General Manager, Haryana Roadways vs Rudhan Singh on 14 July, 2005

Equivalent citations: AIR 2005 SUPREME COURT 3966, 2005 AIR SCW 4634, 2005 AIR - JHAR. H. C. R. 2447, (2005) 3 JCR 209 (SC), 2005 (7) SRJ 82, 2005 (2) UJ (SC) 932, 2005 (5) SLT 372, (2005) 34 ALLINDCAS 370 (SC), 2005 (3) SERVLJ 170 SC, 2005 (5) SCALE 433, 2005 (5) SCC 591, 2005 LAB LR 849, (2006) 3 ALLMR 26 (SC), 2006 (3) ALL MR 26 NOC, 2005 SCC (L&S) 716, (2005) 4 SUPREME 726, (2005) 5 SCALE 433, (2005) 3 JLJR 109, (2005) 3 ESC 484, (2005) 3 ALL WC 2492, (2005) 3 LABLJ 4, (2005) 3 LAB LN 754, (2005) 3 PAT LJR 207, (2005) 3 PUN LR 397, (2005) 3 SCT 559, (2005) 5 SERVLR 51

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Bench: R.C. Lahoti, G.P. Mathur, P.K. Balasubramanyan

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           CASE NO.:
Appeal (civil)  7501 of 2002

PETITIONER:
General Manager, Haryana Roadways

RESPONDENT:
Rudhan Singh

DATE OF JUDGMENT: 14/07/2005

BENCH:
CJI R.C. Lahoti,G.P. Mathur & P.K. Balasubramanyan

JUDGMENT:
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J U D G M E N T G.P. Mathur, J.

1. This appeal, by special leave, has been filed against the judgment and order dted 145.2001 of the High Court of Punjab and Haryana by which the writ petition preferred by the appellant challenging the award of Industrial Tribunal-cum-Labour Court, Rohtak directing reinstatement of the respondent Rudhan Singh with continuity of service and 50% back wages was dismissed.

2. The respondent Rudhan Singh was appointed in various capacities on a class IV post with the appellant Haryana Roadways and he worked from 16.3.1988 to 28.2.1989 with some breaks. Thereafter, he was not given any appointment. He raised a demand for being reinstated before the Conciliation Officer, Rohtak on 24.8.1991. The conciliation efforts having failed the State Government exercising powers under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short

the 'Act') made a reference to the Industrial Tribunal-cum-Labour Court, Rohtak as to whether the termination of service of the respondent is justified and valid, and, if not, to what relief he was entitled under law.

3. In his claim statement the respondent pleaded that he was appointed as Helper on 16.3.1988 on daily wage basis. His work and conduct was always satisfactory but his services were terminated on 28.2.1989 without assigning any reason. He further pleaded that neither any notice nor wages in lieu of notice were paid to him and as he had completed 240 days of service in a calendar year, the termination of his service was in violation of Section 25-F of the Act and, therefore, the same was liable to be set aside and he was entitled to be reinstated with continuity of service and full back wages. The appellant (management) filed a written statement on the plea that the respondent Rudhan Singh was initially appointed on daily wage basis for a fixed period from 16.3.1988 up to 31.3.1988. Thereafter, he was appointed as Washing Boy, Helper and Water Carrier as per the needs of the Department. According to the appellant the appointment of the respondent was for a fixed period which came to an automatic end and, therefore, it was not a case of retrenchment in view of Section 2(oo)(bb) of the Act and consequently Section 25-F of the Act had no application to the facts of the case. The respondent filed a replication controverting the please taken in the written statement and reasserting the contents of the claim statement. The parties adduced oral and documentary evidence in support of their case. The Industrial Tribunal-cum-Labour Court held that the respondent had worked for 264 days in one calendar year and, therefore, the termination of his service without complying with the requirements of Section 25-F of the Act was illegal as neither any notice nor salary in lieu thereof nor any retrenchment compensation was paid to him. Regarding back wages it was held that the same can be awarded to the workman keeping in view the actual loss suffered by him by remaining out of employment. Since the respondent was working on a class IV post and the said type of work was available in Haryana as large number of labourers come from Eastern UP and Bihar for doing that kind of work, the Industrial Tribunal-cum-Labour Court concluded that it cannot be held that the respondent did not earn any amount during the period he was out of employment. It was thus held that the respondent was entitled to 50% back wages. Accordingly an award was passed on 26.5.2000 directing reinstatement of the respondent on his previous post with continuity of service and 50% back wages. The appellant filed a writ petition challenging the award of the Industrial Tribunal-cum- Labour Court before the Punjab and Haryana High Court, which was dismissed on 14.5.2001.

