SUPREME COURT OF INDIA

Haryana State Coop Supply Mkt Fed.Ltd.

Vs.

Sanjay

C.A.No.4605 of 2009

(Tarun Chatterjee and R. M. Lodha JJ.)

22.07.2009

JUDGEMENT

R.M. Lodha, J.

1. Leave granted.

2. This appeal by special leave is directed against the judgment of the High Court of Punjab and Haryana whereby Division Bench of that Court upheld the award passed by the Industrial Tribunal-Cum-Labour Court, Hissar ordering reinstatement of the respondent-workman with continuity of service and payment of 50% back wages.

3. Sanjay, respondent, was engaged as Chowkidar on causal basis by the District Manager, HAFED, Jind on August, 1998 for 29 days. On expiry of the said contract, fresh contracts were executed from time to time and he rendered service there until December 31, 1998. He was engaged afresh by the District Manager, HAFED, Hissar on January 15, 1999 where he worked upto May 31, 1999. As the service of the respondent was not renewed after May 31, 1999, he issued demand notice under Section 2A of the Industrial Disputes Act, 1947 (for short ID Act) raising dispute to the effect that his services were illegally terminated. Conciliation efforts having failed, upon receipt of the failure report, the appropriate Government referred the dispute for adjudication to the concerned Labour Court.

4. The respondent in his statement of claim before the Labour Court set up the case that he had completed more than 240 days of continuous service in the year preceding the date of termination with the HAFED. He raised the grievance that without following the mandatory procedure provided in Section 25-F of the ID Act, his services were terminated which amounted to illegal retrenchment. It is pertinent to notice here that the respondent clubbed the period of his engagement with District Manager, HAFED, Jind and District Manager, HAFED, Hissar while computing 240 days of continuous service.

5. The Appellant-Management traversed the workman's claim and set up the plea that the workman was engaged on contractual basis by the District Manager, HAFED, Jind for the

period from August 1, 1998 to December 31, 1998 and there he completed 145 days of service. The District Manager, HAFED, Hissar, which is a separate industrial establishment, engaged the workman afresh on January 15, 1999 upto May 31, 1999 and accordingly, workman worked in the office of District Manager, HAFED, Hissar for 112 days. The Management, thus, set up a specific case that the workman worked at two different units of HAFED and the period of service rendered at these two places cannot be clubbed for the purposes of Section 25-F of the ID Act. The case of the Management was that the workman having not completed 240 days of continuous service, there was no necessity of compliance of Section 25-F of the ID Act.

6. Both the parties led evidence in support of their respective case. The Industrial Tribunal-Cum-Labour Court, Hissar held that there was violation of Section 25-F of the ID Act and, therefore, termination of service of the workman was bad in law. It directed reinstatement of the workman with 50% back wages. The said award has been affirmed by the High Court.

7. The question that falls for our consideration is: whether the work rendered by the respondent in the office of District Manager. HAFED, Jind and the District Manager, HAFED, Hissar can be clubbed together for the purposes of application of Section 25-F of the ID Act.

8. For the purposes of applicability of Section 25-F, the workman has to show that he has been in continuous service for not less than one year under an employer. A workman is deemed to be in continuous service for a period of one year if during the period of 12 calendar months preceding the date of termination, he has actually worked under the employer for not less than 240 days by virtue of Section 25B(2) of the ID Act. The words has been in continuous service.......... under an employer in Section 25-F are crucial. Can office of the District Manager, HAFED, Jind and office of the District Manager, HAFED, Hissar, for the purposes of Section 25-F, be said to be one establishment and, thus, covered by an expression under an employer? We do not think so. In our view, the office of the District Manager, HAFED, Jind and the office of the District Manager, HAFED, Hissar are two distinct and separate establishments and cannot be treated as one establishment for the purpose of reckoning continuity of service within the meaning of Section 25-F read with Section 25-B of the ID Act. It is so because the workman was engaged on contract basis by two separate authorities under different contracts. The contract of employment with District Manager, HAFED, Jind commenced on August 1, 1998 initially for 29 days and continued upto December 31, 1998. The contract with District Manager, HAFED, Hissar, January 15, 1999 was a separate contract. Both authorities are distinct. It is true that the office of District Manager, Jind and the office of District Manager, Hissar are the establishments or offices of the HAFED but the authority that engaged the workman as Chowkidar on casual basis at Jind is different from the authority that engaged him at Hissar. It is not unusual for an Institution, Corporation or Authority to have different offices, branches and establishments. When a casual employee is employed in different establishments of a Corporation, Institution or Authority, the concept of continuous service under one employer cannot be applied. In the case of *Union of India v. Jummasha Diwan*[1], this Court observed, there are several establishments of 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. 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...........

