Before Augustine George Masih, J.

DIVISIONAL FOREST OFFICER, FOREST DEPARTMENT, JIND,—***Petitioner***

versus

THE PRESIDING OFFICER-INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISSAR AND ANOTHER,—***Respondents***

C.W.P. No. 1593 of 2006

5th February, 2009

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—S. 25-B & 25-F—Termination of a daily wager—Workman not completing 240 days during last 12 preceding months—Labour Court ordering reinstatement on ground that workman completing 240 days in earlier years—Question of continuation of service for purpose of S. 25-F—Confined to only 12 months preceding to date of termination—Workman not entitled to grant of benefit of S. 25-F—Petition allowed, award holding reinstatement of workman with continuity of service and 50% back wages set aside.

(Suraj Pal Singh and others versus Presiding Officer, Labour Court No. III and another, 2002 Lab. I.C. 2897, not followed)

Held, that clause (2) of Section 25-B of the Act comes into play where the workman although has not continuously worked for one year but still would have completed 240 days and as per the deeming fiction, in case the workman completes 240 days in a calendar year in 12 months preceding his date of termination, it would be termed as continuous service entitling him the benefit of Section 25-F of the Act. This situation not being in the present case, as the workman has not completed 240 days, as has been held by the Labour Court in the impugned award, the workman would not be entitled to claim that she is in continuous service bringing her within the puview for granting the benefit under Section 25-F of the Act.

(Para 8)

Kartar Singh, AAG, Haryana, *for the petitioner.*

Ashwani Bakshi, Advocate, *for respondent No. 2.*

AUGUSTINE GEORGE MASIH, J. (ORAL)

(1) In the present writ petition, the challenge is to the award dated 20th May, 2005 (Annexure P-3) passed by the Industrial Tribunal-cum-Labour Court,—*vide* which the reference has been answered in favour of the workman holding her entitled to reinstatement with continuity of service and other consequential benefits alongwith 50% back wages from the date of issuance of the demand notice.

(2) Counsel for the petitioner contends that the learned Labour Court has totally overlooked the provisions of Section 25-B of the Industrial Disputes Act, 1947 (for short 'the Act'). It has in its finding clearly held that the workman has worked for less than 240 days during the last 12 preceding months from the date of her termination but still she has been held entitled to benefit of Section 25-F of the Act of the ground that the workman had in earlier years of her service completed more than 240 days.

(3) On the other hand, counsel for respondent No. 2 contends that as per the provisions of Section 25-B of the Act, it is dealing with two situations, clause (1) deals with the situation, where there is continuous service of the workman and Clause (2) would come into play only where the workman has completed less than one year of service and it is a deemed fiction as to what will be the continuous service of one year to give the workman the benefit of Section 25-F of the Act. He contends that the case of the workman in the present case would be covered by Clause (1) of Section 25-B of the Act. He contends this on the basis of his assertion that the workman is working since the year 1987 on daily wages as Beldar-cum-Chowkidar with the petitioner till the date of her termination i.e. 3rd September, 1999 and all through these years, there had been various ocassions, where the workman has completed 240 days. He relies upon a judgment of the Hon'ble Supreme Court in the case of **M/s U.P. Drugs and Pharmaceuticals Co. Ltd.** *versus* **Ramanuj Yadav and others, (1)** to

(1) 2003 (4) S.C.T. 408

substantiate his submission. Specific reliance has been made on para-11, which reads as follows :—

> "11.Learned counsel for the appellant, however, relies upon **Mohan Lal** *versus* **Management of M/s Bharat Electronics Ltd.** [(1981) 3 SCC 225]. In that case, the Court was considering the scope of Section 25-B of the I.D. Act. It was observed that in order to invoke the fiction enacted in clause (2) (a) of Section 25-B, 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 a period of 12 months, the workman has rendered service for a period of 240 days. It was held that if these three factors 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 qualifications enacted in Section 25-F. In Mohal Lal's case, the appellant was employed with the respondent from 8th December, 1973. His services were abruptly terminated by letter dated 12th October, 1974 with effect from 19th October, 1974. This Court said that it is not necessary for the purpose of Clause (2) (a) of Section 25-B that workman should be in service for a period of one year. It was held if he is in service for a period of one year and that service is continuous service within the meaning of clause (1), his services would be governed by clause (1) and his case need not be covered by clause (2). Clause (2) envisages the situation not governed by clause (1). 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 calender months counting backward and just preceding the relevant date the date of retrenchment.

