A RAJINDER SINGH CHAUHAN AND ORS.

v.

STATE OF HARYANA AND ORS.

NOVEMBER 21, 2005

B [ARIJIT PASAYAT AND R.V. RAVEENDRAN, JJ.]

Labour Laws:

C *Industrial Disputes Act, 1947—Sections 25-F and 25-N—CONFED Staff Service Rules, 1975—Rule 35(b)—Retrenchment—Of employees of non-industrial establishment—Applying provisions of Section 25-F -Employees demanding applicability of Section 25-N instead of Section 25-F and applicability of the Rule—Writ Petition—Dismissal of—In appeal, held : Section 25-N will not apply to the present case because the establishment in question* D *is not an industrial establishment—Employees are entitled to benefits under the Rule as they have to be inferentially treated as permanent employees after expiry of their probation period.*

Appellants were employees of State Federation of Consumer Co-operative Wholesales Stores Limited (CONFED) which was not an E **industrial establishment. They were retrenched in terms of Section 25-F of Industrial Disputes Act, 1947. Appellants filed Writ Petitions taking the stand that provisions of Section 25-N and not 25-F were applicable and that they were entitled to the benefits in terms of Rule 35(b) of CONFED Staff Service Rules, 1975 being permanent employees after completion of** F **their probation period. The stand of the respondent was that the appellants were not confirmed employees. High Court dismissed the Writ Petitions. Hence the present appeal.**

Allowing the appeal, the Court

G **HELD: 1. Section 25-N of Industrial Disputes Act, 1947 refers to workman in an industrial establishment. The expression "Industrial Establishment" is defined in Section 25-L, which means a factory or a mine or a plantation. The employer is not covered by the definition of the "Industrial Establishment". Therefore, the High Court was right in holding** H **that Section 25-N has no application. [365-F, G]**

2. The stand of the appellants that they were deemed to have been confirmed after expiry of probation period and they were permanent employees is in terra firma. 'Salesmen' belong to Class III of the category of permanent employees. The definition of "Probationer" given in Rule 4(b) fully supports the appellants' stand that the probation period shall not exceed 24 months in all. Therefore, the appellants inferentially have to be treated as permanent employees, and consequently the benefits under Rule 35(b) were available to them. But the same shall not be in addition to what is payable under Section 25-F. The amount which is higher of the two i.e. of Section 25-F or Rule 35(b) shall be paid to the appellants.

[369-B, C]

State of Punjab **v.** *Dharam Singh,* **AIR (1968) SC 1210, followed.**

Om Prakash Maury **v.** *U.P. Co-operative Sugar Factories Federation, Lucknow and Ors.,* **AIR (1986) SC 1844 and** *High Court of M.P. through Registrar and Ors.* **v.** *Satya Narayan Jhavar,* **[2001] 7 SCC 161, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 302 of 2004.

From the Judgment and Order dated 12.2.2002 of the Punjab and Haryana High Court in C.W.P. No. 2684 of 2002.

U.S. Chaudhury and Ms. Sunita Sharma for the Appellants.

Praveen Kumar Rai, Shibashish Misra, Ajay Siwach, T.V. George and Dr. Kailash Chand for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Appellants call in question legality of the judgment rendered by a Division Bench of the Punjab and Haryana High Court holding that the appellants' stand about applicability of Section 25-N of the Industrial Disputes Act, 1947 (in short the 'Act') was not correct.

Controversy lies within a narrow compass.

Appellants were employees of the Haryana State Federation of Consumers Co-operative Wholesales Stores Limited (in short the 'CONFED'), fourth respondent herein. The service conditions of its employees are covered by CONFED Staff Service Rules, 1975 (in short the 'Rules'). On account of continued financial losses, a restructuring plan for gainful employment for employees was prepared. It was noted that Retail Outlets (in short the 'ROL')

A were causing huge loss to the organization. Therefore, it was decided that all ROL should be closed being financially non-viable. Retrenchment compensation in terms of Section 25-F of the Act was paid. In the retrenchment order it was specifically stated as follows:

> "It is made clear that employees of CONFED from where the
B retrenchment is being effected are not covered by Chapter V-B of the Industrial Dispute Act, 1947, necessitating any permission under Section 25-N of the said Act. Therefore the retrenchment is being effected in accordance with Chapter V-A by employing with Section 25-F and other provisions of the said Chapter."

C Questioning the retrenchment, writ petitions were filed before the High Court taking the stand that provisions of Section 25-N and not Section 25-F were applicable and in any event the appellants were entitled to the benefit in terms of Rule 35(b) of the Rules. High Court did not find any substance in the stand and dismissed the Writ Petitions holding that there was compliance
D with the requirements of Section 25-F(b) of the Act.

According to the learned counsel for the appellants the High Court has erroneously held that Section 25-N has no application. Even otherwise, it was contended that the appellants were entitled to the benefits available under Rule 35(b).

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It was in this context submitted by the learned counsel for the appellants that after completion of the probation period, the appellants had become permanent employees and, therefore, they were governed by the Rules and the benefits under Rule 35(b) were clearly applicable.

F In response, learned counsel for the respondents submitted that the High Court's view is in order.

In order to appreciate rival submissions the relevant provisions need to be noted. Section 25-F, 25-K, 25-L and 25-N of the Act read as follows:

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> "25-F: *Conditions precedent to retrenchment of workmen:*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until —
>
> H (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice

has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette).

25-K: *Application of Chapter V-B:* (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

25-L: For the purpose of this chapter, - (a) 'Industrial Establishment" means:

(i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948(63 of 1948);

(ii) a mine as defined in clause (j) of sub-section(1) of Section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause(ii) of clause (a) of Section 2;

(i) in relation to any company in which not less than fifty-one percent of the paid up share capital is held by the Central Government, or

(ii) in relation to any corporation (not being a corporation referred

to in sub-clause (i) of clause (a) of Section 2) established by or under any law made by Parliament,

the Central Government shall be the appropriate Government.