9. The Constitution Bench of this Court in the case of *Management of Indian Cable Co. Ltd, v. Workmen*[2] dealt with the expression industrial establishment albeit with reference to Section 25-G of the ID Act and held :

> "Thus whether we have regard to the popular sense of the words industrial establishment, or to the limitation of relief under Section 25-G to workmen in the same category, the conclusion would appear to be inescapable that each branch of a company should normally be regarded as a distinct industrial establishment."

10. In the case of *DGM Oil Natural Gas Corporation Ltd. Anr. v. Ilias Abdul Rehman*[3], this Court was concerned with the question whether work put in by the workman in different units, namely, Baroda and Mehsana projects of Oil and Natural Gas Corporation could be counted for determining whether the workman worked for 240 days continuously for the purpose of Section 25-F of the ID Act. The Court answered the question in the negative and held that the Baroda and Mehsana projects of the Corporation could not be considered as a single unit or department under the Corporation and, therefore, the days put in by the workman in different units could not be counted for determining whether the workman worked for 240 days continuously for the purpose of Section 25-F of the ID Act, This is what this Court said:

> "We are aware that the judgment of this Court in Indian Cable Co. Ltd. was rendered in the context of Section 25-G of the Act, still we are of the opinion that the law for the purpose of counting the days of work in different departments controlled by an apex corporation will be governed by the principles laid down in the judgment of Indian Cable Co. Ltd. And the Industrial Tribunal was justified in dismissing the reference."

11. In *Haryana Urban Development Authority v. Om Pal*[4], the question raised before this Court was whether the two Sub-Divisions of Haryana Urban Development Authority could be treated to be one establishment for the purpose of reckoning continuity of service within the meaning of Section 25-B of the Act. This Court held:

> "5. 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 25-B of the Act, as was held by the Tribunal, a person working at different points 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 25-F 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."

12. Learned counsel for the respondent, however, strenuously urged that the Managing Director, HAFAED has control over the office of District Manager, Jind as well as District Manager, Hissar and, therefore, workman can be said to have worked under the same employer. We are unable to accept the contention of the learned counsel. Merely because the District Manager, Jind and the District Manager, Hissar are the subordinate officers under the control of Managing Director, HAFED, the two offices at Jind and Hissar do not cease to be separate establishment for the purposes of Section 25-F of the ID Act. As held by this Court in Jummasha Diwan, with which we respectfully agree, that when a casual employee is employed in different establishments, may be under the same employer, the concept of continuous service cannot be applied. There is also no merit in the submission of the learned counsel for the respondent that the workman was transferred from the office of the District Manager, Jind to the Office of District Manager, Hissar. No transfer order was placed by the workman before the Labour Court. As a matter of fact, by a separate and fresh contract, the workman was engaged by the District Manager, Hissar from January 15, 1999. The employment of the workman at Hissar was not an employment in continuity but a fresh employment.

13. In what we have discussed above, the conclusion would appear to us to be inescapable that the office of the District Manager, Jind and the office of the District Manager, Hissar are separate and distinct and the services rendered by the workman at these two establishments cannot be clubbed for the purpose of reckoning continuity of service within the meaning of Section 25-F read with Section 25-B of the ID Act. The workman having not completed 240 days of continuous service under the employer in the year preceding his termination, Section 25-F is not at all attracted. In the circumstances, the impugned Judgment cannot be sustained and has to be set aside.

14. The appeal is, accordingly, allowed. The Judgment dated May 7, 2007 passed by the High Court and the Award dated February 8, 2006 passed by the Industrial Tribunal-Cum-Labour Court, Hissar are quashed and set aside. The parties will bear their own costs.

[1]*(2006) 8 SCC 544* [2]*1962 Supp (3) SCR 589* [3]*(2005) 2 SCC 183* [4]*(2007) 5 SCC 742*