Mohd. Ali vs The State Of Himachal Pradesh on 16 April, 2018

Equivalent citations: AIR 2018 SUPREME COURT 2194, 2018 (15) SCC 641, (2018) 3 PAT LJR 93, AIR 2018 SC (CIV) 2156, (2018) 3 LAB LN 257, (2018) 5 SCALE 717, (2018) 2 SCT 553, (2018) 6 SERVLR 251, (2019) 1 CALLT 51, (2018) 2 SERVLJ 63, (2018) 2 CURLR 1041, (2018) 126 CUT LT 547, (2018) 157 FACLR 1001, (2018) 2 ESC 349, (2018) 3 JLJR 86, 2018 (8) ADJ 2 NOC, AIRONLINE 2018 SC 25

Author: R.K.Agrawal

Bench: S. Abdul Nazeer, R.K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3803 OF 2018
(Arising out of Special Leave Petition (C) No. 19160 OF 2015)

Mohd. Ali .... Appellant(s)

Versus

State of H.P. and Others .... Respondent(s)

JUDGMENT

R.K.Agrawal J.

1) Leave granted.

2) The present appeal has been filed against the impugned judgment and order dated 18.11.2014 passed by the Division Bench of the High Court of Himachal Pradesh at Shimla in LPA No. 209 of 2011 whereby the High Court dismissed the appeal filed by the appellant herein against the judgment and order dated 07.07.2010 passed by learned single Judge in CWP No. 3761 of 2009.

3) Brief Facts:-

(a) Mohd. Ali-the appellant herein was engaged as Casual Labourer in the Agriculture Seed Multiplication Farm Bhagni, Dist. Sirmor, Himachal Pradesh on Muster roll basis during the year 1980. He worked as such till the year 1991 under different work schemes i.e., Rabi and Kharif and completed 240 days in a calendar year during the years 1980, 1981, 1982 and 1986 to 1989.

(b) It is the case of the respondents that during the period of engagement, the appellant had worked as follows:-

S.No.	Year	Number of days worked
2.	1981	297.5
3.	1982	289.5
5.	1984	4.5
8.	1987	284.5
12.	1991	19.5

It is further the case of the respondents that thereafter he abandoned the work without informing the Incharge Seed Multiplication Farm Bhagani and never returned to work.

(c) In the year 2005, the appellant herein made a representation to the State Government for making Reference under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). In pursuance of the Representation made by the appellant herein, the State Government made a Reference being No. 9 of 2005 to the Industrial Tribunal-cum-Labour Court, Shimla.

(d) Learned Presiding Judge, gave the Award dated 23.04.2009 in favour of the appellant herein and directed the respondent-State to reinstate the appellant in service with seniority and continuity while denying the back wages.

(e) Being aggrieved, respondent-State filed a writ petition being CWP No. 3761 of 2009 before the High Court at Shimla. Learned single Judge of the High Court, by judgment and order dated 07.07.2010, allowed the said writ petition and set aside the Award dated 23.04.2009.

(f) Being aggrieved by the order passed by learned single Judge, the appellant preferred a Letters Patent Appeal before the High Court. The Division Bench of the High Couort, vide judgment and order dated 18.11.2014 dismissed the Letters Patent Appeal while upholding the decision of learned single Judge.

(g) Aggrieved by the judgment and order passed by the Division Bench of the High Court, the appellant has preferred this appeal by way of special leave before this Court.

4) Heard Mr. M.C. Dhingra, learned counsel for the appellant and Mr. D.K. Thakur, learned Additional Advocate General for the respondent-State and perused the records. Point(s) for consideration:-

5) The short point that arises for consideration in the present case is whether in the present facts and circumstances of the instant case, the impugned order of the High Court calls for any interference?

Rival contentions:-

6) At the outset, learned counsel appearing on behalf of the appellant argued that the dismissal of the appellant was in violation of the provisions of Sections 25F read with Section 25B of the Act. Learned counsel further argued that the High Court misinterpreted Section 25B along with Section 25F of the Act. It was further submitted that it is not necessary that a workman has to complete the 240 days' period during the period of 12 months immediately preceding his disengagement. Rather, he argued that inasmuch as once the appellant completed 240 days of service in any calendar year of his employment then he becomes entitled for the benefits of provisions of Section 25F of the Act.

