

Before Harbans Lal, J.

RAMESH CHANDER,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondents

C.W.P. No. 3175 of 1991

29th August, 2008

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—Ss.25-G and 25-H—Industrial Disputes (Central) Rules, 1957—RI.78—Retrenchment of a daily wager—After petitioner's retrenchment fresh candidates appointed—No notice or intimation to petitioner as required under RI.78—Violation of provisions of Ss. 25-G and 25-H as well as Rule 78—Authorities bound to appoint petitioner on daily wage basis in preference to other persons—Petition allowed directing respondents to reinstate petitioner—However, petitioner not entitled to any back wages or compensation.

Held, that admittedly Chhabila and others were employed after the appointment of the petitioner. The principle enshrined in Section 25-G of the Act is "first come last go". If due to shortage of vacancies, the services of the petitioner were terminated, in that eventuality, as and when the vacancy came to occur, the preference should have been given to the petitioner by sending intimation in writing. The respondent-authorities could not appoint others, when the services of the retrenched employee i.e. the petitioner were available. Thus, the appointments of Chhabila and others are violative of the provisions of the Act. The respondents-authorities are bound to appoint the petitioner on daily wage basis in preference to other persons, being a retrenched employee. Although the petitioner-workman had not completed a continuous service of 240 days immediately preceding the date of termination of his service, yet his retrenchment was invalidated for the reason that the persons junior to him were retained in service, whereas he was shown the exit door. The requirement of 240 days service is necessary only in case of complaint of violation of the provisions of Section 25-F of

the Act. The plea of the petitioner that he was not issued any registered notice as required under 78 *ibid* before appointing others has not been controverted in the written statement specifically. Had such notice been issued, there would have been a reference to the postal receipt,—*vide* which it was despatched. Thus, to say the least of it, respondents No. 1 to 3 have flagrantly violated the provisions of Sections 25-G and 25-H of the Act as well as Rule 78 *ibid*.

(Para 13)

Mani Ram Verma, Advocate *for the petitioner*.

Tarunveer Vashisht, Additional Advocate General, Haryana, for
respondents No. 1 to 3.

JUDGMENT

HARBANS LAL, J.

(1) This petition has been moved by Ramesh Chander under Articles 226/227 of the Constitution of India for directing the respondents No. 1 to 3 to appoint him on daily wages and quash the appointments of Chhabila, respondent No. 4 and Gaja Nand, respondent No. 5 and for declaring his retrenchment as void.

(2) The brief facts giving rise to this petition are that petitioner was appointed as daily wage worker in July, 1988 at Sub Division No. 3, Division No. 1, Public Health at Boisting Station Dhirana. He continued to work under the supervision of respondents No. 2 and 3 till 30th November, 1990 with notional break. Before his retrenchment, he completed 240 days of continuous service. He was not allowed to work after 30th November, 1990 nor he was given retrenchment compensation. The Public Health Department, where the petitioner worked, being an Industry, the petitioner is a 'workman' and, as such, entitled to the benefit of the provisions of the Industrial Disputes Act, 1947 (for brevity, the Act). After his retrenchment, the respondents-authorities have appointed other daily wage workers without complying with the provisions of the Act. Chhabila and Gaja Nand respondents were also appointed as daily wage workers including others whose

particulars are not known to the petitioner. They as well as many others, who were appointed after the petitioner's retrenchment, are fresh candidates. Chhabila and Gaja Nand were appointed on 1st January, 1991 and are continuing in service. While appointing them, no intimation was given to the petitioner by any means including registered post as required under Rule 78 of the Industrial Disputes (Central) Rules, 1957 (for short, the Rules). The respondents-authorities were bound to employ the petitioner instead of Chhabila as well as Gaja Nand, being a retrenched employee. He was not given an opportunity while appointing Chhabila and Gaja Nand, though in view of the provisions of Section 25-F of the Act, the respondents-authorities were bound to appoint the petitioner on daily wage in preference to other persons who were retrenched employees. Dhoop Singh, Brahma Nand, Tul Bahadur and Jai Bhagwan were appointed in 1989 at Sub Division No. 3. They are still continuing in service while the petitioner, who joined in July, 1988 has been thrown out from service in violation of Articles 14 and 16 of the Constitution. The petitioner being a retrenched employee is being ignored just to accommodate their favourites. The vacancies of daily wage workers are there which are being filled without complying with Rule 78 of the Rules. The main questions of law involved in this writ petition are as under :—

- (a) Whether the respondents authorities can appoint other persons, when the services of retrenched employee like the petitioner are available to them ?
- (b) Whether appointment made in violation of Rule 78 of the Rules is valid ?
- (c) Whether the respondents authorities are bound to appoint the petitioner on daily wage basis in preference to other person being retrenched employees ?
- (d) Whether the retrenchment of the petitioner can be sustained without complying the provisions of Section 25-F of the Industrial Disputes Act ?

