SUPREME COURT OF INDIA

Garrison Engineer (Utility) Bhatinda

Vs

Narinder Singh

(Arijit Pasayat and L. S. Panta, JJ)

Appeal (Civil) 6144 of 2005

21.05.2007

JUDGMENT

DR. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the order passed by the Division Bench of the Punjab and Haryana High Court dismissing the writ petition filed by the appellant questioning correctness of the award dated 25.8.2003 made by the Presiding Officer Central Government Industrial Tribunal cum Labour Court, Chandigarh (hereinafter referred to as the 'Labour Court').

2. Background facts in a nutshell are as follows:

3. Respondent was engaged as Mazadoor on daily wages basis during various periods from 1.1.1985 to 15.1.1987. He was engaged as per the requirement of the department on the basis of specific sanction of muster roll vacancies from time to time. However, the aforesaid sanction did not exceed 25 days in one stretch of period under any circumstances and the period of Sundays and holidays were also included in the above period. As the services of the respondent no.1 were no longer required, his engagement was terminated on 16.1.1987. After about five years respondent no.1 sought for a reference and claimed that his services were to be regularized. He claimed that he has

worked for more than 240 days and, therefore, the termination of service without following the procedures of the Industrial Disputes Act, 1947 (in short 'the Act') was bad in law. The appellant filed reply to the claim petition. It was specifically pleaded that the appellant is a part of the Defence Department and is not an industry and, therefore, the reference was not maintainable. Labour Court did not specifically deal with this aspect and holding that the respondent had rendered services for 240 days, his termination was not sustainable. The award was challenged before the High Court. Apart from the other controversies a specific plea was raised that the appellant is not an industry and, therefore, the Act has no application.

4. The High Court by the impugned order held that the requirements of Section 25F of the Act had not been complied with and, therefore, the order of the Labour Court was not to be interfered with.

5. Learned counsel for the appellant submitted that the basic plea that the Act has no application and the appellant cannot be treated as an industry, has not been considered.

6. Per contra, learned counsel for the respondent submitted that the order of the High Court does not suffer from any infirmity.

7. From a perusal of the orders of the Labour Court and the High Court, it is noticed that the factual position has not been analysed in detail and abrupt conclusion has been arrived at. Additionally, the legal issue regarding maintainability of the reference was not considered. Right from the beginning of the proceedings before the Labour Court and in the High Court, appellant had taken specific plea that the Act was not applicable to it and it was not an industry. Unfortunately, as noted above, neither the Labour Court nor the High Court dealt with this issue.

8. Above being the position, we set aside the orders of the Labour Court and the High Court and remit the matter to the Labour Court to decide the objection raised by the appellant about the maintainability of the proceedings under the Act, founded on the claim that it is not an industry. The other factual aspects shall also be considered on evidence being led by the parties.

9. The appeal is accordingly disposed of without any order as to costs.