Before Rajesh Bindal, J.

BALA DEVI @ ROOPA—*Petitioner*

versus

PRESIDING OFFICER AND OTHERS—*Respondents*

CWP No. 17439 of 2011

December 1, 2012

Constitution of India, 1950 - Art. 226 - Writ Jurisdiction - Labour Laws -Industrial Disputes Act, 1947 - Daily Wager - Worked for 18 years - Termination - Claim dismissed by Labour Court - Respondent-management did not produce complete service record before Labour Court nor pleaded that employment of Petitioner was not according to Rules - Petition allowed and award set aside - Petitioner ordered to be re-instated with continuity of service and full wages from date of award till actual re-instatement.

Held, that on due consideration of the matter, I do not find any merit in the submissions made by the learned counsel for respondent management. There was no plea raised by it before the Labour Court that the employment of the petitioner was not in accordance with rules or norms of public appointment. In fact complete service record of the petitioner was not produced before the Labour Court.

(Para 10)

Furthr held, that in the present case, the facts reveal that the petitioner had been in continuous employment for the last more than 18 years, when her services were terminated. The aforesaid decisions are fully applicable in the facts and circumstances of the present case.

(Para 11)

Further held, that for the reasons recorded above, the present petition is allowed. The impugned award dated 8.9.2010 is set aside. The respondent management is directed to reinstate the petitioner with continuity of service and pay wages from the date of award till actual reinstatement.

(Para 12)

J. S.Cooner, Advocate, *for the petitioner.*

Roopak Bansal, Additional Advocate General, Haryana.

RAJESH BINDAL, J.

(1) The petitioner has challenged the award dated 8.9.2010 (Annexure P-1), whereby her claim for reinstatement with continuity in service and full back wages was rejected by the learned Labour Court, Ambala.

(2) The petitioner was appointed as daily wager with respondentdepartment in January, 1988. She worked in the department continuously till 7.12.2006. After she had put in more than 18 years of service, her services were terminated on 7.12.2006 in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short "the Act") as no retrenchment compensation was paid to her. The petitioner then served a demand notice dated 17.1.2007 praying for her reinstatement in service with continuity and full back wages. The matter was referred to the Labour Court, which was decided against the petitioner vide the impugned award dated 8.9.2010. It is this award which is impugned in the present writ petition by the petitioner.

(3) Learned counsel for the petitioner submitted that the petitioner worked as daily wager from January, 1988 till 7.12.2006 continuously. After she had put in more than 18 years of service, her services were unceremoniously terminated in utter violation of Section 25-F, G, H of the Act. It is further pleaded that the Labour Court vide its award dated 8.9.2010 decided the reference against the petitioner and in favour of respondent management thereby dismissing her claim, completely on flimsy grounds even after giving a categoric finding to the effect that the petitioner-workman was in the employment of the respondent management from 1988 to 2006. Once it was proved that the petitioner had completed 240 days of service during the preceding 12 months, resultant termination in violation of Section 25-F of the Act should have been held to be bad with consequential relief of re-instatement with continuity of service and full back wages. He further submitted that the learned court below failed to appreciate that in the present case it was not the pleaded case of the respondent-management that the petitioner was not entitled for reinstatement with continuity in service

and back wages because she was daily wager and was not appointed as per the service rules. No issue in this regard was framed by the Labour court. The complete record pertaining to the service of the petitioner was also not produced by the respondent management. Despite no evidence against the petitioner, the learned Labour Court rejected the claim of the petitioner. The prayer is for reinstatement of the petitioner with all consequential reliefs.

(4) On the other hand, learned counsel for the respondent management submitted that the petitioner had not worked for 240 days or more in twelve preceding months before her alleged termination. In fact, her services were never terminated by the respondent-management rather she had left the service on her own, hence, the question of violation of Section 25-F of the Act does not arise at all. He further submitted that the petitioner is not entitled to any relief being daily wager, as she was not appointed as per the service rules against the regular sanctioned post, thus, relief of reinstatement with continuity and back wages should not be granted to her.