7) Learned counsel appearing for the respondent-State submitted that the service of the appellant herein was not retrenched but the appellant herein abandoned the work himself. Further, it was submitted that the appellant herein approached the State Government after a delay of more than 12 (twelve) years which was not properly explained by the appellant herein. Hence, the appellant herein was negligent qua his act and no interference is sought for by this Court in the matter.

Discussion:-

8) At this juncture, in order to appreciate the matter in controversy it is necessary to reproduce relevant portion of Section 25F and Section 25B of the Act which are as follows:

"25F. Conditions precedent to retrenchment of workmen. —No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; *****

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

25B. Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) ninety- five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case. Explanation.- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks."

9) It is a well known fact that the Industrial Disputes Act is a welfare legislation. The intention behind the enactment of this Act was to protect the employees from arbitrary retrenchments. For this reason only, in a case of retrenchment of an employee who has worked for a year or more, Section 25F provides a safeguard in the form of giving one month's prior notice indicating the reasons for retrenchment to the employee and also provides for wages for the period of notice. Section 25B of the Act provides that when a person can be said to have worked for one year and the very reading of the said provisions makes it clear that if a person has worked for a period of 240 days in the last preceding year, he is deemed to have worked for a year. The theory of 240 days for continuous service is that a workman is deemed to be in continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of retrenchment has actually worked under the employer for not less than 240 days.

10) In Surendra Kumar Verma and Others vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another (1980) 4 SCC 443, a three-Judge Bench of this Court has very categorically dealt with the theory of 240 days as contemplated under Section 25B of the Act. The relevant paragraphs of the judgment are reproduced hereinbelow:-

> "8....The provision appears to be plain enough. Section 25-F requires that a workman should be in continuous service for not less than one year under an employer before that provision applies. While so, present Section 25-B(2) steps in and says that even if a workman has not been in continuous service under an employer for a period of one year, he shall be deemed to have been in such continuous service for a period of one year, if he has actually worked under the employer for 240 days in the preceding period of twelve months. There is no stipulation that he should have been in employment or service under the employer for a whole period of twelve months. In fact, the thrust of the provision is that he need not be. That appears to be the plain meaning without gloss from any source.
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> 9. Now, Section 25-B was not always so worded. Prior to Act 36 of 1964, it read as follows:
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> "For the purposes of Sections 25-C and 25-F, a workman who, during a period of twelve calendar months, has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry.
>
> Explanation.—....
>
> The difference between old Section 25-B and present Section 25-B is patent. The clause "where a workman is not in continuous service ... for a period of one year" with which present Section 25-B(2) so significantly begins, was equally significantly

absent from old Section 25-B. Of the same degree of significance was the circumstance that prior to Act 36 of 1964 the expression "continuous service" was separately defined by Section 2(eee) as follows:

"(eee) 'continuous service' means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal, or lock-out or a cessation of work which is not due to any fault on the part of the workman;" Section 2(eee) was omitted by the same Act 36 of 1964 which recast Section 25-B. Section 25-B as it read prior to Act 36 of 1964, in the light of the then existing Section 2 (eee), certainly lent itself to the construction that a workman had to be in the service of the employer for a period of one year and should have worked for not less than 240 days before he could claim to have completed one year's completed service so as to attract the provisions of Section 25-F. That precisely was what was decided by this Court in Sur Enamel and Stamping Works Ltd. v. Workmen. The court said:

