Before J. S. Narang & Arvind Kumar, JJ.

HARYANA STATE INDUSTRIAL DEVELOPMENT CORPORATION LTD. AND ANOTHER,—*Petitioner*

versus

P.O.L.C. HISAR AND ANOTHER,—*Respondent*

C.W.P. NO. 18434 OF 2004

18th July, 2006

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—S. 25-F—Termination of services of a daily wage employee by way of retrenchment—Management paying retrenchment compensation—Labour Court holding that adequate retrenchment compensation not paid to workman—Workman worked only 26 days in a month—Whether average monthly salary was to be divided by 26 or 30—Interpretation—Working days always taken as 30 in a month—Compensation calculated and paid to the workman is correct—No violation of S. 25-F of 1947 Act—Petition allowed and findings of Labour Court set aside.

Held, that the Labour Court has fallen into error in holding that the adequate retrenchment compensation of 60 days has not been paid and that the average monthly salary was to be divided by 26 and not by 30 as the workman has to work only 26 days to earn his monthly salary. We are afraid the interpretation is not logically acceptable. The perusal of Clause (a) of Section 25 would show that the workman has to be given one month's notice in writing or is to be paid in lieu of such notice. Admittedly, the workman had been paid a sum of Rs. 1898 as wages for one month in lieu of the notice and that one month shall have to be read as 30 days and not 26 days. We are not impressed by the methodology adopted by the Labour Court. Apart from this, the rule for calculating retrenchment compensation is that 15 days average pay for every completed year of continuous service shall be computed while calculating the retrenchment compensation. This would obviously mean that half of month shall be taken into consideration for each completed year of continuous service. There is no logic that this period 15 days shall be taken from 26 days. Apart from this, any part thereof in excess of six

the months would also mean each month comprised of thirty days and not that six months shall be computed by calculating 26 days in a month. We do not accept the computation adhered to by the Labour Court. The factual status has been clearly indicated by the management as to how the retrenchment compensation has been calculated.

(Para 9)

Kamal Sehgal, Advocate, *for the petitioner.*

Rajesh Sharma, Advocate, *for respondent No. 2.*

JUDGEMENT

J. S. NARANG, J.

(1) The management has questioned the award, dated 21st May, 2004, made by the Labour Court, Hisar, answering the reference in favour of the workman to the effect that the termination of the services of the workman was neither in order nor justified, therefore, he is entitled to reinstatement with continuity of service and all other consequential service benefits alongwith 25% back wages.

(2) The facts to be noticed are that the workman was employed as Peon-cum-Chowkidar on 13th May, 1996 and allegedly he worked continuously upto 2nd March, 2000 when his services were terminated by way of retrenchment. The plea is that the said order is void, illegal, without authority, without jurisdiction, unreasonable and against law and facts, arbitrary, discriminatory and against the principles of natural justice and is in utter violation of Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") as the workman had not been given any opportunity of hearing. Further, the retrenchment compensation given to him was neither adequate nor in accordance with the provisions of the Act. It is also the case that the workers junior to him have been retained in service and that the services of 21 other workmen similarly situated have been regularised.

(3) The claim of the workman had been contested on the ground that the workman was engaged as Peon-cum-Chowkidar on daily wages basis at D.C. Rates, for a short duration, in a casual vacancy, on the specific condition that he shall stand disengaged when no longer required or as and when regular substitute joins as Peon-cum-Chowkidar at the Branch Office, Hisar. It is also the plea of the

management that in this regard sanction from the head office had been obtained from time to time for short durations to enable the workman to continue in the job pursuant to the aforesaid stipulations. The muster roll is indicative of the terminal breaks from 30th May, 1996 to 29th February, 2000 and that he has been paid his wages for the days he worked. It is also the plea that upon the joining of regular substitute namely Rajinder Parsad with effect from 10th January, 2000, the workman became surplus and there was no need to continue him on the said post. He had been terminated pursuant to the stipulation contained as his services were no longer required. It is further pleaded that procedure under Section 25-F of the Act had been duly complied with and that the compensation of Rs. 7,205 had been paid at the time of termination by way of retrenchment. It is the stand of the management that no provisions of the Act have been violated nor the orders suffer from any rigor as claimed by the workman.

(4) The claim of the management has been refuted by way of replication. Upon the pleadings of the parties, the issues had been framed. The Labour Court has opined that there is no dispute to the effect that the workman had worked with the respondent-department from 30th May, 1996 to 2nd March, 2000, and therefore, had completed more than 240 days in 12 preceding months to the date of his retrenchment.

(5) The question which has been delved upon is as to whether the appropriate compensation by way of retrenchment has been paid or not. It has also been opined that there is nothing on the file which could show that the services of the workman were hired on specific terms and conditions. Admittedly, no appointment letter was given to the workman at the time of his joining. However, a letter EX. WXA dated 10th/12th, January, 2000, written to the head office has been referred,—*vide* which request has been made to continue the services of the workman so that the offical work may not suffer. It has also been opined that there was the vacancy available with the respondent and services of the workman have not been retrenched on the appointment of the regular incumbent. However, one Rajinder Parsad joined upon his transfer from the office at Sirsa. It has been further opined that the retrenchment compensation for 60 days has been incorrectly computed. The same has been computed as Rs. 3409 which comes to be less on calculation on the basis of monthly salary. It has

been held that the retrenchment of the services of the claimant are violative of Section 25-F(b) of the Act. Resultantly, the issues have been answered in favour of the workman and against the management and that the reference has been answered in favour of the workman.

