

GURNAM SINGH v. THE PRESIDING OFFICER, INDUSTRIAL 359
TRIBUNAL-CUM-LABOUR COURT, PANIPAT
AND ANOTHER (*Uma Nath Singh, J.*)

Before Uma Nath Singh & A.N. Jindal, JJ.

GURNAM SINGH,,—Appellant

versus

**THE PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, PANIPAT & ANOTHER—Respondents**

LPA No. 218 OF 2008 IN

C.W.P. No. 5318 of 2004

14th January, 2009

Constitution of India, 1950—Art.226—Industrial Disputes Act, 1947—S.25-G—Termination of services of a daily wager—Retrenchment—Two of petitioner's juniors retained and still working in department—Violation of S.25-G—Appeal allowed, order of Single Judge and award of Labour Court set aside—Matter remanded to Labour Court for fresh consideration.

Held, that in the demand notice, as also the claim, the appellant has reiterated that there was a violation of Section 25-G of the Act inasmuch as two of his juniors, namely, Sultan and Mahavir, were retained, whereas he was made to suffer retrenchment. However, this averment has been denied in the written statement to the appeal, wherein it is asserted that no workman junior to the appellant was retained, whereas, the appellant was retrenched. Contrary to the stand taken by the State, a management witness in his statement has admitted as : “it is correct that Mahavir and Sultan are working with us. But I do not know if they are junior or senior to the claimant.” The appellant has also been very consistent in taking this stand and further in his evidence before the Labour, he has reiterated the fact that Mahabir and Sultan, his juniors were still working in the department. Thus, the impugned judgement, dated 18th January, 2008 passed by learned Single Judge and also the award rendered by the Labour Court, dated 14th November, 2003 cannot endure, hence they are set aside.

(Paras 7, 8 and 10)

Ms. Abha Rathore, Advocate, *for the appellant*.

Ms. Ritu Bahri, Additional Advocate General, Haryana.

UMA NATH SINGH J.

C.M.NO. 762 OF 2008

(1) C.M. No. 762 of 2008 (application for condonation of delay) is considered and allowed, resultantly, 123 days' delay in filing the appeal is condoned.

L.P.A. NO. 218 OF 2008

(2) Heard learned counsel for parties and perused the pleadings.

(3) This L.P.A. has been preferred against the judgment passed by learned Single Judge, dated 18th January, 2008 in C.W.P. No. 5318 of 2004, dismissing the petition on having found no substance in the pleadings for the enforcement of Sections 25-G and 25-H of the Industrial Disputes Act. (hereinafter referred to as 'the Act'). The learned Single Judge has held that since the workman was working on a specific project, therefore, after the completion of that project, he could not have been retained.

(4) It appears that the workman was appointed as a labourer with the Haryana Roadways, Karnal, on 1st January, 1986 as a daily wager at the rate approved by the Deputy Commissioner, Karnal, for construction of Bus Queue Shelters. He worked up to 26th December, 1988 with intermittent breaks. Thereafter, he suffered retrenchment and his services were terminated. He served a demand notice, dated 3rd June, 1993 and thereafter, laid a claim statement on 20th November, 1998. The claim of workman was rejected *vide* award, dated 14th November, 2003, merely on the ground that the workman could not establish that he had worked continuously for 240 days in a calendar year. Being aggrieved by the award of Labour Court in Reference No. 11 of 1998, petitioner filed a writ petition which was rejected *vide* the impugned order and thus, the view taken by learned Labour Court, Panipat, was affirmed.

(5) Learned counsel for the appellant-workman submitted that a specific plea regarding the violation of Section 25-F, 25-G and 25-H of the Act, was taken in the writ petition, but the learned Single Judge has returned his findings only *qua* Section 25-G and 25-H of the Act and the impugned judgment is silent about the application of Section 25-F. Learned counsel also submitted that for the application of Section 25-G, as per the settled position in law, in terms of the ratio of a Division Bench Judgment of this Court in C.W.P. No. 5552 of 1997 (*Balraj versus HUDA and others*), dated 18th December, 1997, and also other judgments based thereon, a workman is not required to prove that he has worked continuously for 240 days in a calendar year. Thus, learned counsel pleaded that this L.P.A. deserves to be allowed and the impugned judgment, so also the award, need to be set-aside with direction to remit the matter to the Labour Court for consideration afresh.

