Supreme Court of India
State Of Haryana vs Om Parkash And Anr. on 18 January, 1996
Equivalent citations: (1998) 8 SCC 733
Bench: A Ahmadi, S V Manohar
ORDER

1. Special leave granted.

2. Respondent 1 was appointed as a Daily-rated Workman by the Deputy Director, Department of Animal Husbandry on 10-8-1985. He stopped attending work with effect from 30-6-1986. He did not report for duty thereafter, but instead almost three years later, on 11-5-1989 he served a demand notice claiming reinstatement with attendant benefits under the Industrial Disputes Act, 1947 (hereinafter called "the Act"). A reference was, therefore, made under Section 10(1) of the Act to the effect: "Whether the services of Om Parkash were terminated or he abandoned the job himself? In either event, to what relief is he entitled?" The Industrial Tribunal-cum-Labour Court, Hissar, came to the conclusion that the employer had terminated his services which amounted to retrenchment and, therefore, he was entitled to the protection of Sections 25-F and 25-G of the Act. Noticing that there was a delay of almost three years preceding the demand notice, the authority took the view that since he was an illiterate and uneducated person unaware of his rights, the delay should be overlooked. The authority took the view that there had been a breach of Section 25-F and, therefore, the termination was invalid. He, therefore, directed reinstatement with full back wages and benefit of continuity in service, etc. The management feeling aggrieved has preferred this appeal.

3. Interim stay against the impugned award was granted on condition that the amount of back wages is deposited within 15 days. That condition has been satisfied. The High Court, in our view, was wrong in summarily rejecting the petition filed under Articles 226/227 of the Constitution because this, in our view, was a fit case where the jurisdiction was erroneously exercised by the Labour Court. The admitted facts show that after the first respondent was appointed with effect from 10-8-1985, he worked up to 30-6-1986 and thereafter ceased to report for work. The employer has not taken any step to terminate his service. He being a Daily-rated Workman himself chose to remain absent and it was after a period of almost three years that he raised a demand and the same came to be referred to the Industrial Tribunal-cum-Labour Court. The second question is whether there was a violation of Section 25-F of the Act. The authority below has come to the conclusion that he had worked for a period from 10-8-1985 to 30-6-1986 which would be less than one year. Therefore, the authority was wrong in concluding that he had worked for 240 days during 12 months immediately preceding the date of cessation of work. Besides no information was laid before the authority as to how many days during that period he had worked for, but in any case, he had not worked for 12 calendar months. There is also no evidence that he had worked for 240 days to satisfy Section 25-B of the Act. Therefore, the authority was wrong in coming to the conclusion that there was a violation of Section 25-F of the Act besides, as stated earlier, he himself voluntarily ceased to report for duty and there was no act on the part of the employer nor is there anything on record to suggest that the employer had refused work to him. Retrenchment within the meaning of Section 2(oo) means termination by the employer of the service of the workman for any reason whatsoever. Therefore, it contemplates an act on the part of the employer which puts an end to service to fall

within the definition of the expression "retrenchment" in Section 2(oo) of the Act. There was nothing of the sort in the instant case. It was the workman who ceased to report for duty and even after he ceased to report for duty, it is not his case that at any point of time he reported for duty and he was refused work. He straightaway proceeded to invoke the provisions of the Act and, therefore, this is a case in which the employer has done nothing whatsoever to put an end to his employment and hence the case does not fall within the meaning of Section 2(oo) of the Act. Therefore, the case does not attract Section 2(oo), nor does it satisfy the requirements of Section 25-F.

4. By virtue of the interim order of this Court, the workman has been paid back wages. If he has not withdrawn the same, the State may withdraw the same. But if he has withdrawn, we would not like to make an order for refund having regard to his economic condition. The appeal will stand allowed accordingly with no order as to costs.