(6) Learned counsel for the petitioner has argued that the Labour Court has fallen into error while computing the retrenchment compensation. In fact, the retrenchment compensation is payable equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. Admittedly, the workman was entitled to the compensation for the year 1996-97, 1997-98, 1998-99 and 1999-2000 and that the period from January 2000 to February 2000 was required to be ignored. Average for the year 1996-97 has been reflected as Rs. 1510 per month, 1997-98 Rs. 1642 per month, 1998-99 Rs. 1768, 1999-2000 Rs. 1898, the commensurate computation would come to Rs. 755+821+884+949 and that the payable amount would be Rs. 3409 for 60 days. One month salary in lieu of notice period has been paid amounting to Rs. 1898 and that the salary for the month of February 2000 amounting to Rs. 1898 has also been paid. Thus, the total amount of Rs. 7205 has been paid. The Labour Court has not opined categorically as to in what manner the retrenchment compensation of 60 days has come out to be less on calculation on the basis of monthly salary. Perhaps the salary for the year 1999-2000 has been kept in view while computing the amount accordingly. Whereas, as per the aforesaid provisions, the retrenchment compensation equivalent to 15 days average pay for every completed year of continuous service is to be taken into consideration. Thus, by applying the formula indicated in Section 25-F of the Act, the amount has been correctly computed and has been paid accordingly. It is only on this ground that the order of retrenchment has been held to be violative of Section 25-F of the Act.

(7) On the other hand, learned counsel for the respondent has argued that the Labour Court has correctly computed and opined that the average monthly salary was to be divided by 26 and not by 30 as the workman has to work only for 26 days to earn his monthly salary. The management has failed to explain as to how they have computed the compensation for four years as Rs. 3409. The calculation adhered to is not at all correct and that the retrenchment compensation has been paid in utter violation of Section 25-F(b) of the Act.

(8) We have heard learned counsel for the parties and have perused the paper book as also the award, dated 21st May, 2004 impugned before us.

(9) We are of the considered opinion that the Labour Court has fallen into error in holding that the adequate retrenchment compensation of 60 days has not been paid and that the average monthly salary was to be divided by 26 and not by 30 as the workman has to work only for 26 days to earn his monthly salary. We are afraid, the interpretation is not logically acceptable. The perusal of Clause (a) of Section 25 would show that the workman has to be given one month's notice in writing or is to be paid in lieu of such notice. Admittedly, the workman had been paid a sum of Rs. 1898 as wages for one month in lieu of the notice and that one month shall have to be read as 30 days and not 26 days. The workman has been paid the salary and that a week day, which is off day, would also form part thereof for computation of salary. For the rest day also the salary is paid and the workman is deemed to be in service.. It is nowhere the contention that for the rest day the workman shall not be taken to be in service. It is absolutely a separate matter whether a workman is paid on daily wage basis i.e. he is paid every day wages at the D.C. rates or otherwise payable in accordance with law. In that context, if the workman works on a Sunday and only then he is paid the wages, the matter would be different. If he does not work on a Sunday or any day of the week and he is not being paid the wages accordingly, the status of the workman may have to be analysed differently. If the principle enunciated by the Labour Court is accepted then the computation of the period of 240 days in the preceding 12 months shall have to be taken into consideration as 26 days and not 30 days. In that situation the period of 240 days, shall be computed accordingly. Whereas in that context the working days are always taken as 30 in a month and if a workman has worked for 8 months in 12 months, he shall be deemed to have completed 240 days. We are not impressed by the methodology adopted by the Labour Court. Apart from this, the rule for calculating retrenchment compensation is that 15 days average pay for every completed year of continuous service shall be computed while calculating the retrenchment compensation. This would obviously mean that half of the month shall be taken into consideration for each completed year of continuous service. There is no logic that this period of 15 days shall be taken from 26 days.

Apart from this, any part thereof in excess of six months would also mean each month comprised of thirty days and not that six months shall be computed by calculating 26 days in a month. We do not accept the computation adhered to by the Labour Court. The factual status has been clearly indicated by the management as to how the retrenchment compensation has been calculated.

(10) Resultantly, we are of the opinion that the award, dated 21st May, 2004 made by the Labour Court is not sustainable by holding it to be violative of Section 25-F(b) of the Act. No other point has been opined by the Labour Court. Therefore, the findings in this regard of the Labour Court are set aside and that the reference is answered against the workman. The petition is allowed in the above terms.

R.N.R.

Before J.S. Narang & Arvind Kumar, JJ.

PUNJAB AGRICULTURAL UNIVERSITY & OTHERS,—*Petitioner*

versus

P.O.L.C. LUDHIANA AND ANOTHER,—*Respondents*

C.W.P. NO. 4861 OF 2006

2nd November, 2006

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—S.11—A—Charges of theft against a chowkidar proved and established—Termination of services—Industrial dispute—Reference—Whether a fair and proper inquiry had been conducted by the Management—Preliminary issue—Labour court finding that no fair and proper inquiry conducted—Management filing application for permission to lead evidence to prove charge of misconduct against workman—Rejection of—Neither any preliminary objection nor any alternative plea in the written statement by the management—Whether the Labour Court is not entitled to take any fresh evidence relating to the matter—Held, no—No inordinate delay on the part of management in making request to lead additional evidence—Workman would not suffer in any manner as he is also to be given opportunity to defend himself—Petition allowed, matter remitted to Labour Court for adjudication afresh by granting opportunity to the parties to lead additional evidence.