(11) Is it possible for a member to withdraw the resignation at any time before its acceptance is notified in the official gazette ? I think, yes. Section 13, in my view, gives a right to a member to withdraw the resignation within 15 days even if it has been accepted before that. Thereafter, if the acceptance has not been published in the official gazette, the member has a right to withdraw it. The only difference would be that it would be discretionary for the authority to allow the withdrawal or to disallow it.

(12) According to the petitioners, the application for withdrawal was made on 22nd November, 1990. This was before the publication of the acceptance in the official gazette. I think, the Deputy Commissioner had the discretion to allow the withdrawal. He did not violate any provision of the Act while doing so. Consequently, the impugned order (Annexure P-4) was not passed in violation of the provisions of Section 13.

(13) In this view of the matter, I don't think it is necessary for me to go into the contentions raised on behalf of the respondents-regarding the *locus standi*, etc., of the petitioners.

(14) The writ petition thus fails and is dismissed with costs. Counsel's fee Rs. 1,000.

R.N.R.

Before N. K. Sodhi, J.

THE DOABA COOPERATIVE SUGAR MILLS LIMITED,

NAWANSHAHR, PUNJAB,—*Petitioner.*

versus

JASMINDER SINGH AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 8517 of 1987.

23rd April, 1991.

Industrial Disputes Act, 1947—S. 25-F—Termination of services—Workman even if assumed to be probationer had put in 18 months of service—Mandatory for *management to comply with S. 25F—*

The Doaba Cooperative Sugar Mills Limited, Nawanshahr, Punjab *v.* Jasminder Singh and another (N. K. Sodhi, J.)

Even if order of termination could not be jutified by non-compliance of S. 25-F, always open to Management to justify termination on grounds of misconduct.

Held, that it is common case of the parties that the workman had put in 18 months of service and even if it were to be assumed that the workman was a probationer, it was necessary for the management to comply with the provisions of S. 25-F of the Act and not having done so, the order of termination could not be upheld. I find no informity in this part of the award of the Labour Court and the same must be upheld. (Para 4)

Held, further, that even if the order of termination could not be justified by way of discharge simpliciter because of the non-compliance with the provisions of S. 25-F of the Industrial Disputes Act, it is always open to the management to justify the order of termination on account of misconduct. (Para 5)

Petition Under Articles 226/227 of the Constitution of India praying that this Hon'ble Court after summoning the records of the case may be pleased to :—

(*i*) *issue a writ in the nature of Certiorari quasing the impugned Award dated 4th May, 1987 (Annexure P-8) passed by respondent No. 2;*

(*ii*) *issue any other writ, order or direction which this Hon'ble Court may deems fit and proper in the cricumstances of the case;*

(*iii*) *dispense with the filing of certified copies of Annexures P-1 to P-8;*

(*iv*) *dispense with the issuance of advance notices on the respondents;*

(*v*) *award the costs of the petition. It is further prayed that operation of the impugned Award be stayed during the pendency of the present writ petition.*

J. S. Mann, Advocate, *for the Petitioner.*

P. S. Patwalia. Advocate, *for the Respondent.*

JUDGMENT

N. K. Sodhi, J.

(1) This petition under Article 226 of the Constitution of India is against the award dated 4th May 1987 passed by the Labour Court,

Jalandhar directing reinstatement of the respondent workman with full back wages and continuity of service.

(2) The petitioner is a Cooperative Society and Jasminder Singh respondent was appointed as a Store-keeper by an office order dated 19th June, 1978. According to the terms and conditions of his appointment, he was placed on probation for a period of one year which was further extended by another six months on 13th July, 1979. On the expiry of the extended period of probation, the Board of Directors of the petitioner-society decided to terminate the services of the respondent as his work and conduct had not been found satisfactory. It appears that there were some serious allegations of misconduct against the workman but he was discharged on the expiry of the probationery period without being formally charge sheeted or any enquiry being held. This termination gave rise to an Industrial Dispute which was referred for adjudication by the State Government to the Presiding Officer, Labour Court, Jalandhar.

(3) On receipt of notices from the Labour Court, the stand taken by the workman was that under the certified standing orders, on which reliance was sought to be placed, the maximum period of probation of a workman could be 9 months and no more and since the respondent workman continued working beyond that period, he was a confirmed employee and his services could not be terminated without a charge sheet and an enquiry being held. The management, on the other hand, relied upon Bye-law 10(14) of its Bye-laws to contend that all persons who are appointed against a permanent post have to be on probation for a period of one year which could be extended by another one year if the appointing authority considers fit. It was also the case of the management that since the respondent-workman was on probation, which had been extended by another six months, he could be discharged on the expiry of the probationery period on account of unsatisfactory work and conduct. In the written statement, filed by the management before the Labour Court, the details of the allegations of mis-conduct alleged against the workman were mentioned. A request too seems to have been made to the Labour Court for holding an enquiry into those allegations and allowing the management to lead evidence in regard thereto. The Labour Court accepted the request of the management and passed an order dated 15th November, 1985 allowing the management to adduce evidence to justify the termination of the workman on the allegations made in the written statement and to which some

reference has been made in the order of termination dated 8th January, 1990. The management adduced evidence in regard to these charges levelled against the workman and this became necessary because the management had not itself held any domestic enquiry against the employee. The Labour Court by the impugned order found that the respondent-workman had become a confirmed employee in terms of the certified standing orders applicable to the establishment of the petitioner-society and his services could not be terminated without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947, and since the said provisions had not been complied with, the order of termination was void. Accordingly, the order was set aside the respondent-workman was directed to be reinstated with continuity of service and full back wages. It is this award which has been impugned in the present writ petition.

