to comply with the requirements of Section 25-F of the Act;

(ii) Even if the order of reinstatement is to be upheld, there is no justification for directing reinstatement as Computer Programmer, as he was appointed only as a Helper on daily wage basis.

Re : Contention (i):

The contention of the appellant that the respondent was appointed for a specific period, namely, 1.7.1998 to 31.8.1999 and the termination of his service is on account of non-renewal of contract of employment is not borne out either by the pleadings or the evidence. The appellant did not produce any letter of appointment or other documents showing that the respondent was appointed for the period from 1.7.1998 to 31.8.1999 or the termination was on account of non-renewal of such term appointment. On the other hand, the specific case of the appellant before the Labour Court and in the writ petition was that there was no sanctioned post of Computer Programmer or Computer Operator and that as there was no such sanctioned post, the respondent was appointed as a Computer Helper on daily wage basis, pending decision on creation of the post and prescription of qualification thereof. The appellant specifically pleaded in the writ petition that Respondent was informed that "the work was of a temporary nature and his services would not be required after the staff of the Mill gained proficiency in computerization". It was further alleged that as some staff of the appellant, learnt to operate the computer, the respondent's services were terminated on 31.8.1999 and he had not served for 240 days. The appellant never contended before the Labour Court or the High Court that the appointment was contractual for a specific term from 1.7.1998 to 31.8.1999 and that the termination was on account of non renewal of such contract. Nor was it pleaded or proved that Respondent was informed at the time of appointment that appointment was contractual up to 31.8.1999. The appellant can not raise such a contention for the first time before us. The pleadings and evidence clearly show that the termination is `retrenchment'. The first contention is, therefore, rejected.

From the evidence led before the Labour Court, the finding recorded by the Labour Court that the respondent was employed on daily wage basis and had worked for more than 240 days during the period of 12 months before the date of termination, did not call for interference. The appellant had examined one Randhir Singh, Time Keeper as MW-2 who had produced the Attendance Register for the period 1.7.1998 to 31.8.1999 and specifically admitted that as per the Attendance Register, the respondent had worked continuously between the said period and further admitted that the respondent had worked for more than 240 days in a period of one year prior to respondent's termination. In view of it, there was a clear violation of Section 25-F and we find no error in the direction for reinstatement.

Re: Contention (ii)

This leads us to the second question as to whether the Labour Court was justified in directing that the Respondent should be reinstated as a Computer Programmer.

In the demand notice sent by the respondent under Section 2A of the Act, the respondent merely stated that he was engaged to work in the Computer Section on computers. He did not say that he was appointed as a Computer Programmer. The appellant, on the other hand, specifically contended in the reply that the respondent was appointed as a Helper in the Computer Department and not as a Computer Programmer. The Appellant has also produced the Casual Labour Payment Sheet for some of the months during the period when the respondent was employed on daily wage basis. The said Casual Labour Payment Sheet for July, 1998 shows that he was engaged as a Computer Helper. The Casual Labour Muster Roll and Casual Labour Payment Sheet show that he was appointed a Computer Helper. The respondent has also produced some documents before us (correspondence) referring to him as Computer Programmer. But those are all communications emanating from the respondent describing himself as `Computer Programmer'. It is not disputed that the respondent was a matriculate with a Diploma in Computer Science at the time of appointment. It is also evident that the respondent's services were being utilized by the appellant for operating the computer temporarily, till it could secure the services of a qualified person. The Respondent did not produce any document to show that he was appointed as a `Programmer'. In the demand notice under section 2A, he merely stated that he was engaged to work in the computer department and prayed that he may be reinstated into service. The Labour Court was not justified in directing that the respondent should be reinstated as a Computer Programmer, as he was appointed as a Helper in the Computer Department. The reinstatement can, therefore, be only as a helper and not as `Computer Programmer'. As the records clearly show that he was appointed in a non-manual clerical post in the computer department, his reinstatement shall be as Helper involving clerical work (not necessarily in the computer section), but not as a manual labourer.

Subject to the said clarification, we uphold the orders of the Tribunal and that of the High Court and dismiss this appeal.