CASE NO.:
Appeal (civil) 4626 of 2006

PETITIONER:
Jaipur Development Authority

RESPONDENT:
Ram Sahai & Anr.

DATE OF JUDGMENT: 31/10/2006

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (C) No.23715 of 2004)

S.B. Sinha, J.

Leave granted.

Appellant herein is a State within the meaning of Article 12 of the Constitution of India. It is created under the Jaipur Development Authority Act. Respondent was appointed on daily-wage basis from September, 1986 to June, 1987. His services were dispensed with, with effect from 1.7.1987. He raised an industrial dispute and on receipt of failure report dated 26.4.1988 of the Conciliation Officer, the Government of Rajasthan made a reference for adjudication of the following dispute to the Presiding Officer, Labour Court at Jaipur, in exercise of its power under Section 10(1)(c) of the Industrial Disputes Act, 1947 :

"Whether termination of service of workman Shri Ramsahai s/o Chhotu through Shri M.F. Beg Labour Welfare Centre, near Mayank Cinema, Station Road, Jaipur w.e.f. 1.7.87 by the Secretary, Jaipur Development Authority, Jaipur and the Garden Specialist, Jaipur Development Authority, Jaipur is reasonable and legal. If not then to what relief and amount the workman is entitled to receive?"

By reason of an Award dated 22.3.1999, the Presiding Officer, Labour Court held that the termination of services of the workman was not legal. He was directed to be reinstated in service with full back-wages. It was held :

"The termination of workman Ramsahai son of Shri Chhotu Ram by the respondents w.e.f. 1.7.87 is not reasonable and legal. He is reinstated back in service. His continuity in service is maintained, and from the date of his termination till the date of award he is awarded all back wages along with other benefits which he would have received while in continuous service and from the date of award the workman shall receive the wages and other benefits which other similarly situated workmen junior to him are receiving today."

A writ petition was filed by the appellant before the High Court of Rajasthan, which was marked as S.B. Civil Writ Petition No.6863 of 1993. The said writ petition was dismissed. A Letters Patent Appeal filed thereagainst has also been dismissed by a Division Bench of the said Court. The Labour Court in its Award, inter alia, held that the respondent has not

been in continuous service for a period of 240 days with twelve months immediately preceding his termination stating :

"....In this way the applicant workman under the respondents/management has not completed one year continuous service according to the definition of one year continuous service as contemplated under section 25(B) of the Act. Therefore the Issue No.1 is decided in favour of the respondents/management against the applicant."

It was further held that the plea of the appellant herein that he had abandoned his services is not correct. It was further held that the termination of the workman does not come within the purview of any of the exceptions contemplated under Section 2(oo) of the Industrial Disputes Act ('the Act', for short). It was however, opined that the appellant failed to comply with the requirements contained in Section 25G of the Act read with Rule 77 of the Industrial Disputes rules, 1958 ('the Rules', for short) as also Section 25H thereof.

Mr. S.K. Bhattacharya, learned counsel appearing on behalf of the appellant would contend that the recruitment and termination of Respondent being on daily-wage basis, Sections 25G and 25H of the Act have no application in the instant case. It was further submitted that workman having voluntarily abandoned his services, the Labour Court wrongly opined that he was retrenched from service.

Mr. Sushil Kumar Jain, learned counsel appearing on behalf of the respondent, on the other hand, would submit that Sections 25G and 25H of the Act stand on a different footings, vis-'-vis, 25F thereof, in so far as, for the purpose of invoking the said provisions, it is not necessary that the workman must complete a continuous service of 240 days within a period of twelve calendar months preceding the order of termination as envisaged under Section 25B of the Act.

The fact that Respondent was appointed on daily wages and he has not completed 240 days, is not in dispute. Retrenchment of Respondent by Appellant, therefore, did not require compliance of the provisions of Section 25F of the Act.

Section 25G introduces the rule of 'last come first go'. It is not a rule which is imperative in nature. The said rule would be applicable when a workman belongs to a particular category of workman. An employer would, in terms thereof, is ordinarily required to retrench the workman who was the last person to be employed in that category. However, for reasons to be recorded, the employer may retrench any other workman.