"On the plain terms of the Section 25-F only a workman who has been in continuous service for not less than one year under an employer is entitled to its benefit. 'Continuous service' is defined in Section 2(eee) as meaning uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal or a lock-out or a cessation of work which is not due to any fault on the part of the workman. What is meant by 'one year of continuous service' has been defined in Section 25-B. Under this section a workman who during a period of twelve calendar months has actually worked in an industry for not less than 240 days shall be deemed to have completed service in the industry. . . . The position (therefore) is that during a period of employment for less than 11 calendar months these two persons worked for more than 240 days. In our opinion that would not satisfy the requirement of Section 25-B. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a period of not less than 12 calendar months and, next that during those 12 calendar months had worked for not less than 240 days. Where, as in the present case, the workmen have not at all been employed for a period of 12 calendar months it becomes unnecessary to examine whether the actual days of work numbered 240 days or more." Act 36 of 1964 has drastically changed the position. Section 2(eee) has been repealed and S. 25-B(2) now begins with the clause "where a workman is not in continuous service . . . for a period of one year". These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months; it is not necessary that he should have been in the service of the employer for one whole year. So we hold that Usha Kumari and Madhu Bala are in the same position as the other appellants."

11) Further, this Court, in Mohan Lal vs. Management of M/s Bharat Electronics Limited (1981) 3 SCC 225, in paragraphs 10 and 12 held as under:-

"10. It was, however, urged that Section 25-F is not attracted in this case for an entirely different reason. Mr Markendeya contended that before Section 25-F is invoked, the condition of eligibility for a workman to complain of invalid retrenchment must be satisfied. According to him unless the workman has put in continuous service for not less than one year his case would not be governed by Section 25-F.....

12. Sub-section (2) incorporates another deeming fiction for an entirely different situation. It comprehends a situation where a workman is not in continuous service within the meaning of sub-section (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period of one year or six months, as the case may be, if the workman during the period of 12 calendar months just preceding the date with reference to which calculation is to be made, has actually worked under that employer for not less than 240 days. Sub-section (2) specifically comprehends a situation where a workman is not in continuous service as per the deeming fiction indicated in sub-section (1) for a period of one year or six months. In such a case he is deemed to be in continuous service for a period of one year if he satisfies the conditions in sub-clause (a) of clause (2). The conditions are that commencing (sic) the date with reference to which calculation is to be made, in case of retrenchment the date of retrenchment, if in a period of 12 calendar months just preceding such date the workman has rendered service for a period of 240 days, he shall be deemed to be in continuous service for a period of one year for the purposes of Chapter V-A. It is not necessary for the purposes of clause (2)(a) that the workman should be in service for a period of one year. If he is in service for a period of one year and that if that service is continuous service within the meaning of clause (1) his case would be governed by clause (1) and his case need not be covered by clause (2). Clause (2) envisages a situation not governed by clause (1). And clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of 12 calendar months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date i.e. the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favour of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F. On a pure grammatical construction the contention that even for

> invoking clause (2) of Section 25-B the workman must be shown to be in continuous service for a period of one year would render clause (2) otiose and socially beneficial legislation would receive a set back by this impermissible assumptions.

The contention must first be negatived on a pure grammatical construction of clause (2). And in any event, even if there be any such thing in favour of the construction, it must be negatived on the ground that it would render clause (2) otiose. The language of clause (2) is so clear and unambiguous that no precedent is necessary to justify the interpretation we have placed on it……" In view of the aforesaid principles laid down by this Court and also the categorical findings of the High Court, the contention of the appellant herein is not sustainable in the eyes of law since the provisions are very clear qua the calculation of period.

12) Further, it is an admitted position that though the appellant worked as such till 1991 under different work/schemes i.e. Rabi and Kharif and completed 240 days in a calendar year only during the years 1980, 1981, 1982 and 1986 to 1989 but he worked only for 195 days in the year 1990 and 19.5 days in the immediate preceding year of his dismissal which is below the required 240 days of working in the period of 12 calendar months preceding the date of dismissal, therefore, he is not entitled to take the benefits of the provisions of Section 25F of the Act and Division Bench of the High Court was right in dismissing the appeal of the present appellant.

13) In view of the foregoing discussion, we are not inclined to interfere in the decision passed by the High Court. The appeal is dismissed leaving parties to bear their own cost.

……J. (R.K. AGRAWAL) ……J. (S. ABDUL NAZEER)
NEW DELHI;

APRIL 16, 2018.