(3) In joint written statement filed on behalf of respondents No. 2 and 3, it has been admitted that the petitioner has been engaged

on daily wages/muster rolls/one month sanction basis for different periods from different dates. The period of the service rendered by him during 12 calendar months immediately preceding the date of termination of his services, works out only to 212 days as per Annexure R-1 showing the breaks in his service. He has not completed 240 days of continuous service in 12 calendar months from the date he was initially appointed in July, 1988. No regular appointment letter was required to be issued to the petitioner as he was engaged on above mentioned basis. He has been paid his wages as per rates fixed by the Deputy Commissioner, Bhiwani. He does not come within the definition of 'workman' nor the renewal of daily engagement amounts to retrenchment within the meaning of the Act. The daily wages workers are appointed keeping in view the volume of work. The petitioner's services were terminated being no longer required. The Public Health Department is not Industry and, as such, he does not come within the definition of 'workman' and, thus, not entitled to the benefits of the provisions of the Act. Chhabila was engaged on daily wages/muster rolls/one month sanction basis on 1st December, 1990. Gaja Nand was engaged on daily wages/muster rolls/one months sanction basis on 8th December, 1990. His services have been dispensed with effect from 1st April, 1991. The Department has not violated any provisions of law. While engaging respondents No. 4 and 5 on daily wages, no such intimation was required to be given to the petitioner. Rule 78 of the Rules is not applicable to the facts of the present case. As the petitioner was not appointed on regular basis, so he is not entitled to claim for fresh appointment. Dhoop Singh was engaged on daily wages basis on 11th September, 1989 and on account of stay granted by this Court in CWP No. 9315 of 1990, he was allowed to continue in service. Similarly, Brahma Nand, Tul Bahadur and Jai Bhagwan, who were engaged on daily wages on 7th May, 1989, 11th September, 1989 and April, 1989 were allowed to continue in service on account of stay granted by this Court in CWP Nos. 681 of 1990, 9315 of 1990 and 681 of 1990 respectively. In view of these circumstances, the action of the answering respondent is justified and does not violate the principle of 'first come last go.' Lastly, it has been prayed that this petition may be dismissed with costs.

(4) I have heard the learned counsel for the parties.

(5) Mr. Mani Ram Verma, Advocate appearing on behalf of the petitioner urged with great eloquence that the Public Health Department being an 'Industry', the petitioner is a 'workman' as defined in the Act. He was admittedly appointed in July, 1988. He was not allowed to work after 30th November, 1990 without issuing any notice and without giving any retrenchment compensation. In utter violation of the provisions of Section 25-G and H of the Act as well as Rule 78, the respondent-authorities appointed Chhabila as well as Gaja Nand in January, 1991. He further puts that Dhoop Singh, Brahma Nand, Tul Bahadur and Jai Bhagwan were engaged on daily wages in 1989, which is obviously after the petitioner, but they all are still continuing in service, though the petitioner has not been taken back. He had been emphatic in the course of arguments that the main-stay of the respondents No. 1 to 3 is that as per Annexure R-1, the petitioner did not complete continuous service of 240 days and that being so, he is disentitled to any benefit under any provisions of the Act or the Rules, but as per the provisions of Sections 25-G and H *ibid*, the 'workman' is not required to fulfill this condition of continuous service of 240 days for being re-appointed or reinstated in view of the observations made by the Apex Court in re: **State of Haryana versus Dilbagh Singh (1)**, **Ashok Kumar versus M.C.D. (2)**, **Punjab State Electricity Board versus Presiding Officer, Labour Court, Amritsar and others (3)**, **State of Punjab through its Secretary, Labour Punjab, Chandigarh and another versus Jaswant Singh and another (4)**, and **U. P. State Electricity Board versus Pooran Chandra Panday and others (5)**.

(6) Mr. Tarunveer Vashisht, Additional Advocate General, Haryana countered this argument by initially urging that Public Health Department being not Industry, the petitioner does not fall within the definition of 'workman' as laid down in the Act. He further contends that as per Annexure R-1, his continuous service being 212 days during

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- (1) 2007 (2) R.S.J. 196 (SC)
 - (2) 2008 (3) R.S.J. 518
 - (3) 2004 (4) R.S.J. 28
 - (4) 2004 (3) R.S.J. 422
 - (5) 2008 (1) R.S.J. 304

the 12 calendar months immediately preceding the date of termination of his services, he is disentitled to the relief under the Act. He further pressed into service that as regards Gaja Nand, his services having been dispensed with from 1st April, 1991, his name has been deleted from the array of respondents and in so far as Dhoop Singh, Brahma Nand, Tul Bahadur and Jai Bhagwan are concerned, there being stay granted by this Court in the writ petitions filed by these workmen, they continued in service. He further canvassed at the bar that the petitioner being not covered by the provisions of the Act, he cannot seek any relief under provisions of Section 25-G and 25-H of the Act.

