SUPREME COURT OF INDIA

Chief Soil Conservator Punjab

Vs.

Gurmail Singh

C.A.No. 3473 of 2009

(Dr. Arijit Pasayat J.)

08.05.2009

JUDGEMENT

Dr.Arijit Pasayat, J

1. Leave granted.

2. Challenge in this appeal is to the order passed by the Division Bench of the Punjab and Haryana High Court dismissing writ petition filed by the appellant under Article 226 of the *Constitution of India, 1950* (in short `the Constitution'). Prayer in the writ petition was to quash the award dated 23.9.2004 under which the respondent no.1 was directed to be reinstated with continuity of service with 50% back wages within stipulated time. The award was made by the Presiding Officer, Patiala. The matter was before the Labour Court on the basis of a complaint made by respondent no.1.

> "The brief facts of the case are that respondent no.1-workman was appointed as Buldozer Operator with the petitioner-management on 1.11.1990. Since his appointment was on 89 days basis, the same was extended from time to time till 5.7.1996. Thereafter, his services were not extended. The workman raised an industrial dispute on the ground that his services were terminated by the management on 15.7.1996 without any notice, charge sheet, enquiry or compensation and that the juniors to him are still in service of the management and new persons were also appointed by the management after terminating his services. The government referred the dispute to the Labour Court for adjudication under Section 10(1)(c) of the *Industrial Disputes Act, 1947* (in short the `Act') and the Labour Court on 23.9.2004 made the award, which was challenged before the High Court.
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> The stand of the petitioner-management is that respondent no.1- workman was engaged as Buldozer Operator on 89 days basis and in that stop-gap arrangement he had worked from 1.11.1990 till 15.7.1996 but intermittently. He was never employed continuously, therefore, did not work for 240 days in the preceding 12 calendar months. Thus, denial of further extension of his service does not amount to

retrenchment, therefore, has been wrongly awarded reinstatement with back wages. The Labour Court has not appreciated the fact that since the petitioner department is not an "Industry", the services of respondent no.1 were not governed by the afore-stated Act.

The Labour Court held that Section 2(o) of the Act has no application to the facts of the case. In any event, the workman had completed 240 days of work in several years. The appellants took the stand that respondent no.1 have not completed 240 days of work in any calendar year. He never worked continuously. The employer was not an industry. The Labour Court held that there was no compliance with requirement of Section 25F of the Act. The question whether department is an industry has to be decide against the management for want of evidence. The onus was on the department to prove that the workman worked only 180 days and not completed 240 days in the preceding 12 calendar months from the date of alleged termination. Since no records were produced by the department the claim has to be accepted. In the writ petition before the High Court it was categorically urged by the appellant that no appointment order was produced. In any event, the attendance sheet clearly shows that the claim of the workman was not acceptable. The High Court held that no authenticity can be attached to the documents as the attendance for the month of July 1996 was not produced and the same was up to June 1996. It was also held that whether department is an industry is a question of fact which was not established."

3. Learned counsel for the appellant submitted that the Labour Court and the High Court erroneously held that the onus was on the department. It was also submitted that the attendance sheets have been discarded without any reason. The plea of the department was that work upto particular date in July. Even if the period is added to the period available for verification from the attendance sheet, it does not exceed 240 days. It was also submitted that the engagement was made for specific purpose that too on 89 days basis. Therefore, Section 2(o)(o) of the Act has clearly application.

4. Learned counsel for the respondent on the other hand supported the order of the Labour Court.

5. As contended by learned counsel for the appellant, it was for the workman to establish that he was engaged for more than 240 days in the 12 months preceding the date of alleged termination. This position was highlighted in *Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr.*[1].

6. Apart from that the record produced were upto June, 1996. What would have been the effect if the whole period of 15 days upto 15th July, 1996 was added has not been considered. There is no discussion on the aspect as to why the appellant should not be treated as "industry". Neither the Labour Court nor the High Court has discussed this matter.

7. In the normal course, we would have remitted the matter to the Labour Court for consideration of the relevant aspects. But considering the passage of time we do not consider

it appropriate to do so. The order of stay was passed on 7.8.2006. In the peculiar facts of the case we direct that the respondent will pay a sum of Rs.60,000/- in full and final settlement of his claim. We make it clear that we have not decided the issue as to whether the appellant is an industry.

8. The appeal is disposed of accordingly.

[1]*(2004 (8) SCC 161)*