Before Rajiv Narain Raina, J.

SATPAL—*Petitioner*

versus

THE PRESIDING OFFICER, LABOUR COURT, AMBALA & ANOTHERS—*Respondents*

CWP No. 3900 of 2009

May 8, 2012

Constitution of India Article, 1950 - Art 226 & 227 - Industrial Disputes Act, 1947 - Ss. 2(00)(bb) & 25 F - Retrenchment - Labour Court held that daily wager being disengaged from service would not amount to retrenchment - Challenge thereto Disengaging a daily wage mali from his work whether amounts to retrenchment or not -No universal principle that every daily wage service falls in the exception clause - Present case does not falls under the exception (bb) to section 2(oo) of the act - Petitioner to be reinstated to service as daily wager/piece rate contract worker with right to back wages - Writ allowed.

Held, that there is no universal principle that every daily wage service falls in the exception clause of Section (bb) to the Section 2(oo) of the Act. Many other factors would have to be considered. For example, nature of the work, duties and responsibilities, mode and manner of payment.

In a case that the management pays daily wages at the end of the month an inference can be drawn that the intention is not to close the contract at sun set by handing over the daily wage before the worker goes home. Keeping these facts in view I tend to hold that the present case does not fall under Section (bb) to the Section 2(oo) of the Act. If this is so then Section 25-F would immediately raise its head and speak for the workman.

(Para 7)

Jasmeet Singh Bedi, Advocate, *for the petitioner.*

Kirti Singh, DAG, Haryana.

RAJIV NARAIN RAINA, J.

(1) The present petition has been filed under Articles 226 & 227 of the Constitution of India praying for quashing of the award dated 12.2.2008 (P-3) published in the gazette on 7.4.2008.

(2) The award has been passed by the Presiding Officer, Labour Court, Ambala. The reference has been answered against the petitioner-workman and no relief has been found admissible. It has been held that since the workman was a daily wage Mali, dis-engaging him from service would not amount to retrenchment and would instead be covered by exception (bb) to section 2(oo) of the Industrial Disputes Act, 1947 (for short 'the Act'). Therefore, violation of provisions of Sections 25-F to H of the Act would not make material difference in the present case.

(3) The brief facts of the case as stated by the petitioner workman are that the petitioner-workman was a daily wage Mali in the Forest Department from July, 1981 upto 28.11.2001 when his services were terminated by Thambu Ram, Forester illegally and in violation of the provisions of Sections 25-F to H of the Act. The reason given in the impugned order of termination Ex. W-3 was "*Removing the workers having Court cases from work*". This removal was in compliance of oral orders with reference to a letter dated 22.11.2001 from the Deputy Conservator of Forest, Kurukshetra. Thambu Ram, Forester was summoned by the petitioner-workman to tender evidence on the basis of summoned

record. In his testimony Thambu Ram admitted that the petitioner had worked from 1998 to 28.11.2001. The Labour Court returned a finding that the workman had not put in the necessary 240 days of work in the last 12 preceding calendar months prior to the order of termination issued and served on 28.11.2001. It was admitted that violation was committed of provisions of Section 25-F of the Act since neither notice nor retrenchment compensation was paid to the workman at the time of retrenchment. The workman had produced the seniority list Ex. W-4 of daily wage workers in the Forest Department (Territorial), Kurukshetra range showing 1982 as the date of joining in the case of the petitioner. The management has been unable to rebut continuous service from 1982 to 1998. It is stated that in para 3 of the written statement filed in the present case that old record of Thanesar Range of Kurukshetra Forest Division has been weeded out upto 31.1.1993 vide o/o no. 148 dated 14.1.1997 as per Rules 15.26 of Haryana Forest Manual Vol. II prior to file the petition bearing reference no. 139 of 2001.

(4) The defence of the respondent was that the petitioner had abandoned service. The Labour Court has not gone into the issue of abandonment, therefore, the defence would not come to the aid of the management since the Forest Department has not assailed the award. The Labour Court relied upon the following judgments to decide the reference against the workman-petitioner. ***Municipal Council, Smrala*** versus ***Raj Kumar (1), Reserve Bank of India*** versus ***Gopinath Sharma (2), SM Nilajkar and others*** versus ***Telecom District Manager, Karnataka (3), Himanshu Kumar Vidyarthi*** versus ***State of Bihar (4), Gangadhar Pillai*** versus ***Siemens Limited (5),*** and the judgment of this Court rendered in CWP No. 18587 of 2004 titled ***Tek Chand v. The Presiding Officer and others*** decided on 20.7.2007.