(6) On the other hand, learned Additional Advocate General, Haryana, submitted that there was an inordinate delay in serving the demand notice, laying the claim, and also filing the writ petition, which gives the impression that the workman has been luke warm in pursuing his claim. This is also a submission of learned State counsel that once the workman fails to establish that he has continuously worked for 240 days, provisions of Section 25-G of the Act would not be attracted.

(7) On a careful consideration of rival submissions and perusal of records, we find that in the demand notice, as also the claim, the appellant has reiterated that there was a violation of Section 25-G of the Act inasmuch two of his juniors, namely, Sultan and Mahavir, were retained, whereas, he was made to suffer retrenchment. However, this averment has been denied in the written statement (Annexure P-5) to the appeal, wherein it is asserted that no workman junior to the appellant was retained, whereas, the appellant was retrenched.

(8) Contrary to the stand taken by the State, a management witness namely Yograj Singh, Clerk, the Haryana Roadways, Karnal, in his statement (Annexure P-7) has admitted as ; "It is correct that Mahavir and Sultan are working with us. But I do not know if they are junior or senior to the claimant." The appellant has also been very

consistent in taking this stand, and further in his evidence (Annexure P-6), before the Labour Court, he has reiterated the fact that Mahavir and Sultan, his juniors, were still working in the department.

(9) Besides, we may also refer to the aforesaid judgement of the Division Bench in the case of Balraj *versus* HUDA and others, which has been rendered in somewhat similar circumstances, as under :

“.....It is, thus, clear that the petitioner had specifically pleaded that persons junior to him had been retained in service. He supported this plea by oral statement. In this manner, he proved that the action of the employer was *prima facie* violative of Section 25-G of the Act. The respondents did not lead evidence to disprove the case set up by the petitioner. However, the Labour Court has not at all dealt with the issue relating to violation of Section 25-G of the Act. It has not recorded the finding that the persons junior to the petitioner were not retained in employment at the time of termination of his service. It must, therefore, be held that the Labour Court has failed to exercise the jurisdiction vested in it to decide the legality and justification of the termination of the services of the petitioner in a correct perspective and on this ground the impugned award is liable to be set aside.

In view of the above mentioned conclusion, we do not consider it necessary to deal with the other issues raised by the parties including the one relating to the petitioner's plea that he had completed 240 days of service. In our opinion, the same must be left to be decided by the Labour Court afresh in the light of the judgment of this Court dated 16th December, 1997 in CWP No. 2375 of 1997 'Rajpati *versus* Haryana Urban Development Authority and others.'

In the result, we allow the writ petition and set aside the award Annexure P-6 with a direction to the Labour Court, Panipat to decide Reference No. 56 of 1996 afresh after

COMMISSIONER SECRETARY, PRINTING AND STATIONERY, 363
HARYANA AND ANOTHER v. THE PRESIDING OFFICER, LABOUR
COURT, U.T., CHANDIGARH AND ANOTHER

(Augustine George Masih J.)

giving opportunity of hearing to the parties. We hope that the Labour Court will decide the matter within 4 months of the submission of certified copy of this order.....”

(10) Thus, we are of the considered view that the impugned judgment, dated 18th January, 2008, passed by learned Single Judge, in Civil Writ Petition No. 5318 of 2004, and also the award rendered by the Labour Court, dated 14th November, 2003, cannot endure, hence, they are set-aside. Resultantly, this LPA is allowed and the matter is remanded to the Labour Court, Panipat, for afresh consideration and decision in Reference No. 11 of 1998, after giving the opportunity of hearing to the parties, within a time frame of 4 months from the date of receiving a copy of this order. However, any discussion or observation made in the judgment shall not be taken as the expression of our views in deciding the Reference afresh.

(11) Parties shall appear before the Labour Court, Panipat, on the date to be fixed by the Presiding Officer of the Court.

R.N.R.

Before Augustine George Masih, J.

**COMMISSIONER SECRETARY, PRINTING AND
STATIONERY, HARYANA AND ANOTHER—*Petitioners***

versus

**THE PRESIDING OFFICER, LABOUR COURT, U.T.,
CHANDIGARH AND ANOTHER—*Respondents***

C.W.P. No. 20865 of 2008

13th February, 2009

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—S.33-C(2)—Labour Court granting benefit to technical staff for attending duties on Saturdays and Sundays—No separate rules governing conditions with regard to leave, workmen belonging to Industrial Staff cannot be discriminated with ministerial staff—High Court in earlier petition holding petitioners entitled to relief