These were the facts under which it was held as to how the period of 240 days was to be calculated. The decision in the case of Mohan Lal does not lay down that if workman had worked for more than 240 days in any number of years and if during the year of his termination, he had not worked for the said number of days, he would not be entitled to the benefit of Section 25-B. The question with which we are concerned was not under consideration in Mohan Lal's case. If the view point propounded by the Management is accepted, then in every year the workman would be required to complete more than 240 days. If in any one year the employer gives him actual work for less than 240 days, the service of the workman can be terminated without compliance of Section 6N of the UP Act, despite his having worked for number of years and for more than 240 days in each year except the last. Such an intention cannot be attributed to the UP Act. In the present case, as already noticed, for finding of the Labour Court is that the respondents worked for more than 240 dasy in each year from 1983 to 1986 but not having worked for 240 days in the year of termination, the termination was held by the Labour Court not to be violative of Section 6N. Reference may also be made to the decision in **Ramakrishna Ramnath** *versus* **Presiding Officer, Labour Court, Nagpur and another** (1970) 3 SCC 67, where this Court observed that the provision requiring an enquiry to be made to find out whether the workman has actually worked for not less than 240 days during a period of 12 calendar months immediately preceding the retrenchment does not show that a workman, after satisfying the test, has further to show that he has worked during all the period he had been in service of the employer for 240 days in the year. The interpretation propounded for the appellant is wholly untenable. The decision in **U.P. State Cooperative Land Development Bank Ltd.** *versus* **Taz Mulk Ansari and others** [1994 Supp. (2) SCC 745] relied upon by learned counsel for the appellant has no

applicability since that was a case of clause (a) of Section 6N and, therefore, Section 2 (g) had no relevance."

(4) Counsel for respondent No. 2, on the basis of this, contends that the question, which was under consideration before the Hon'ble Supreme Court in Mohal Lal's case was only whether the workman, who had worked for merely 10 months with the employer and, therefore, the deeming fiction of Section 25-B of the Act would be attracted in these circumstances that Court has held that the relevant date for taking into consideration 240 days as per this provision, would be the date of termination. He therefore, contends that the Court should not take into consideration only the 12 preceding calendar months before the date of termination but it has to be taken into consideration the earlier years as well and the benefit of 240 days, which the workman has worked in earlier years, would entitle her to the benefit to Section 25-F of the Act. He further relies upon a Single Bench judgment of the Delhi High Court in the case of **Suraj Pal Singh and others** *versus* **Presiding Officer, Labour Court No. III and another, (2)** wherein the High Court has held that the period under Section 25-B read with Section 25-F of the Act cannot be restricted to immediately preceding calendar year if the employee has worked for 240 days in any calendar year preceding his termination, the employee would be entitled to the benefit of Section 25-F of the Act.

(5) I have given my thoughtfull consideration to the submission as put forth by the counsel for the parties.

(6) Coming first to the present case, the factual position with regard to non-completion of 240 days in the last preceding 12 months from the date of her termination is not in dispute. Section 25-B (1) states that a workman shall be said to be in continuous service for a period if he is, for that period, in uniterrupted 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 lockout or a cessation of work which is not due to any fault on the part of the workman.

(7) A perusal of this provision would show that it would primarily apply to such workman who is appointed on a post without

(2) 2002 LAB.. I.C. 2897

any fixed tenure or on a regular basis or has attained such status under the statute/standing orders/rules governing the service and for such workman the continous period of service to be taken into consideration would be an un-interrupted service where in an establishment including therein the interruptions in service of the workman, which has been provided under clause (1). None of these interruptions has either been pleaded or proved during the proceedings before the Labour Court, which would come into play to bring the service of the workman the definition of the continuous service, as tried to be asserted by the counsel for the workman. Further, it is an admitted fact that she was working on daily wage basis as Beldar-cum-Chowkidar in the Forest Department. It has been held by a catena of judgments that daily wages has no right to the post as his employment starts with the shift and ends with the completion of that shift. Therefore, clause (1) of Section 25-B of the Act would not cover the claim of the workman with regard to her continuous service.

(8) Clause (2) of Section 25-B of the Act comes into play where the workman although has not continuously worked for one year but still would have completed 240 days and as per the deeming fiction, in case the workman completes 240 days in a calendar year in 12 months preceding his date of termination, it would be termed as continuous service entitling him the benefit of Section 25-F of the Act. This situation not being in the present case, as the workman has not completed 240 days, as has been held by the Labour Court in the impugned award, the workman would not be entitled to claim that she is in continuous service bringing her within the purview for granting the benefit under Section 25-F of the Act. The judgment relied upon by the counsel for the petitioner in the case of **M/s U.P. Drugs and Pharamceuticals Co. Ltd.** *(supra)* was passed under the provisions, as were applicable under the U.P. Industrial Disputes Act, 1947, where there is no such requirement as envisaged under Section 25-B of the Act with regard to the counting of completed 240 days in the preceding 12 calendar months prior to date of termination of the workman. In the light of the provisions applicable to the case of the workman, there the Court had accordingly observed that 240 days would be in any calendar year preceding the termination irrespective of the preceding 12 calendar months, as provided under Section 25-B of the Act.