(7) Mr. Verma contended that for a little while, if it is assumed that the petitioner did not complete 240 days in 12 calendar months immediately preceding the date of his retrenchment, nonetheless he is entitled to press into service the provisions of Sections 25-G and 25-H of the Act.

(8) I have well considered the rival contentions. The Public Health Department falls within the ambit of 'Industry'.

(9) In re: **Dilbagh Singh's** case (*supra*), the respondent was serving as a Beldar in PWD (B&R). His services were terminated on 25th December, 1999. After hearing both the parties, it was held by the Labour Court that the person junior to the respondent is still working, whereas the services of the respondent had been terminated and, thus, there was breach of Sections 25-G and 25-H of the Act. The Apex Court held that "it is a clear finding of Tribunal that a person like Krishan son of Dharam Singh, who is junior to the respondent is still working with the Management, whereas the services of the respondent had been terminated. It is also alleged that another person named Mahabir who is also junior to the respondent is still working with the Management. Therefore, the Tribunal had found violation of Sections 25-G and 25-H of the Act. This finding of fact has not been controverted by the Management and there is no reason to take a different view from the view taken by the Tribunal which was affirmed by the High Court. Hence, we find no merit in this appeal and the same is accordingly dismissed. The respondent shall be reinstated but looking into the peculiar facts and circumstances of this case, he will not be entitled

to any back wages. The appellant shall issue order of appointment of the respondent within one month from the date of receipt of this order.”

(10) Further in re: **Jaswant Singh and another** (*supra*), the Division Bench of this Court held that “a categoric finding of fact has been recorded by the learned Single Judge in the present case that persons junior to respondent-workman were retained in service, whereas he was retrenched and that finding is not under challenge.”

(11) In re: **Ashok Kumar** (*supra*), it has been held that “completing of 240 days continuous service is not a pre-requisite for the application of Section 25-G and H of the Act.”

(12) Adverting to the facts of the case at hand, if on the basis of Annexure R-1, it is assumed that the petitioner has not completed 240 days continuous service, despite that the provisions of Section 25-G and H of the Act were required to be complied with by the respondents-authorities.

(13) In re: **Jaswant Singh and another** too, it has been clearly laid down that completion of 240 days is not necessary to attract the provisions of Section 25-G and H of the Act. If juniors were retained, termination of senior will not be sustainable. **The principle is ‘first come last go’**. In re: **Central Bank of India versus S. Satyam** (6), it has been held by the Apex Court that “Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of ‘last come first go’ which is not confined only to workmen, who have been in continuous service for not less than one year covered by Section 25-F.” In view of these observations, it was obligatory upon respondents No. 1 to 3 to have given appointment first to the petitioner and then to the others. The written statement is also silent about the compliance of Rule 78 of the Rules. It emanates from the written statement that Chhabila, Gaja Nand, Dhoop Singh, Brahma Nand, Tul Bahadur and Jai Bhagwan, were employed after the retrenchment to the petitioner. Except Gaja Nand, the remaining are still continuing in service. The respondents No. 1 to 3 have not assigned any reason worth the name

for appointing orders by giving precedence over the petitioner. Admittedly, Chhabila and others were employed after the appointment of the petitioner. The principle enshrined in Section 25-G of the Act is "First come last go." If due to shortage of vacancies, the services of the petitioner were terminated, in that eventuality, as and when the vacancy came to occur, the preference should have been given to the petitioner by sending intimation in writing. The respondents-authorities could not appoint others, when the services of the retrenched employee i.e. the petitioner were available. Thus, the appointments of Chhabila and others are violative of the provisions of the Act. The respondent-authorities are bound to appoint the petitioner on daily wage basis in preference to other persons, being a retrenched employee. Although the petitioner-workman had not completed a continuous service of 240 days immediately preceding the date of termination of his services, yet his retrenchment was invalidated for the reason that the persons junior to him were retained in service, whereas he was shown the exit door. The requirement of 240 days service is necessary only in case of complaint of violation of the provisions of Section 25-F of the Act. The plea of the petitioner that he was not issued any registered notice as required under Rule 78 *ibid* before appointing others has not been controverted in the written statement specifically. Had such notice been issued, there would have been a reference to the postal receipt,—*vide* which it was despatched. Thus, to say the least of it, respondents No. 1 to 3 have flagrantly violated the provisions of Sections 25-G and 25-H of the Act as well as Rule 78 *ibid*.

(14) As a sequel of the above discussion, this petition succeeds and is accepted, with a direction to respondents No. 1 to 3 to reinstate the petitioner by issuing an appointment letter to him within one month from the date of receipt of a certified copy of this order. However, taking into consideration the peculiarity of facts and circumstances of this case, the petitioner will not be entitled to any back wages or compensation.

R.N.R.