Before : V. Ramaswami CJ and G. R. Majithia, J.

RAM LAKHAN SINGH,—*Appellant.*

versus

PRESIDING OFFICER, LABOUR COURT AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 836 of 1988.

August 8, 1988.

Industrial Disputes Act (XIV of 1947)—*Sections* 2(*s*) 25*B and* 25*F—Part-time* Mali *discharged from service and re-employed next day as Chowkidar on temporary basis under a fresh contract—Period spent in both posts—Whether can be clubbed for purposes of computing continuous service of* 240 *days—Part-time worker—Whether has any right under the Act.*

Held, that the world part-time does imply that there is no prohibition for the worker to have employment in more than one place outside the part-time employment. It is not an exclusive employment under one employer. The appellant was employed as a part-time employee for two hours a day. Once a part-time employment is accepted and there is no restriction on him to seek employment under any other employer and he could get employment anywhere and work more number of hours and earn more money, he could not be said to be in exclusive employment of an employer for the purposes of getting benefits under Section 25F of the Industrial Disputes Act, 1947. We have to understand part-time worker as not falling under the provisions of the Act. (Para 3)

Held, that the question whether the part-time post of *Mali* and the temporary post of *Chowkidar* could be taken together in order to find out the total number of 240 days of continuous service does not even arise. Even if we assume that both posts could be tagged we are unable to see how the appellant has completed 240 days to enable him to get the benefits of Section 25F of the Act because part-time work cannot be considered to be continuous service within the meaning of Section 25B of the Act in order to invoke the provisions of Section 25F of the Act. (Para 3)

Appeal under Clause X of the Letters Patent praying that on the grounds stated above and the others if any be submitted later, the appeal of the appellant be kindly accepted, the judgment of the Learned Single Judge be set aside and the writ petition be kindly accepted with costs throughout.

I.L.R. (1988)2 Pb. & Hry. 439—Affirmed.

K. L. Arora, Advocate, *for the Appellant.*

JUDGMENT

V. Ramaswami, CJ.

(1) This is an appeal against the order of the learned Single Judge of this Court dismissing the writ petition filed by the appellant, praying for the issue of writ of *certiorari* to quash the award dated 19th March, 1982 of the Labour Court and also for the issue of a writ of *mandamus* directing the second respondent to treat the petitioner as in continuous service from the date of his termination with all back wages. The petitioner was orginally working as a part-time Mali for two hours a day and later it was modified as four hours a day. When he was working two hours a day he was paid Rs. 73 per month and when he was working four hours a day he was paid Rs. 113.50 paise p.m. This part-time job continued from 14th July, 1980 till 5th February, 1981. It appears that the second respondent was having its office in a residential building where there was a need of Mali and, under these circumstances, he was employed as a part-time Mali in that premises. When the Corporation shifted its office to the second floor of another building, they could not continue his part-time employment. However, they appointed him as Chowkidar on purely temporary and *ad hoc* basis for a period of 89 days on 6th February, 1981. Again, by proceedings dated 18th June, 1981, Annexure P-1 to the writ-petition, the period of 89 days was extended up to 18th June, 1981 and on that day he was also relieved from that duty. Thereafter, the petitioner raised an industrial dispute and the following question was referred for adjudication to the Labour Court :—

> "Whether the services of Shri Ram Lakhan Singh were terminated illegally by the Management of Punjab Agro Industrial Corporation Ltd., Chandigarh ? If so, to what effect and to what relief he is entitled to, if any?"

The Labour Court held that the period during which he was employed as a part-time Mali could not be taken into consideration for the purpose of finding out continuous service within the meaning of section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and that it is not a case of retrenchment under section 25-F of the Act. With that view, the question was answered against the workman. He filed Civil Writ Petition No. 4200 of 1982, against the aforesaid award of that Labour Court.

(2) The learned Single Judge heard the writ-petitioner, considered the matter afresh in detail and came to the conclusion that the period during which he was a part-time Mali could not be tagged on to that during which he was a temporary and *ad hoc* Chowkidar and if those two periods could not be clubbed together, there is no continuous service of 240 days in order to invoke the provisions of Section 25-F of the Act. He was also of the view that part-time employees are not covered by the provisions of the Industrial Disputes Act and, for this view, the learned Single Judge relied upon a Division Bench judgment of the Andhra Pradesh High Court reported as *Ranqamannar Chetti (G) (Satyanarayana Rice Mill, Nellore)* v. *Industrial Tribunal, Hyderabad, and another* (1). Accordingly, the writ petition was dismissed.