(4) The first contention advanced by the learned counsel for the petitioner was that according to Bye-Law 10(14) of the Bye-Laws, the respondent-workman was on probation for one year which could be extended by another year and the same having been extended for six months, his services could be terminated by way of discharge due to his unsatisfactory work and conduct. The workman, on the other hand, contends that he had become a confirmed employee in terms of the certified standing orders applicable to the establishment and his services could not be terminated without holding an enquiry and without serving a charge sheet. Without going into the question as to whether the respondent-employee was a confirmed hand or a probationer, it is common case of the parties that the workman had put in 18 months of service and even if it were to be assumed that the workman was a probationer, it was necessary for the management to comply with the provisions of Section 25-F of the Act and not having done so, the order of termination could not be upheld. I find no infirmity in this part of the award of the Labour Court and the same must be upheld.

(5) The next contention urged on behalf of the petitioner is that while terminating the services of the petitioner, the Board of Directors of the petitioner-society had taken serious note of the allegations against the workman and accordingly decided to terminate his services since he was a probationer. Concededly, no enquiry was held against the workman in regard to those allegations of misconduct which appeared to be serious in nature. The counsel further states

that when the matter was before the Labour Court it was open to the management to make a request to the said Court to hold enquiry into those allegations, a detailed reference to which had been made in the written statement, such a request having been made and accepted by the Labour Court, the management adduced its evidence before the said court but surprisingly no finding whatso-ever has been recorded thereon either holding the employee guilty or absolving him of the said charges/allegations. I find force in this contention. When the alleged period of probation after 18 months of service was about to end, the Board of Directors in their meeting took note of the serious allegations which were there on the record against the respondent-workman and decided to discharge him from service without holding an enquiry into those allegations. The matter when came up before the Labour Court for adjudication, the management could not succeed in showing that the order of discharge simpliciter was justified but in my opinion, it certainly had the right to justify the order of termination on the basis of the allegations which had been levelled against the workman. It is not that the allegations were sought to be levelled for the first time before the Labour Court. These allegations were taken note of by the Board of Directors while considering as to whether the workman should be confirmed or discharge and the fact that there were serious allegations against the workman finds mentioned even in the order of termination dated 8th January, 1980. When the Labour Court accepted the request of the management and allowed it to lead evidence in regard to the allegations levelled, I see no justification as to why the Labour Court should not have recorded its findings thereon. Even if the order of termination could not be justified by way of discharge simpliciter because of the non-compliance with the provisions of Section 25-F of the Industrial Disputes Act, it is always open to the management to justify the order of termination on account of misconduct. In the absence of such a finding, the management has obviously been prejudiced.

(6) For the reasons recorded above, the award of the Labour Court dated 4th May, 1987 is set aside and the case is remanded to it with a direction that it should record its findings on the allegations which the management has levelled against the workman and in regard to which evidence has already been recorded. It is, however, made clear that the Labour Court will not permit the parties to produce any fresh evidence. The Labour Court is further directed to decide the matter within four months from the

date the order is received. In the circumstances of the case the parties are left to bear their own costs.

J.S.T.

Before : G. C. Mital, A.C.J. & H. S. Bedi, J.

STATE OF PUNJAB AND ANOTHER,—*Appellants.*

versus

PRITHI SINGH MONGA,—*Respondent.*

Letters Patent Appeal No. 1319 *of* 1990.

26th April, 1991.

Punjab Civil Services (Premature Retirement) Rules, 1975—*Rl.* 3(1)(*a*)—*Premature retirement—A.C.Rs. of government servants bearing adverse remarks and several entries of doubtful integrity—Employee, however, allowed to cross the efficiency bar—Adverse entries prior to crossing of efficiency bar taken into account while retiring employee prematurely—Such entries not washed away automatically—Entire service record of government servant is relevant for forming opinion for premature retiring government servant—Scrutiny of service record need not be confined to last* 10 *years alone—No specific rule has been laid down regarding period of* 10 *years—Court should decide such cases on the facts and circumstances.*

Held, that the crossing of the efficiency bar in the case of the respondent did not wash away the entries as it was a conscious decision to allow him to cross the efficiency bar subject to conveyance of the adverse entries and also because no representation was filed against those remarks.

(Para 15)

Held, that no specific rule regarding the period of 10 years has been laid down. The work and conduct of the respondent has been uniformally poor to 'Average' throughout his career coupled with 6 reports of doubtful integrity and, as such, to confine scrutiny to ten years alone would not be proper. It would be anomalous to lay down this as an inflexible rule. It would also be a travesty of justice to ignore all adverse entries of doubtful integrity starting from the 11th year backward. No hard and fast rule can be formulated.

(Para 18)