SUPREME COURT OF INDIA

Haryana Urban Development Authority

Vs

Om Pal

(S. B. Sinha and Markandeya Katju, JJ)

Appeal (Civil) 1869 of 2007

10.04.2007

JUDGMENT

S. B. SINHA, J.

Leave granted.

Respondent herein was appointed as a daily-wager. From October, 1994 to February, 1995, he worked for a period of 145 days in Sub- Division No.2, Panipat. He, however, worked in Sub-Division No.3 for a period of 90 days from March 1995 to July, 1995. His services were terminated. An industrial dispute was raised questioning validity of the said order of termination. The said industrial dispute was referred by the Appropriate Government to the Industrial Tribunal-cum-Labour Court, Panipat, for its determination. It was registered as Reference No.59 of 1999. By an award dated 28.2.2003, the Industrial Court on the premise that the services rendered by the respondent in both the Sub-Divisions should be counted for the purpose of Section 25F read with Section 25B of the Industrial Disputes Act, 1947, directed his reinstatement with continuity of service and full back-wages from the date of demand notice i.e. 14.9.1995. A writ petition filed thereagainst by the appellant herein was dismissed. The appellant has, therefore, filed this appeal by special leave.

The short question which arises for consideration by us in this appeal is as to whether in the

aforementioned fact situation, the Industrial Tribunal-cum-Labour Court was justified in directing reinstatement of the respondent with full back-wages and continuity of service. It has not been denied or disputed that the two Sub-Divisions constituted two different establishments. Only because there is one Controlling Authority, the same by itself would not mean that the establishments were not separate.

Respondent did not produce before the Industrial Tribunal-cum- Labour Court his offers of appointment. If offers of appointment had been issued in his favour by the two Sub-Divisions separately, the same ipso facto would lead to the conclusion that they were separate and distinct. If his appointment was only on the basis of entry in the muster roll(s), the designation of the authority who was authorised to appoint him as a daily- wager would be the determinative factor. It is not the case of the respondent that he was appointed in both the establishments by the same authority.

The Industrial Tribunal-cum-Labour Court unfortunately did not go into the said question at all. If both the establishments are treated to be one establishment, for the purpose of reckoning continuity of service within the meaning of Section 25B of the Act, as was held by the Tribunal, a person working at different point of time in different establishments of the statutory authority, would be entitled to claim reinstatement on the basis thereof. However, in that event, one establishment even may not know that the workman had worked in another establishment. In absence of such a knowledge, the authority retrenching the workman concerned would not be able to comply with the statutory provisions contained in Section 25F of the Act. Thus, once two establishments are held to be separate and distinct having different cadre strength of the workmen, if any, we are of the opinion that the period during which the workman was working in one establishment would not enure to his benefit when he was recruited separately in another establishment, particularly when he was not transferred from one Sub-Division to the other. In this case he was appointed merely on daily wages.

In Union of India and Others v. Jummasha Diwan Â , this Court opined : "

"There are several establishments of the Railway Administration. If a workman voluntarily gives up his job in one of the establishments and joins another, the same would not amount to his being in continuous service. When a casual employee is employed in different establishments, may be under the same employer, e.g., the Railway Administration of India as a whole, having different administrative set-ups, different requirements and different projects, the concept of continuous service cannot be applied and it cannot be said that even in such a situation he would be entitled to a higher status being in continuous service. It is not in dispute that the establishment of Appellant 3 herein had started a project. His recruitment in the said establishment would, therefore, constitute a fresh employment. In a case of this nature, the Respondent would not be entitled to his seniority. If the project came to a close, the requirements of Section 25-N of the Act were not required to be complied with."

Moreover, it is now also well-settled that despite a wide discretionary power conferred upon the Industrial Courts under Section 11A of the 1947 Act, the relief of reinstatement with full back-wages should not be granted automatically only because it would be lawful to do so. Grant of relief

would depend on the fact situation obtaining in each case. It will depend upon several factors; one of which would be as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any. Respondent worked for a very short period. He only worked, as noticed hereinbefore, in 1994-95. The Industrial Tribunal-cum-Labour Court, therefore, in our opinion committed an illegality, while passing an award in the year 2003, directing the reinstatement of the respondent with full back-wages. Although we are of the opinion that the respondent was not entitled to any relief, whatsoever, we direct the appellant to pay him a sum of Rs.25, 000/-.

This appeal is allowed to the aforementioned extent. However, in the facts and circumstances of this case, there shall be no order as to costs.