

(15) As a result, the stipulation contained in paragraph (v) by which the benefit of special increment was restricted to those Government employees who undergo sterilisation operation on or after July 20, 1981 is declared unconstitutional. Accordingly, the respondents are directed to refix the petitioners' pay by treating them as entitled to the grant of special increment. However, the payment of arrears of salary shall be confined to a period of 38 months preceding the date of the filing of the petition. In the circumstances of the case, there will be no order as to costs.

R.N.R.

Before : Hon'ble A. L. Bahri & V. K. Bali, JJ.

SHRI DAULAT RAM,—Petitioner.

versus

THE PRESIDING OFFICER, LABOUR COURT, CHANDIGARH
AND ANOTHER,—Respondents.

Civil Writ Petition No. 17287 of 1991

February 25, 1992.

Constitution of India, 1950—Art. 226 and 227—Industrial Disputes Act, 1947—S. 25 (h)—Labour Court upheld petitioners' retrenchment order,—vide award dated September 11, 1982—Thereafter respondent decided to fill 4 posts of peons—Did not appoint petitioner despite demand notice—Award of Labour Court dated September 31, 1990 declining claim of petition to post under section 25(h)—Whether previous award of Labour Court not having been challenged and becoming final operates as resjudicata—Held That right of workman to reemployment has no connection to legality of order of retrenchment—Impugned award of Labour Court cannot be sustained.

Held, that principle of resjudicata does not apply to the facts of the case as far as award dated September 11, 1982, passed by the Labour Court is concerned, which merely related to legality of the order of retrenchment passed. That order is not being reviewed by the petitioner when he approached the Labour Court second time for relief under section 25(h) of the Industrial Disputes Act for re-employment on account of new vacancies being there. The right of the workman, who has been retrenched, to get re-employment has no connection with the legality of the order of retrenchment passed. It is assumed that the workman was retrenched. It is only then that he can claim re-employment. The Labour Court in the impugned

award Annexure P/11 was, thus, misconceived of the legal position and the aforesaid order cannot be sustained.

(Para 3)

R. L. Chopra, Advocate, for the Petitioner.

Sanjay Majithia, Advocate with Rajesh Khurana, Advocate, for Respondent No. 2.

M. C. Berri, D.A.G. Punjab, for Respondent No. 1.

JUDGMENT

A. L. Bahri, J. (oral)

(1) Daulat Ram, petitioner, was employed as Peon-cum-Cook in 1972 by the Indian Red Cross Society, Haryana, Chandigarh. In August 1973 he was confirmed as Peon. Copy of the confirmation letter is Annexure P/2. In April 1981 he was retrenched from service,—vide order Annexure P/3. Matter was taken to the Labour Court, challenging the retrenchment. The petitioner failed. Award of the Labour Court was given on September 11, 1982. In 1986 respondent No. 2, the Red Cross Society, decided to fill four posts of Peons. The petitioner served a demand notice on July 22, 1986, Annexure P/4, calling upon the Society to re-employ him on one of the posts of Peons. The society did not agree. Again the matter was taken to the Labour Court in an Industrial dispute. The Labour Court gave award on December 3, 1990, Annexure P/11, declining the claim of the petitioner. Hence, the petitioner has approached this Court in this Writ petition for quashing the award of the Labour Court Annexure P/11.

(2) The claim of the petitioner is that after retrenchment he was to be re-employed on the post falling vacant or the new post being created subsequently, in view of the provisions of Section 25(h) of the Industrial Disputes Act. The stand of the Society/Respondent No. 2 is that the previous award of the Labour Court having not been challenged has become final and operates as *res judicata*. This was also held by the Labour Court in the impugned award Annexure P/11.

(3) After hearing counsel for the parties, we are of the opinion that there is merit in this petition. (Principle of *res judicata* does not apply to the facts of the case as far as award dated September 11 1982, passed by the Labour Court is concerned, which merely related to legality of the order of retrenchment passed. That order is not being reviewed by the petitioner when he approached the Labour Court second time for relief under Section 25 (h) of the Industrial

Disputes Act for re-employment on account of new vacancies being there. The right of the workman, who has been retrenched, to get re-employment has no connection with the legality of the order of retrenchment passed. It is assumed that the workman was retrenched. It is only then that he can claim re-employment. The Labour Court in the impugned award Annexure P/11 was, thus, misconceived of the legal position and the aforesaid order cannot be sustained.

(4) Learned counsel for the respondent has argued that since the petitioner was initially appointed as Peon-cum-Cook and the posts which have now been filled in 1986, were only for peons and the petitioner could not be accommodated. This contention again cannot be accepted. Order Annexure P/11 indicates that the petitioner was confirmed on the post of Peon. May be, he was initially appointed as Peon-cum-Cook but when he was retrenched, he was working as Peon, which is also clear from the order of retrenchment Annexure P/3. It is left to the respondent as to on what job the petitioner is to be put but suffice to say. That having been confirmed as Peon, he is entitled to be re-employed to the post of Peon.

(5) For the reasons recorded above, the award Annexure P/11 dated December 3, 1990, is quashed. Respondent No. 2 is directed to re-employ the petitioner on the post of a Peon with effect from April, 1986, when the last person was employed as Peon against the vacancies occurring then. The petitioner will be paid all the back wages and other benefits of service. It is directed that the respondent-Society would comply with the directions aforesaid within a period of two months. The Writ Petition stands allowed accordingly. No order as to costs.

J.S.T.

Before : Hon'ble A. L. Bahri & V. K. Bali, JJ.

THE PUNJAB STATE CO-OPERATIVE BANK LIMITED,
CHANDIGARH,—*Petitioner.*

versus

PRESIDING OFFICER, LABOUR COURT, CHANDIGARH AND
ANOTHER,—*Respondents.*

Civil Writ Petition No. 14016 of 1991

February 26, 1992.

Constitution of India, 1950—Art. 226 and 227—Industrial Disputes Act 1947—S. 10—Res judicata—Petitioners' services terminated—Order upheld in High Court—Whether subsequent proceedings taken under