4. Learned counsel for the appellant has submitted that the respondent had been appointed for a fixed period and his appointment came to an automatic end after the expiry of the period and, therefore, it was not a case of retrenchment in view of Section 2(oo)(bb) of the Act. It is true that in view of the aforesaid provision the termination of service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein would not amount to retrenchment in view of Section 2(oo)(bb) of the Act. However, such a plea that had been taken in the written statement does not appear to have been pressed before the Industrial Tribunal-cum-Labour Court nor the award shows that any evidence was led to substantiate such a plea that the respondent had been engaged on contract for a fixed period or his contractual employment had come to an end in accordance with any stipulation contained therein in that behalf.

This plea has also not been raised before the High Court and, therefore, it is not open to the appellant to raise a new plea at this stage.

5. Learned counsel for the appellant has next submitted that according to the own case of the respondent he was appointed on 16.3.1988 and his services were terminated on 28.2.1989 and thus he had not worked for one year and consequently Section 25-F of the Act would not apply to his case. In support of this submission reliance has been placed on Sur Enamel and Stamping Works Ltd. vs. The Workmen [AIR 1963 SC 1914], wherein it was held that under Section 25-F of the Act only a workman, who has been in continuous service for not less than one year under an employer, is entitled to its benefit. 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 he had worked for not less than 240 days. It was further held that a workman, who has not at all been employed for a period of 12 months, would not satisfy the requirements of Section 25-B of the Act and would not be entitled to the benefit under Section 25-F of the Act. It is important to note that Section 25-B of the Act, which contains the definition of 'continuous service' was amended by Act No. 36 of 1964 and the relevant part thereof reads as under: -

> "25-B. Definition of continuous service For the purpose of this Chapter, -
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> (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 authorized 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
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> (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
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> (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
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> (ii) two hundred and forty days, in any other case;
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> (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
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> (i) ninety-five days, in the case of a workman employed below ground in a mine; and
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> (ii) one hundred and twenty days, in any other case.

Explanation. - .... (omitted as not relevant for the present case)"

> This amended provision has been considered in Surendra Kumar Verma vs. The Central Government Industrial Tribunal-cum- Labour Court, New Delhi [AIR 1981 SC 422], where after noticing the ratio of Sur Enamel and Stamping Works Ltd. vs. The Workmen (supra), it was held as under: -
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> "Act 36 of 1964 has drastically changed the position. S. 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. ....."

In view of this authoritative pronouncement the requirements of Section 25-F of the Act would be satisfied if a workman has worked for 240 days in a period of 12 months and it is not necessary that he should have been in the service of employer for complete one year. The Industrial Tribunal-cum-Labour Court has recorded a finding that the respondent has worked for 264 days and this finding has not been challenged before the High Court. In this view of the matter the provisions of Section 25-F of the Act are clearly applicable and as neither any notice or wages in lieu of the period of notice nor any retrenchment compensation was paid to the respondent, his termination of service has to be held to be invalid.

6. The next question, which requires consideration is whether the respondent is entitled to any back wages. The Industrial Tribunal-cum- Labour Court awarded 50% back wages on the ground that in Rohtak District of State of Haryana work of the nature, which was being done by the respondent, is available in plenty as a large work force comes from Eastern UP and Bihar for doing such kind of work. However, a general observation has been made that keeping in view the facts and circumstances of the case it will be proper to award 50% back wages. The High Court has also not given any reason for upholding this part of the award.