Section 25H provides for re-employment of retrenched workman, which will apply in case where the employer proposes to take into employment any person, an opportunity has to be given to him to offer himself for re-employment.

The State of Rajasthan has framed Rules known as Rajasthan Industrial Disputes Rules, 1958.

Rule 77 of the Rajasthan Industrial Disputes Rules prescribes the procedure in which seniority list in the particular category of workman was to be maintained. Rule 78 postulates re-employment of retrenched workman.

From the scheme of the Act and the Rules framed, it appears that 25F on the one hand and Sections 25G and 25H were enacted to meet situations of different kind.

It contemplates industries where different categories of workman

would be appointed. Provisions relating to retrenchment of workman was contemplated in different situation namely where it can be pre-determined or a contingency which can be foreseen.

The statute does not envisage application of the provisions of the Act and Rule where both recruitment and termination is uncertain or when the workmen are not required to be recruited in a category-wise service, e.g., skilled, semi-skilled or unskilled, etc.

Before the Labour Court, muster rolls were produced by Appellant. It was noticed that in July, 1985 Respondent had worked regularly. He did not work in August, 1985. He worked for 25 days in September, 1985, whereas, again in October, 1985 he did not work at all. He, however, worked regularly in November and December of 1985. But in January, 1986 he worked only for 9 days. Again in February, 1986 he did not work at all. Yet again, in March, April, May and June of 1986, he worked for 26 days, 26 days, 27 days and 25 days respectively. In the months of July, August, September and October of 1986 he did not work at all. Thereafter, in November, 1986, he worked for 27 days.

It is not in dispute that he had not been appointed in accordance with the recruitment Rules.

In the Award of the Labour Court it is stated :

"As per the muster rolls submitted by the respondents/management the working period in September 86 vide Annexure-1 is 25 days, in October 86 vide Annexure-2 is 26 days, in December 86 vide Annexure-4 is 27 days, in January 87 vide Annexure-5 is 27 days, in March 87 vide Annexure-7 is 24= days, in April 87 vide Annexure-8 is 26 days, in June 87 vide Annexure-10 is 26 days. In this manner from September 86 to June 87 the applicant workman worked in total for 181= days. If weekly holidays of 21 days are further included in it, then total of work days comes to 202= days only. Thus it does not make 240 days but it is lesser than it."

He was, therefore, not been regularly appointed. He was not in continuous service. He never made any complaint prior to raising any industrial dispute that Appellant had not complied with the provisions of Section 25G or Section 25H of the Act.

The Labour Court committed a serious error in opining that only because his name was not included in the muster roll of July, 1987, the same would amount to removal of his services from the muster rolls. Labour Court should have probed deeper into the matter.

It is one thing to say that the workman is retrenched from his services, but, a daily wager who keeps on coming and going and even has not taken or been given any work on any day on each month, it was not necessary, as had been opined by the Labour Court, to initiate a departmental proceeding against him for his absence from duty. It would have been proper in the aforementioned circumstances for the Labour Court to delve deep into the said question as to whether Appellant deliberately and intentionally did not allow him to join in his duties or Respondent himself did not continue to work since 1.7.1987.

Labour Court may be correct in arriving at the conclusion that there was nothing to show that the provisions of Sections 25G and 25H had been complied, but there is also no finding as to whether in a situation of this nature the same were required to be complied with.

The State of Rajasthan has framed Rules in regard to the manner in

which the seniority of workmen in a particular category from which retrenchment is contemplated, should be maintained. It, however, pre-supposes that a daily-wager would fall in a particular category of workman. Only when a daily-wager is employer in a particular category of workman, a seniority list is required to be maintained in terms of Rule 77 of the Rules. We may, however, do not intend to lay down any law in this behalf as it is not necessary for the purpose of this case. In an appropriate case, this Court may have to consider the question of justification of giving extended meaning to the terms 'retrenchment' and 'industry'.