25-N: *CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN:*

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until, -

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2). An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority

does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

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(7). Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

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(9). Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months."

Section 25-F appears in Chapter V-A of the Act which relates to lay-off and retrenchment. Section 25-K, L and N appear in Chapter V-B which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. In other words Chapter V-A deals with the general provisions relating to lay-off and retrenchment, while special provisions have been made for certain establishments covered by Chapter V-B. Section 25-N refers to workman in an industrial establishment. The expression "Industrial Establishment" is defined in Section 25-L, which means a factory or a mine or a plantation. Admittedly, the employer is not covered by the definition of the "Industrial Establishment". Therefore, the High Court was right in holding that Section 25-N has no application.

There is no dispute that the requirements of Section 25-F have been complied with by the employer.

The residual question is whether any benefit was to be extended under

Rule 35. Rule 4, 10(5&6) and 35(b) of the Rules read as follows:

"Rule 4 (a) "Permanent" employee means an employee who has been continued on vacant permanent post. The staff of the federation shall be classified into the following:

1.	Class-I	Managing Director, Addl. Managing Director
2.	Class-II	Business Manager, Accounts officers, general Manager, establishment officer and Assistant Manager.
3.	Class-III	Accountants, Assistants, purchase and Sale Assistant Accounts Assistant, Storekeepers, Cashiers, Clerks, Stenographers/Steno-typists and Salesmen.
4.	Class-IV	Driver, Peons, Daftri, Chowkidar and Sweepers.

4(b). "Probationer" means an employee who is provisionally employed to fill a permanent vacancy of post and has not been made permanent or confirmed in services. The probation period will be 12 months for all the posts of Class I, II, III which may further be extended by such time as deemed fit, but in no case it will exceed 24 months, in all. The probation period for Class-IV shall be 6 months which may further be extended by such time as may be deemed fit but in no case total period of probation shall exceed 12 months.

4(c). "Temporary" employee means an employee who has been appointed for a limited period for work which is of an essentially temporary nature.

4(d). An "Apprentice" means a learner who is given a nominal stipend during the period which will ordinarily be of 6 months before he is taken up as a temporary employee.

4(e). Every employee shall be given a written order regarding his appointment, confirmation, promotion, transfer and ending of service as the case may be.

Rule 10 (5): If the work and conduct of an employee during the period of probation is found satisfactory, he will be confirmed from the date of completion of the probation period.

10(6). No employee will be deemed to have been confirmed in the federation service unless specific orders in this regard are issued. The appointing authority shall have to take a decision regarding confirmation or reversion or removal of a probationer within the prescribed period of probation.

35(b). Confirmed employee shall be entitled to one month's pay and allowance for every completed year of service. In addition to this, they will also be entitled to such pay and allowance as may be due to them on account of accumulated earned leave upto the maximum of one month.

Rule 35(b) inter-alia provides that confirmed employees shall be entitled to one month's pay and allowance for every completed year of service on retrenchment of service. In addition they are entitled to pay and allowance as may be admissible to them on account of accumulative earned leave upto the maximum of one month.

The stand of the respondents was that the appellants were not confirmed employees. The appointment order of each of the appellants contains the stipulations which are as follows:

"1. Your appointment as Sales man is purely temporary.

2. During the period of probation, your services are liable to be terminated without giving any notice or assigning any reason.

3. You shall be governed by the terms and conditions contained in the Staff Service Rules of the Federation, amended from time to time."

This is a case where the period of probation is fixed having regard to Rule 4(b) read with Rule 10 as quoted above. Rule 10(6) no doubt provides that no employee shall be deemed to have been confirmed in the service unless specific order in this regard is issued. Relying on this provision, learned counsel for the fourth respondent submitted that there was no specific orders of confirmation and, therefore, the appellants should be deemed to have continued as probationers till the date of termination of their services. A similar stand was considered in *Om Prakash Maurya* v. *U.P. Co-operative Sugar Factories Federation, Lucknow and Ors.*, AIR (1986) SC 1844. A Constitution Bench of this Court in *The State of Punjab* v. *Dharam Singh,*

A AIR (1968) SC 1210 noted as follows:

> "Where as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended and an employee appointed or promoted to a post on probation is allowed to continue in the post after completion of the maximum
B period of probation without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negatived by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to
C draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication."

In *High Court of M.P. through Registrar and Ors.* v. *Satya Narayan Jhavar,* [2001] 7 SCC 161, this Court categorised the provisions for probation
D as follows:

> "The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject-matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this
E point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be
F confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation.
G The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of
H confirmation and of passing a test for the purposes of confirmation.

In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired." A

In above view of the matter, the stand of the appellants that they were deemed to have been confirmed at the end of 24 months and they were B permanent employees is in terra firma. 'Salesmen' belong to Class III of the category of permanent employees. The definition of "Probationer" given in Rule 4(b) fully supports the appellants' stand that the probation period shall not exceed 24 months in all. Therefore as was held in *Om Prakash's,* case, *Satya Narayan Jhavar's,* case and *Dharam Singh's,* case (supra) the appellants C inferentially have to be treated as permanent employees, and consequently the benefits under Rule 35(b) were available to them. But the same shall not be in addition to what is payable under Section 25-F. The amount which is higher of the two i.e. of Section 25-F or Rule 35(b) shall be paid to the appellants. If any amount has already been paid in terms of Section 25-F the same shall be adjusted while making the payment under Rule 35(L), which D shall be made within three months. The appeal is allowed to the aforesaid extent. No costs.

K.K.T. Appeal allowed.