(5) I have heard learned counsel for the parties and have perused the record including the muster rolls.

---

(1) (2006) 3 SCC 81
(2) (2006) 6 SCC 221
(3) (2003) 4 SCC 27
(4) AIR 1997 SC 3657
(5) (2007) 1 SCC 533

(6) Learned counsel for the petitioner contends that the finding of the Labour Court that the case falls in the exception clause of Section (bb) to the Section 2(oo) of the Act is incorrect finding looking to the continuous service of the petitioner-workman from 1982 to 2001 or at any rate from 1998 to 2001. This finding is perverse and in gross misinterpretation of the provisions of Section (bb) to the Section 2(oo) of the Act. The type of cases which fall under Section (bb) to the Section 2(oo) of the Act have been explained in the Division Bench judgment of this Court in the Chairman, The Mewat Development Agency, Nuh v. Ravinder Balwan & another, LPA No. 2154 of 2011 decided on 25.11.2011, relevant part of which reads as under :-

> *"The Labour Court also does not appear to be acquainted with the object and reasons for introducing Section 2(oo) (bb) in 1984 by amendment. Section 2(oo)(bb) ordinarily was intended for such engagements that are under special contract, express or implied which come to an end by efflux of time, or fixed tenure under contract for a specified purpose which by nature is limited by time. We may give an example so that the Labour Court would construct a word picture in mind to help it decide cases in future. Suppose a Chef has been engaged by a Hotel to train cooks for a specified period, say one year and t he training is complete. The Cooks are trained. The contract is over. The Chef must exit out and such automatic disengagement would not have any reference to prior notice or payment of retrenchment compensation under Section 25-F of the Act. This is only by way of illustration open to be multiplied in myriad and different fact. situations presented in each case. No hard and fast rules can be laid down."*

(7) There is no universal principle that every daily wage service falls in the exception clause of Section (bb) to the Section 2(oo) of the Act. Many other factors would have to be considered. For example, nature of the work, duties and responsibilities, mode and manner of payment. In a case that the management pays daily wages at the end of the month an inference

can be drawn that the intention is not to close the contract at sun set by handing over the daily wage before the worker goes home. Keeping these facts in view I tend to hold that the present case does not fall under Section (bb) to the Section 2(oo) of the Act. If this is so then Section 25-F would immediately raise its head and speak for the workman. In ***Anoop Sharma*** versus ***Executive Engineer Public Health Division No.1, Panipat, Haryana (6);*** the Supreme Court has dealt with the case of daily wager in the context of violation of Section 25-F of the Act.

(8) The stand of the State-respondent is based on the Haryana Government circular letter dated 22.10.2003 directing implementation of policy of Piece Rate Contract System w.e.f. 1.12.2003 in the Forest Department. The Industrial Piece Rate Contract System would not deter this Court to order reinstatement of the workman at a stage prior to coming into force of the policy letter dated 20.10.2003. It would be open to the management to readjust the petitioner within the fold of the system w.e.f. 20.10.2003 in case this Court decides that the present is a fit case for quashing of the award and order reinstatement.

(9) Having given my thoughtful consideration on the nature of relief which could be granted in the present case I feel it would serve justice that this writ petition should be allowed. The principle laid down in Anoop Sharma's case (supra) deserves to be applied in the present case. Award of reinstatement along with back wages should fall from the date of termination, however, in the present I do not find any specific evidence of service of notice of demand for justice consequent upon termination in 2001 and would, therefore, be just and appropriate to order back wages from the date of notification dated 29.4.2005 upon which reference No. 60/2005 was registered.

(10) For the foregoing reasons, this writ petition is partly allowed. The impugned award dated 12.2.2008 (P-3) is quashed. The petitioner would be reinstated to service as daily wager /Piece Rate Contract worker with right to back wages from the date of reference.

A. Aggarwal

(6) 2010(3) SCC 497