Mr. Jain appears to be right when he submits that continuous work in terms of Section 25B of the Act is not necessary in so far as statutory requirements under Sections 25G and 25H are concerned. The said question appears to have been considered by this Court in some decisions.

In Central Bank of India vs. S. Satyam & Ors. [(1996) 5 SCC 419], this Court opined :

"The next provision is Section 25-H which is couched in wide language and is capable of application to all retrenched workmen, not merely those covered by Section 25-F. It does not require curtailment of the ordinary meaning of the word 'retrenchment' used therein. The provision for reemployment of retrenched workmen merely gives preference to a retrenched workman in the matter of re-employment over other persons. It is enacted for the benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman."

Yet again in Samishta Dube vs. City Board, Etawah & Anr. [(1999) 3 SCC 14], this Court held :

"We shall next deal with the point whether, in case employees junior to the appellant were retained, the directions issued by the Labour Court could be treated as valid. Section 6-P of the U.P. Act (which corresponds to Section 25-G of the Central Act of 1947) states that where any workman in an industrial establishment is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workmen in this behalf the employer shall ordinarily retrench the workmen who was the last person to be employed in that category, unless for reasons to be recorded, the employer retrenches any other person. Now this provision is not controlled by conditions as to length of service contained in Section 6-N (which corresponds to Section 25-F of the Industrial Disputes Act, 1947). Section 6-P does not require any particular period of continuous service as required by Section 6-N. In Kamlesh Singh v. Presiding Officer5 in a matter which arose under this very Section 6-P of the U.P. Act, it was so held. Hence the High Court was wrong in relying on the fact that the appellant had put in only three and a half months of service and in denying relief. (See also in this connection Central Bank of India v. S. Satyam6.)

Nor was the High Court correct in stating that no rule of seniority was applicable to daily-wagers. There is no such restriction in Section 6-P of the U.P. Act read with Section 2(z) of the U.P. Act which defines workman.

It is true that the rule of first come, last go in

Section 6-P could be deviated from by an employer because the section uses the word ordinarily. It is, therefore, permissible for the employer to deviate from the rule in cases of lack of efficiency or loss of confidence, etc., as held in Swadesamitran Ltd. v. Workmen7. But the burden will then be on the employer to justify the deviation. No such attempt has been made in the present case. Hence, it is clear that there is clear violation of Section 6-P of the U.P. Act."

Yet again recently in Regional Manager, SBI vs. Rakesh Kumar Tewari [(2006) 1 SCC 530], this Court followed Central Bank of India (supra), stating :

"Section 25G provides for the procedure for retrenchment of a workman. The respondents have correctly submitted that the provisions of Sections 25G and 25H of the Act do not require that the workman should have been in continuous employment within the meaning of Section 25B before he could said to have been retrenched."

We would, therefore, proceed on the basis that there had been a violation of Sections 25G and 25H of the Act, but, the same by itself, in our opinion, would not mean that the Labour Court should have passed an Award of re-instatement with entire back wages. This Court time and again has held that the jurisdiction under Section 11A must be exercised judiciously. The workman must be employed by a State within the meaning of Article 12 of the Constitution of India, having regard to the doctrine of public employment. It is also required to recruit employees in terms of the provisions of the rules for recruitment framed by it. Respondent had not regularly served Appellant. The job was not of perennial nature. There was nothing to show that he, when his services were terminated any person who was junior to him in the same category, had been retained. His services were dispensed with as early as in 1987. It would not be proper to direct his reinstatement with back wages. We, therefore, are of the opinion that interest of justice would be sub-served if instead and in place of re-instatement of his services, a sum of Rs.75,000/- is awarded to Respondent by way of compensation as has been done by this Court in a number of its judgments. [See State of Rajasthan & Anr. vs. Ghyan Chand (Civil Appeal No.3214 of 2006, disposed of on 28th July, 2006.]

This appeal is allowed in part and to the extent mentioned hereinbefore. There shall be no order as to costs.