(9) The Hon'ble Supreme Court in the case of **Surendranagar District Panchayat** *versus* **Dahyabhai Amarsingh, (3)** while dealing with a case, wherein the workman, who had more than 10 years of service with the District Panchayat, was terminated from service by an order dated 15th August, 1985. An application was moved before the Labour Court for direction to the employer (District Panchayat) to produce muster roll and salary register from the year 1976 to 1986. The stand of the employer was that the workman was never engaged permanently and he was employed for miscellaneous work i.e. whenever there was work he was called for it. It was alleged that the workman had not completed 240 days of continuous service in the 12 months preceding the date of termination of his services and, therefore, the provision of Section 25-F of the Industrial Disputes Act was not required to be followed. The Hon'ble Supreme Court while considering the provisions of Section 2 (oo) (bb), Section 25-F of the Industrial Disputes Act, had, in para 8, observed as follows :—

> "8. To attract the provisions of Section 25-F, one of the conditions required is that the workman is employed in any industry for a continuous period which would not be less than one year. Section 25-B of the Act defines continuous service for the purposes of Chapter V-A "Lay-off and Retrenchment".The purport of this Section is that if a workman has put in uninterrupted service of the establishment, including the service which may be interrupted on account of sickness, authorized leave, an accident, a strike which is not illegal, a lockout or cessation of work, that is not due to any fault on the part of the workman, shall be said to be continous service for that period. Thus the workman shall be said to be in continuous service for one year i.e. 12 months irrespective of the number of days he has actually worked with interrupted service, permissible under Section 25-B. However, the workman must have been in service during the period i.e. not only on the date when he actually worked but also on the days he could not work under the circumstances set out in sub-section

(3) 2005 (8) SCC 750

(1). The workman must be in the employment of the employer concerned not only on the days he has actually worked but also on the days on which he has not worked. The import of sub-section (1) of Section 25-B is that the workman should be in the employment of the employer for the continuous, uninterrupted period of one year except the period the absence is permissible as mentioned herein above. Sub-section (2) of Section 25-B introduces the fiction to the effect that even if the workman is not in continuous service within the meaning of Clause (i) of Section 25-B for the period of one year or six months he shall be deemed to be in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) of sub-section (2). By the legal fiction of sub-section (2) (a) (i), the workman shall be deemed to be in continuous service for one year if he is employed underground in a mine for 190 days or 240 days in any other case. Provisions of the Section postulate that if the workman has put in at least 240 days with his employer, immediately prior to the date of retrenchment, he shall be deemed to have served with the employer for a period of one year to get the benefit of Section 25-F."

(10) On these provisions, the Hon'ble Court was pleased to hold that the scope of enquiry before the Labour Court was confined to only 12 months preceding to the date of termination to decide the question of continuation of service for the purpose of Section 25-F of the Industrial Disputes Act. A Division Bench of this Hon'ble Court in the case of **Dhani Ram and others** *versus* **Presiding Officer, Labour Court-II, Faridabad and others, (4)** has in para-12 held as follows :—

"12. Section 25-B of the Act contemplates procedure for calculating 240 days which has to be evaluated during twelve calendar months preceding to the date of termination. In order to invoke the fiction enacted in Section 25-B of the Act, it is necessary to determine first the relevant date i.e.,

(4) 2007 (1) RSJ 294

the date of termination of service which is complained of as retrenchment. After ascertaining the date, move backward to a period of twelve months just preceding the date of termination and then ascertain whether within a period of 12 months, the workman has rendered service for a period of 240 days. These facts, if answered affirmatively in favour of the workman, it will have to be assumed that the workman is in continuous service for a period of one year. Thus, he would be taken to have satisfied the eligibility qualifications enacted in Section 25-F of the Act."

(11) In view of the above, I am in respectful disagreement with the judgment in the case of **Suraj Pal Singh and others** ***(supra)*** passed by the Hon'ble Delhi High Court.

(12) The present writ petition is allowed and the impugned award dated 20th May, 2005 (Annexure P-3) passed by the Industrial Tribunal-cum-Labour Court, Hissar, is set aside.

R.N.R.

Before M.M. Kumar & Jora Singh, JJ.

TAKSH-SHILA VIDYA MANDIR EDUCATION SOCIETY AND ANOTHER,—*Petitioners*

versus

HARYANA URBAN DEVELOPMENT AUTHORITY AND OTHERS,—*Respondents*

C.W.P. No. 11416 of 2007

24th February, 2009

Constitution of India, 1950—Art. 226—Haryana Urban Development Authority Act, 1977—S.17(3)—Haryana School Education Rules 2003—Chapter II, Rl.4—Allotment of plots by HUDA for establishing Primary/High School—Petitioners running schools for last 10 to 30 years—No classification with regard to Nursery/Primary/ Middle/Secondary and Senior Secondary level of