IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.3435 of 2006
DATE OF DECISION: 31.8.2006
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Senior Medical Officer, Incharge, Primary Health Centre, Dudhan Sadhan, Patiala

..PETITIONER

VS.

Sukhwinder Singh and another.

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.S. NARANG.

HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- **Ms. Nirmaljit Kaur, Addl. A.G. Punjab with Ms. Sonia K. Aggarwal, AAG Punjab for the petitioner.**

Mr. Akshay Bhan, Advocate for respondent No.1.
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JUDGMENT:

The challenge in this petition filed under Articles 226/227 of the Constitution of India is to the award dated 8.8.2005 passed by respondent No.2, ordering re-instatement of respondent No.1 with continuity of service, without back wages.

Few facts necessary for disposal of present writ petition are as under:-

Respondent No.1 was inducted into services by the petitioners as Class-IV employee on 89 days wage basis vide letter dated 30.7.1997. He worked from 4.8.1997 to 1.11.1997. Thereafter, as many as 14 extensions were given to him w.e.f. 5.11.1997 to 10.5.2001. After that his services

were not extended which gave rise to an industrial dispute. The workman laid challenge to the action of the department before the Labour Court on the ground of non-compliance of provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (for short the Act), besides allegations of unfair labour practise on the part of the management was also alleged.

His claim was resisted by the petitioner-department. Their stand was that the services of workman were terminated in view the decision of this Court rendered in CWP Nos. 11096 and 11105 of 2001 titled as Nasib Singh Vs. State of Punjab and Mandeep Singh Vs. State of Punjab respectively and also in the light of the instructions dated 12.8.1996 of the Personnel Department.

The Labour Court vide the impugned award disposed of the reference in the manner indicated above.

Feeling dissatisfied with the same, instant writ petition has been preferred by the department questioning the impugned award on the ground that the appointment of workman was made specifically for a period of 89 days on all the occasions. It automatically comes to an end with efflux of time. Moreover, the appointment of workman was made dehors to the rules. No proper procedure was followed while appointing the workman, as such, he is not entitled to reinstatement. Moreover, the services of the workman were terminated in the light of the instructions dated 12.8.1996 of the Personnel Department as well as the decisions rendered by this Court in CWP Nos. 11096 and 11105 of 2001, referred to above.

It is apposite to mention here that on March 6,2006 while issuing notice of motion, a Division Bench of this Court made the

following observation:-

> "Present:- Mr.P.S. Chhina, Addl. A.G. Punjab.
>
> Learned counsel for the State has confined his prayer to enforce the observations of Hon'ble Supreme Court in **Haryana State Coop. Land Development Bank Versus Neelam** 2005(5) Supreme Court Cases 91 (Para 22)"

The Hon'ble Supreme Court in Neelam's case (supra) in para No.22 has held as under:-

> "22. Both HUDA and the appellant are statutory organisations. The service of the respondent with the appellant was an ad hoc one. She served the appellant only for a period of one year three months; whereas she had been serving HUDA for more than sixteen years. Even if she is directed to be reinstated in the services of the appellant without back wages as was directed by the High Court, the same would remain an ad hoc one and, thus, her services can be terminated upon compliance with the provisions of the Industrial Disputes Act. It is also relevant to note that there may or may not now be any regular vacancy with the appellant Bank. We have noticed hereinbefore that in the year 1996, the vacancies had been filled up and a third-party right had been created. It has not been pointed out to us that there exists a vacancy. Having considered the equities between the parties, we are of the opinion that it was not a fit case

where the High Court should have interfered with the discretionary jurisdiction exercised by the Labour Court."

Upon notice of motion, respondent No.1 appeared and filed written statement controverting the stand taken by the petitioner in the petition. Justifying the award of the Labour Court, dismissal of the petition has been sought.

We have heard learned counsel for the parties and have gone through the paper-book carefully.

Learned Deputy Advocate General appearing for the petitioner-department has not been in a position to convince as to how the present case has fallen within the ratio of para 22 of Neelam's case (supra). There is no such pleading or evidence that the work of the post on which the respondent-workman had been working ceased to exist. There is also no evidence that the vacancies had been filled up and 3rd party right had been created. However, argument has been addressed that the appointment of respondent-workman was contractual on 89 days basis and also by virtue of instructions dated 12.8.1996, no further extension was given to him. The argument is not sustainable for variety of reasons. Firstly, it is not within the scope for which motion of motion had been issued by the Division Bench of this Court on 6.3.2006. Secondly, it has been noticed that the workmen used to be appointed after a gap of 1 or 2 days, upon completion of each term. Such an action on the part of the petitioner cannot be said to be bona fide. It is, therefore, clear that the intention of the petitioner-department was not to engage the workman for a specified period, as alleged, but was to defeat the rights available to him under Section 25-F of the Act. The

aforesaid practice at the hands of petitioner-department to employee the workman repeatedly after notional breaks falls clearly within the ambit and scope of unfair labour practice.

