

CASE NO.:
Appeal (civil) 2139 of 2007

PETITIONER:
State of Punjab

RESPONDENT:
Anil Kumar

DATE OF JUDGMENT: 25/04/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (C) No.20373 of 2005)

Dr. ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the order passed by a Division Bench of the Punjab and Haryana High Court summarily dismissing the writ petition filed by the appellant.

Background facts in a nutshell are as follows:

The respondent was engaged in the Punjab Roadways, Jalandhar Depot on daily-wage basis with effect from 6.2.1981. He was engaged on such basis in the Jalandhar Depot No. 2 from 15.9.1981 to 27.12.1981. Again, he was engaged on daily-wage basis in Punjab Roadways, Moga from 16.2.1983 to 30.9.1985. Such engagements were for specific periods. As there was no work for the respondent in Punjab Roadways, Moga, he was not engaged after 30.9.1985.

Respondent filed civil suit in the Civil Court at Jalandhar claiming that he was in continuous service. The learned Civil Court decreed the suit holding that the respondent was deemed to be an employee of appellant and he is entitled to back wages from the date of institution of the suit.

An appeal was filed in the Court of District Judge, Jalandhar by the appellant. The suit was withdrawn by the respondent and as such the judgment and decree dated 9.2.1991 lost their force. On 9.5.1994 respondent again filed a Civil Suit for declaration that his service in Punjab Roadways stood regularized since 5.2.1981. The said suit was dismissed by the Civil Judge (Jr. Division) on 12.10.1996. Respondent filed an appeal in the Court of District Judge, Jalandhar. The said appeal was again withdrawn on 17.9.1998.

A demand notice under the provisions of the

Industrial Disputes Act, 1947 (in short the 'Act') was served on the appellant on 29.9.1998 by the respondent. The matter was referred to the Labour Court, Jalandhar, for adjudication under the Act. Appellant filed written statement raising preliminary objections that (a) the reference was bad being belated, (b) the discontinuance was justified and (c) the appellant has already availed the opportunity in the civil court. The Labour court, Jalandhar passed an award directing reinstatement with 40% back wages from the date of demand notice i.e. with effect from 29.9.1998. A writ petition i.e. CWP No. 4748 of 2005 was filed by the respondent for the direction to the present appellant to implement the Award dated 12.11.2003. He joined duties on 1.4.2005.

The appellant also filed a Writ Petition before the High Court which was numbered as Civil Writ Petition No. 6927 of 2005.

The High Court dismissed the writ petition filed by the appellant. The High Court noted that the workman had worked for more than 240 days of service before his services were terminated and accordingly the award of the Labour court did not warrant any interference.

In support of the appeal, learned counsel for the appellant submitted that the civil suit filed, was thoroughly misconceived. In view of Section 2(oo)(bb) of the Act on expiry of the fixed period for which engagement was done, there was no scope for any direction for reinstatement. The demand for reference under the Act was made after 13 years.

Learned counsel for the respondent on the other hand submitted that there was a clear admission before the Labour Court that the respondent had worked for more than 240 days.

In view of the factual position as highlighted above, we do not find any infirmity in the order passed by the Labour Court as affirmed by the High Court so far as entitlement of the respondent-workman to be re-instated.

At the same time the fact that there was belated approach cannot be lost sight of. Admittedly, there was belated approach and the Labour Court was moved after 13 years.

In the peculiar circumstances of the case while upholding the direction for reinstatement, we direct that the directions given by the Labour court as affirmed by the High Court regarding payment of back wages need to be modified.

In the aforesaid background, the direction for payment of back wages stands set aside while the direction for reinstatement is maintained.

Appeal is allowed to the aforesaid extent. No costs.