

Before G. R. Majithia, J.

NARINDER KUMAR,—Petitioner.

versus

STATE OF HARYANA AND ANOTHER,—Respondents.

Civil Writ Petition No. 269 of 1990.

6th August, 1990.

Industrial Disputes Act (XIV of 1947)—Ss. 25-B, 25-F, 25-G & 25-H—Constitution of India, 1950—Art. 226—Retrenchment—S. 25-G—Scope of—Based on principle of 'First come last go'—Retrenchment in violation of S. 25-G—Workman re-employed—Back wages—Entitlement of.

Held, that where retrenchment has been made in violation of S. 25-G of the Industrial Disputes Act, 1947, but the workman has been taken back in service, he will be entitled to the back wages during the period he was not in service provided he was not gainfully employed anywhere. (Paras 5 & 6)

Civil writ petition under Article 226/227 of the Constitution of India praying that :—

- (1) That a writ, order or direction in the nature of certiorari be issued for quashing the order of termination, dated 1st December, 1989, Annexure P/8.*
- (2) that the Respondent No. 2 be directed to take the petitioner on duty.*
- (3) that in the meanwhile the operation of termination order be stayed.*
- (4) filing of certified copies be dispensed with.*
- (5) advance notice to Respondent be dispensed with.*
- (6) cost of the writ be granted.*

Mrs. Abha Rathore, Advocate, for the Petitioner.

Rameshwar Malik, Advocate, for the Respondents.

ORDER

G. R. Majithia, J.

(1) The petitioner has challenged the order of termination dated December 1, 1989 and sought a mandate to respondent No. 2 to re-employ him as enjoined by Section 25-H of the Industrial Disputes Act (for short the Act) in this petition under Article 226 of the Constitution of India.

(2) *Brief Facts :*

The petitioner was appointed on daily wages as a Helper on April 21, 1989. He continued in service till August 31, 1989, when his services were terminated. He was again taken in service on September 12, 1989, but the services were dispensed with on September 30, 1989. He was again appointed as helper with effect from 2nd November, 1989 to 30th November, 1989. He maintains that the persons junior to him, namely, Karambir, Surinder Kumar, Narinder Kumar, Rameshwar and Rambir Singh are continuing in service while his services have been terminated and after terminating his services, respondent No. 2, give fresh appointment to the following:—

1. Hasan Mohamand, S/o Shri Bakshi Kha.
2. Nafey Singh. S/o Shri Balbir Singh.
3. Bed Pal, S/o Shri Tej Ram.

The petitioner has stated that he has completed 181 days in the service of respondent No. 2. Termination has been made in violation of Section 25-B and 25-H of the Act.

(3) Respondent No. 2 did not controvert that the persons junior to the petitioner have been retained in service but pleaded that they have been working on daily wages in the workshop and their services will be discontinued when not required. It was admitted that after the order of termination of the services of petitioner was passed, three more persons were appointed. Respondent No. 2, however, defended his action on the ground that as the petitioner had rendered less than 240 days service preceding the filing of the petition so respondent No. 2 was fully competent to terminate his service..... The provision of Section 25-F was not applicable since the petitioner

Narinder Kumar v. State of Haryana and another
(G. R. Majithia, J.)

had only remained in service for 181 days and his discontinuation from service did not amount to retrenchment as defined under section 2(oo)(bb) of the Act.

(4) The learned counsel for the petitioner submits that the termination of the petitioner from service is hit by the provisions contained in Section 25-G of the Act. The said section of the Act is based on the principle of 'First come last go'. It says where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

(5) In the instant case, respondent No. 2 has stated that the persons junior to the petitioner have been retained in service but their services were likely to be terminated when the purpose for which they were appointed ceased to exist, but in fact they were continuing in service on the day when the written statement was filed. Resultantly, the services of the petitioner were terminated in violation of Section 25-G of the Act. If the retrenchment has been made in violation of Section 25-G of the Act, the workman is entitled to the payment of back wages provided that during the entire period he has not been gainfully employed. It will be useful to refer to the following observations in *Rajbir Singh and others vs. State of Haryana and others*, (1), where it was held thus:—

“A workman can be validly retrenched or the retrenchment can be illegal. The retrenchment can be considered illegal *inter alia* for the reason that principles laid down in Section 25-G had not been adhered to or where the workman had been in service for a year or more provisions of Section 25-F had not been complied with. In a case where retrenchment is found to be illegal the workman is entitled to reinstatement and to the payment of back wages if during the interregnum had not been gainfully employed.

The next question that arises for consideration is does a validly retrenched workman has not right under the law? Answer is in the affirmative. While a validly retrenched workman in the nature of things cannot as a matter of right seek reinstatement with backwages, Section 25-F of the Act nevertheless does accord a preferential treatment to him for re-employment if after the retrenchment of the workman a vacancy of similar or comparable post occurs in the given industrial establishment.”

(6) The petitioner has admittedly been taken back in service pursuant to the order passed by the Motion Bench on February 22, 1990. He is in service. Consequently he will be entitled to the back wages during the period he was not in service provided he was not gainfully employed anywhere. The writ petition is disposed of accordingly.

S.C.K.

Before G. R. Majithia, J.

INDERJIT BAHAL AND ANOTHER,—*Petitioners.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 9120 of 1990.

10th September, 1990.

Constitution of India, 1950—Arts. 14, 19(1) & (c), 19(4), 19(6), 300-A—Indian Council of World Affairs Ordinance, 1990—Ss. 2, 4 to 11, 15, 23—Societies Registration Act, 1860—Fundamental rights—Indian Council of World Affairs Ordinance—Ordinance incorporating a society into body corporate—Transferring assets of the society to body corporate—Right of membership and holding of office of Society effected—Constitutional validity questioned—Provisions of Ordinance, held, unconstitutional.

Held, that the provisions of the Ordinance have placed unreasonable restriction on the petitioners' fundamental right regarding freedom of speech and expression guaranteed by Article 19(1) (a) of the Constitution since the petitioners who are the office bearers of the Indian Council of World Affairs are entitled to