(3) In this appeal, the learned counsel for the appellant has strenuously contended that the definition of 'workman' in section 2(s) of the Act does not make any distinction between a part-time employee and a full-time employee and if there is relationship of master and servant he would satisfy the definition of 'workman' unless he falls in any one of the excepted categories. He also contended that once he is a workman as Mali or as Chowkidar, there is no reason why both the periods should not be clubbed together for the purpose of finding out continuous service within the meaning of section 25-B of the Act. If both the periods are clubbed together there is no doubt that the total period comes to about 11 months, which will be more than 240 days entitling the appellant to the benefits of section 25-F of the Act. Since admittedly the conditions of section 25-F of the Act had not been complied with, the award of the Labour Court is unsustainable. In this connection, the learned counsel for the appellant referred to a few judgments of the Supreme Court including *Birdhichand Sharma* v. *First Civil Judge, Nagpur and others* (2), where the Biri workers were considered to be workmen within the meaning of section 2(s) of the Act and also to a judgment of the Guiarat High Court in *Gobindbhai* v. *N. K. Desai*, (3), wherein the learned single judge considered that a part-time worker will also be a 'workman' within the meaning of the Industrial Disputes Act. We are unable to agree with the learned counsel for the appellant that part-time workers could be considered

(1) 1959 II Lab L.J. 565.
(2) AIR 1961 S.C. 644.
(3) 1988 Lab. I.C. 505.

as employees within the meaning of the provisions of the Act. May be, they are workmen in the strictest sense of section 2(s) of the Act but what is relevant is whether that could be considered as continuous employment under one employer. The word 'part-time' does imply that there is no prohibition for the worker to have employment in more than one place outside the part-time employment. It is not an exclusive employment under one employer. Literally, the work begins in the morning when he starts the work and ends by the time he finishes the work for that day. The appellant was employed as a part-time Mali for two hours a day. It is true that he was paid a consolidated sum of Rs. 73 per month. That makes no difference at all. Once a part-time employment is accepted and there is no restriction on him to seek employment under any other employer and legally he could get employment anywhere and work more number of hours and earn more money, he could not, be said to be in exclusive employment of an employer for the purpose of getting benefits under section 25-F of the Act. It is true that there is no evidence that the appellant was employed under any other employer during that period but we are not concerned with the factual question if really there was no legal bar to seek such employment. We have to understand part-time workers as not falling under the provisions of the Act. The other way of approaching the question is that the part-time job of Mali ended on 5th February, 1981. In other words, that part-time job was termniated from that date and a new appointment as Chowkidar was made on 6th February, 1981. There is no dispute that the period during which the appellant worked as Chowkidar, though on temporary and *ad hoc* basis, will have to be taken as period of continuous service. But he held that post only for four months and, therefore, did not satisfy the definition of section 25-B in order to enable him to invoke the provisions of section 25-F of the Act. Therefore, the question whether the part-time post of Mali and the temporary post of Chowkidar could be taken together in order to find out the total number of 240 days of continuous service does not even arise. Even if we assume that both posts could be tagged, we are unable to see how the appellant has completed 240 days to enable him to get the benefits of section 25-F of the Act, because part-time work cannot be considered to be continuous. This is not to say that we agree with the learned counsel for the appellant that the period during which he worked as a part-time Mali and the period during which he worked as a temporary chowkidar could be taken together for invoking the provisions of section 25-F of the Act. We also leave open the question as to whether the appellant is a 'workman' as defined in section 2(s) of

the Act. But we are of the view that the period during which the appellant worked as a part-time Mali could not be taken as continuous in order to invoke the provisions of section 25-F of the Act.

(4) In the light of the above discussion, we do not see any reason to refer to the various judgments relied upon by the learned counsel for the appellant. In result, the appeal fails and is dismissed.

R.N.R.

Before D. V. Sehgal, J.

MOHAN SINGH DHINDSA,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 2648 of 1986.

August 22, 1988.

Punjab Recruitment of Ex-Servicemen Rules, 1982—*Rule* 4—*Civil employment—Recruitment—Reservation of posts for ex-serviceman—Proviso to Rule* 4 *creating right of reservation in favour of dependant child or wife of ex-serviceman in cases where ex-serviceman is not available—Appointment of such a dependant in face of availability of ex-serviceman—Whether illegal and* ultra vires.

Held, that Rule 4 of the Punjab Recruitment of Ex-Servicemen Rules, 1982 makes it clear that it is only where an ex-serviceman is not available for recruitment against a reserved vacancy that such a vacancy shall be filled in by recruitment of the wife or one dependent child of an ex-serviceman. It is admitted that not only the petitioner but one more person who stood higher in merit were the ex-servicemen available for appointment against the posts reserved for ex-servicemen. Therefore, the dependant child of an ex-serviceman could not get one post reserved for ex-servicemen on the strength of the instructions, for the reason that his father was a disabled and incapacitated ex-serviceman. Such a stand is without force. The children of deceased/disabled ex-serviceman may be considered sympathetically for civil employment if they fulfill the qualifications for the post. Hence, it has to be held that the appointment of a dependant child of an ex-serviceman in the face of availability of ex-servicemen is illegal and *ultra vires* the provisions of Rule 4 of the Rules. (Paras 8 and 10).