CASE NO.:
Appeal (civil) 2554 of 2005

PETITIONER:
Punjab State Electricity Board

RESPONDENT:
Darbara Singh

DATE OF JUDGMENT: 17/11/2005

BENCH:
ARIJIT PASAYAT & R.V. RAVEENDRAN

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

The Punjab State Electricity Board (in short the 'Board') questions legality of the judgment rendered by a Division Bench of the Punjab and Haryana High Court holding that the respondent had rendered service in excess of 240 days in twelve calendar months preceding his retrenchment and, therefore, provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short the 'Act') were required to be followed. The High Court upheld the judgment of the Labour Court, Amritsar which had directed respondent's reinstatement with 25% back wages from the date of demand raised by the respondent.

The factual position in a nutshell is as under:

On 4.2.1988 the Board appointed respondent as Peon on daily wage basis from 8.1.1988 to 29.2.1988. It was indicated that if the work of the daily wager was not found satisfactory or if a regular employee joins, his services would be deemed to be terminated without any notice. It was also indicated therein that the daily wager was appointed against vacant post which was temporary in character. On 7.3.1988 the period indicated was extended on the same terms. There were similar extensions on 30.6.1988, 10.11.1988 and 7.4.1989. On 12.5.1989 one Surat Singh was appointed on a permanent basis. In terms of the orders of the engagement, the respondent's services were dispensed with in the month of June 1989 in terms of the terms and conditions of the contractual appointment. After about 8 years on 1.4.1997 the respondent sent a demand notice questioning the order of disengagement. The Presiding Officer, Labour Court passed an award on 14.1.2003 holding that disengagement of respondent was illegal and he was entitled to reinstatement. However, taking note of the delayed demand, the wages were restricted. The writ petition filed before the Punjab and Haryana High Court as noted above was dismissed.

Learned counsel for the appellants submitted that the appointment was for a fixed period and, therefore, the provisions of Section 2(oo)(bb) were clearly applicable. It was also submitted that the abnormal delay in raising the demand making a stale claim has been lightly brushed aside by the Labour Court and the High Court.

In response, learned counsel for the respondent

submitted that there was no definite material to show that the appointment was for a fixed period. On the contrary the respondent was permitted to work for several periods. As the respondent was representing to the authorities, it cannot be said that there was any delay. The plea in this regard has been accepted by the Labour Court. In fact, an appeal was filed on 7th September, 1989 and the appellant has failed to prove that the same was disposed of.

The position of law relating to fixed appointments and the scope and ambit of Section 2(00)(bb) and Section 25-F were examined by this Court in several cases.

In view of the findings in the background of the legal position, we do not consider it necessary to go into the question as to whether the demand raised after a long lapse of time is to be considered fatal.

We find that the High Court's judgment is unsustainable on more than one count. In Morinda Coop. Sugar Mills Ltd. v. Ram Kishan and Ors. (1995 (5) SCC 653) it was observed as follows:

"4. It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.

5. The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in clause (bb) of Section 2(oo) of the Act. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated hereinbefore and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work."

The position was re-iterated by a three-Judge Bench of this Court Court in Anil Bapurao Kanase v. Krishna Sahakari Sakhar Karkhana Ltd. and Anr. (1997 (10) SCC 599). It was noted as follows:

"The learned counsel for the appellant contends that the judgment of the High Court of Bombay relied on in the impugned order dated 28.3.1995 in Writ Petition No.488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if

the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In Morinda Coop.Sugar Mills Ltd. v. Ram Kishan, in para 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing; in para 4 it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, in para 5, it was held that it is not 'retrenchment' within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application. However, this Court has directed that the respondent management should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above."

Recently the question was examined in Batala Cooperative Sugar Mills Ltd. v. Sowaran Singh (2005 (7) Supreme 165).

Section 2(oo)(bb) reads as follows:

"(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -
(a) .....
(b) .....
(bb) termination of the service of the workman as a result of the 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".

The materials on record clearly establish that the engagement of the workman was for specific period and conditional. It was clearly indicated that on appointment of a regular employee, his engagement was to come to an end.

In view of the position as highlighted in Morinda Coop. Sugar Mills, Anil Bapurao and Batala Co-operatives cases (supra), the relief granted to the workman by the Labour

Court and the High Court cannot be maintained.

Therefore, the orders of the Labour Court and the High Court are clearly untenable and are quashed. Our interference shall not stand on the way of appellant considering the case of the respondent for engagement on such terms as is deemed proper by it. If question of any disqualification on account of crossing of age limit arises, the appellant shall condone it as a special case in view of the background facts of the case.

The appeal is allowed with no order as to costs.