In the case of **The Faridabad Central Co-op Bank Ltd. vs. The Presiding Officer, Labour Court (II), Faridabad and another 1999 (3) RSJ 378,** when it was established that the work on which the workman was appointed was not of temporary nature and his appointment was being extended from time to time and even when the workman was relieved of his duties, the work was available and the post was in existence, in such a situation, it was held that provisions of Section 25-F of the Act cannot be excluded by merely saying that the appointment is made for "89 days on daily wages". Further in the case of **The Haryana State Cooperative Land Development Bank Ltd., Chandigarh v. The Presiding Officer, Labour Court Rohtak and another, 2001(3) RSJ 247** the workman, by virtue of various orders of appointment on 89 days basis had completed 240 days of service in the last calendar year immediately preceding the date of his termination. It has been observed that the termination of such employee by such order amounts to unfair labour practice. The petitioner-department is relying on the government instructions dated 12.8.1996. The same are also of no help for the obvious reasons. It is not within the scope for which notice of motion had been issued. There was no such plea before the Labour Court relating to said instructions dated 12.8.1996. The said instructions, at no juncture, had also been placed on the record.

The retrenchment has been defined in Section 2(oo) of the Act. It stipulates the termination of a workman "for any reason whatsoever" would constitute retrenchment except in cases excepted in above-said

sections itself. As discussed above, there is a failure on part of the petitioner-department to prove the case having fallen in any of the excepted categories contained in clause (bb) of Section 2(oo) of the Act. Therefore, the case falls within the term termination of service "for any reason whatsoever". It would, thus, constitute retrenchment within the meaning of Section 2(oo) of the Act. Reliance has also been placed on an order passed in CWP No.11096 of 2001 titled as Nasib Singh Vs. State of Punjab. The said plea has adequately been dealt with by the Labour Court, holding that there is nothing in the order to suggest that the management was at liberty to terminate the services of the workman while violating the rights of the workmen vested under Section 25-F of the Act. Further, the so-called government instructions dated 12.8.1996, inconsistent with the substantive provision of law i.e. Section 25-F of the Act ibid, cannot have any force in law. In fact under Section 25-J of the Act, the provisions of chapter V-A of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law. Therefore, whatever are the instructions, the services of an employee who has completed continuous service of 240 days preceding 12 calendar months could not be terminated without complying with the provisions of Section 25-F of the Act. It is not in dispute that respondent-workman had completed 240 days in 12 calendar months preceding the date of his termination i.e. 11.5.2001. Admittedly, there was non-compliance of provisions of Section 25-F of the Act.

Faced with the situation, monetary compensation has been sought instead of re-instatement and referred to **Municipal Council, Sujanpur Vs. Surinder Kumar 2006 SCC (L&S) 967.** There is no dispute that it is open to the employer to specifically plead and establish

that there are special circumstances which warrant non re-instatement. However, in view of the discussions in earlier paras, Surinder Kumar's case (supra) is of no rescue to the petitioner-department. In **Vikramaditya Pandey Vs. Industrial Tribunal and another AIR 2001 SC 672,** the Industrial Tribunal, on the basis of certain provisions contained in the Regulations, observed that no re-instatement can be ordered. The High Court observed that if there is inconsistency between the Regulations and the provisions of the Industrial Disputes Act, 1947, then the Regulations will prevail upon the Act ibid and other Labour Laws. However, it was observed by the Hon'ble Apex Court that once the termination of his service found to be illegal, denial of relief of re-instatement and back wages on the ground that his recruitment was not as per Service Rules and that Service Rules will prevail upon Labour Laws, is improper. The Hon'ble Supreme Court held so in the following words:-

> "Thus, in our opinion both the Tribunal as well as the High Court were not right and justified on facts and in law in refusing the relief of reinstatement of the appellant in service with back wages. But, however, having regard to the facts and circumstances of the case and taking note of the fact that the order of termination dates back to 19.7.1985 we think it just and appropriate in the interest of justice to grant back wages only to the extent of 50%."

In view of the discussion made above, we do not find any reason to interfere with the just and reasoned award of the Labour Court. The petition is wholly without merit and the same is accordingly dismissed,

leaving the parties to bear their own costs.

(ARVIND KUMAR)
JUDGE

August 31,2006 **(J.S. NARANG)**
Jiten **JUDGE**