7. In our opinion certain factors, which are relevant for forming an opinion regarding award of back wages, have been completely ignored and, therefore, the award on this point is vitiated. The list of dates given in the Special Leave Petition, which have not been controverted, show that though according to the own case of the respondent his services had been terminated on 18.2.1989, yet he served a demand notice praying for reinstatement in service after two and half years on 24.8.1991. The State Government made reference to the Industrial Tribunal-cum-Labour Court in the year 1997, which means eight years after the termination of service. Normally, a reference should not be made after lapse of a long period. A labour dispute should be resolved expeditiously and there is no justification for the State Government to sleep over the matter and make a reference after a long

period of time at its sweet will. It causes prejudice both to the workman and also to the employer. It is not possible for an employer to retain all the documents for a long period and then to produce evidence, whether oral or documentary, after years as the officers, who may have dealt with the matter, might have left the establishment on account of superannuation or any other reason. The employer is not at fault if the reference is not made expeditiously by the State Government, but it is saddled with an award directing payment of back wages without having taken any work from the concerned workman. The plight of the workman who is thrown out of employment is equally bad as it is a question of survival for his family and he should not be left in a state of uncertainty for a long period.

8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, i.e., whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period, i.e., from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year.

9. The written statement filed by the respondent shows that between 16.3.1988 to 31.10.1988 he had been given short term appointments as Helper, Wash Boy and Water Carrier with breaks of two days and seven days respectively on two occasions. After 31.10.1988 he was employed as Helper on 8.1.1989 after a gap of more than two months. This appointment was only up to 31.1.1989 and thereafter he was given fresh appointment on 7.2.1989, which came to an end on 28.2.1989. These facts show that the respondent had not worked continuously from 16.3.1988 to 28.2.1989 in the establishment of the appellant. A person appointed on daily wage basis gets wages only for days on which he has performed work.

10. In Smt. Saran Kumar Gaur and others vs. State of Uttar Pradesh and others [JT 1991 (3) SC 478], this Court observed that when work is not done remuneration is not to be paid and accordingly did not make any direction for award of past salary. In State of U.P. and Anr. vs. Atal Behari Shastri and anr. [JT 1992 (5) 523], a termination order passed on 15.7.1970 terminating the services of a Licence Inspector was finally quashed by the High Court in a writ petition on 27.11.1991 and a direction was issued to pay the entire back salary from the date of termination till the date of his attaining superannuation. This Court, in absence of a clear finding that the employee was not gainfully

employed during the relevant period, set aside the order of the High Court directing payment of entire back salary and substituted it by payment of a lumpsum amount of Rs.25,000/-. In Virender Kumar, General Manager, Northern Railways, New Delhi vs. Avinash Chandra Chadha and others [(1990) 3 SCC 472], there was a dispute regarding seniority and promotion to a higher post. This Court did not make any direction for payment of higher salary for the past period on the principle 'no work no pay' as the respondents had actually not worked on the higher post to which they were entitled to be promoted. In Surjit Ghosh vs. Chairman and Managing Director, United Commercial Bank and others [(1995) 2 SCC 474], the appellant (Assistant Manager in the Bank) was dismissed from service on 28.5.1985, but his appeal was allowed by this Court on 6.2.1995 as his dismissal order was found to be suffering from an inherent defect. His claim for arrears of salary for the past period came to about Rs.20 lakhs but this Court observed that a huge amount cannot be paid to anyone for doing no work and accordingly directed that a compensation amount of Rs.50,000/- be paid to him in lieu of his claim for arrears of salary. In Anil Kumar Gupta vs. State of Bihar [(1996) 7 SCC 83], the appellants were employed as daily wage employees in Water and Land Management Institute of the Irrigation Department of Government of Bihar and they were working on the posts of steno-typists, typists, machine operators and peons, etc. This Court allowed the appeal of the workmen and directed reinstatement but specifically held that they would not be entitled to any past salary. These authorities show that an order for payment of back wages should not be passed in a mechanical manner but host of factors are to be taken into consideration before passing any order for award of back wages.

11. In the case in hand the respondent had worked for a very short period with the appellant, which was less than one year. Even during this period there were breaks in service and he had been given short term appointments on daily wage basis in different capacities. The respondent is not a technically trained person, but was working on a class IV post. According to the finding of the Industrial Tribunal-cum-Labour Court plenty of work of the same nature, which the respondent was doing, was available in the District of Rohtak. In such circumstances we are of the opinion that the respondent is not entitled to payment of any back wages.

12. The appeal is accordingly partly allowed and the award of the Industrial Tribunal-cum-Labour Court insofar as it directs reinstatement with continuity of service is upheld but the award regarding payment of 50% back wages is set aside.

13. No costs.

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