(5) Heard learned counsel for the parties and perused the paper book.

(6) Hon'ble the Supreme Court in ***Ramesh Kumar*** versus ***State of Haryana (1)***, held that if sufficient material is shown that workman has completed 240 days of service, his/ her service cannot be terminated without giving notice or payment of compensation in lieu thereof in terms of Section 25-F of the Act.

(7) In ***Anoop Sharma*** versus ***Executive Engineer Public Health Division No.1, Panipat (Haryana) (2)***, Hon'ble the Supreme Court has discussed the scope of term continuous service under Section 25-B of the Act, which when read along with Section 25-F (a) and (b) of the Act mandates giving of one month's notice or pay in lieu thereof and otherwise than by way of punishment or in accordance with express terms incorporated in the order of appointment. If a workman is retrenched by an oral order or communication or is simply asked not to come for duty, the employer

(1) 2010 (1) SCT 675
(2) 2010 (3) SCT 319

will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25-F of the Act. Relevant paragraphs of the aforesaid judgment are reproduced hereunder:-

> "13. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. This Court has repeatedly held that Section 25-F (a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity. This Court has used different expressions for describing the consequence of terminating a workman's service/ employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25-F (a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.
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> xxx xxx xxx
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> 15. In **State Bank of India v. N. Sundara Money** (supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25-F (b).

16. The legal position has been beautifully summed up in **Pramod Jha v. State of Bihar** (supra) in the following words:

> "The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment"

(8) In ***Harjinder Singh*** versus ***Punjab State Warehousing Corporation (3),*** Hon'ble the Supreme Court has held as under:-

> "30. Of late, there has been a visible shift in the courts' approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalisation and liberalisation are fast becoming the raison d'etre of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the present one, relief has

(3) 2010 (3) SCC 192

been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workmanemployee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood.

31. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer - public or private."

(9) In ***Devinder Singh*** versus ***Municipal Council, Sanaur (4)***, Hon'ble the Supreme Court held that provisions of Section 25-F, (a), (b) are mandatory and termination of service of a workman which amounts to retrenchment within the meaning of Section 2 (oo) of theAct without giving one month's notice or pay in lieu thereof and retrenchment compensation is null and void. Further it has held that the appellant shall be entitled to reinstatement with continuity in service and wages for the period between the date of award and the date of actual reinstatement. The relevant paragraphs of the aforesaid judgment are reproduced hereunder:-

"20. This Court has repeatedly held that the provisions contained in Section 25-F (a) and (b) are mandatory and termination of the service of a workman which amounts to retrenchment within the meaning of Section 2 (oo) without giving one month's notice or pay in lieu thereof and retrenchment compensation is null and void/ illegal/ inoperative.

xx xx xx

(4) 2011 (6) SCC 584

28. In the result, the appeal is allowed. The impugned order is set aside and the award passed by the Labour Court for reinstatement of the appellant is restored. If the respondent shall reinstate the appellant within a period of four weeks from today, the appellant shall also be entitled to wages for the period between the date of award and the date of actual reinstatement. The respondent shall pay the arrears to the appellant within period of three months from the date of receipt/ production of the copy of this order."

(10) On due consideration of the matter, I do not find any merit in the submissions made by the learned counsel for respondent management. There was no plea raised by it before the Labour Court that the employment of the petitioner was not in accordance with rules or norms of public appointment. In fact complete service record of the petitioner was not produced before the Labour Court.

(11) In the present case, the facts reveal that the petitioner had been in continuous employment for the last more than 18 years, when her services were terminated. The aforesaid decisions are fully applicable in the facts and circumstances of the present case.

(12) For the reasons recorded above, the present petition is allowed. The impugned award dated 8.9.2010 is set aside. The respondentmanagement is directed to reinstate the petitioner with continuity of service and pay wages from the date of award till actual reinstatement.

S. Gupta