2006 SCeJ 004
Supreme Court of India
Before : Justice S.B. Sinha, Justice P.K. Balasubramanyan

The Haryana State Agricultural Marketing Board

versus

Subhash Chand & Anr.

Appeal (civil) 1271 of 2006 [Arising out of SLP (C) No. 11804 of 2004]

24.02.2006

JUDGMENT:

S.**B. SINHA, J** - Leave granted.

The respondent was appointed on contractual basis as an Arrival Record Clerk. Such appointments were made during paddy seasons. The period of first appointment was from 17.10.1997 to 15.1.1998. Again in the next wheat season he worked under the appellant from 4.4.1998 to 1.7.1998. He was again appointed vide order dated 11.9.1998 and worked from 16.9.1998 till 13.12.1998. The terms and conditions of service as contained in the order dated 11.9.1998 in regard to the appellant are as under: "1. That the appointment will be on consolidated wages at he rate of Rs. 1536/- P.M. No other allowances will be admissible.

2. The period of engagement will be 89 days.

3. Services can be terminated/dispensed at any time without assigning any notice and reason and this will not confer any right for his/her being considered for regular appointment.

4. He/she will not entitle to any leave except one day casual leave for each complete month.

5. The unavailed casual leave shall lapse on the last day of calendar year.

6. His/her appointment on contract basis shall not confer upon any right for regularization of appointment.

7. He will be bound by office secrecy act and shall be required to maintain decorum as is expected under conduct rules of the Board.

8. His retention on contract basis shall firm the performance in the job assigned to him. He will have to join the duty within 100 days from the date of issue of this order failing which the engagement will stand cancelled automatically."

After termination of his services, the appellant raised an industrial dispute. The Government of Haryana made a reference thereof purported to be in exercise of its jurisdiction under Section 10(1) (c) of Industrial Disputes Act, 1947 (herein after referred to as 'the Act') to the Industrial Tribunal-cum- Labour Court, Panipat. It was registered as Reference No. 383 of 2000. Both parties filed their respective written statements before the Labour Court.

One of the disputes related to the total number of days of work completed by the workman in twelve months prior to the date of termination of his services. The appellant contended that the respondent had worked for 208 days whereas the contention of workman was that he had worked for 356 days.

The Labour Court inter alia held that the termination of services of the workman was in violation of the provision of Section 25-G of the Act and the management took recourse to unfair labour policy.

A writ petition filed by the appellant herein before the High Court of Punjab and Haryana being Civil Writ Petition No. 14737 of 2003 was dismissed by a Division Bench summarily. The appellant is, thus, before us.

Mr. Neeraj Kumar Jain, learned counsel appearing on behalf of the appellant raised a short question in support of this appeal. It was contended that the Labour Court as well as the High Court committed a manifest error in passing

the impugned judgment insofar as they failed to take into consideration the definition of retrenchment as contained in Section 2 (oo) (bb) of the Act. It was urged that the High Court failed to take into consideration that Chapter VA of the Industrial Disputes Act and consequently the Fifth Schedule appended to this Act would have no application herein. Mr. Jain submitted that Labour Court committed an illegality in coming to the conclusion that workmen junior to the respondent had been retrained in service as those employees were surplus employees and were retained under the directions of the State Government.

Mr. Mahabir Singh, learned senior counsel appearing on behalf of the respondent, on the other hand, would contend that in view of the fact that the workmen junior to the respondent were retained in service the provisions of Section 25-G besides 25-H of the Act had clearly been breached. It was submitted that the action on the part of the appellant amounts to unfair labour practice and in this behalf our attention has been drawn to clauses (b) and (d) of Item No. 5 as also clause (10) of the Fifth Schedule of the Industrial Disputes Act. It was also submitted that pursuant to the directions of the High Court the respondent has not yet been reinstated with entire wages and thus this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India. 'Retrenchment' has been defined in Section 2 (oo) of the Act to mean:

"□.2 (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) xxx xxx xxx (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;"

It is the contention of the appellant that the respondent was appointed during the 'wheat season' or the 'paddy season'. It is also not in dispute that the appellant is a statutory body constituted under the Punjab and Haryana Agriculture Produce Marketing Board Act. In terms of the provisions of the said Act, indisputably, regulations are framed by the Board laying down terms and conditions of services of the employees working in the Market Committees. A bare perusal of the offer of appointment clearly goes to show that the appointments were made on contract basis. It was not a case where a workman was continuously appointed with artificial gap of 1 day only. Indisputably, the respondent had been re-employed after termination of his services on contract basis after a consideration period (s).

In Municipal Council, Samrala v. Raj Kumar [Civil Appeal Nos.299- 300 of 2006] disposed of on 6th January, 2006, wherein, in the offer of appointment it was specifically averred that "his services will be availed till it is considered as fit and proper and necessary. After that his services will be dispensed with", which was accepted by the employee by affirming an affidavit to the effect that he would not have any objection, if Municipal Corporation dispensed with his services and thereby acknowledged its right to that effect, this Court held :

"Clause (oo)(bb) of Section 2 contain an exception. It is in two parts. The first part contemplates termination of service of the workman as a result of the non-renewal of the contract of employment or on its expiry; whereas the second part postulates termination of such contract of employment in terms of stipulation contained in that behalf□"

[See also Punjab State Electricity Board. v. Darbara Singh □ (2006) 1 SCC 121 and Kishore Chandra Samal v. Orissa State Cashew Development Corpn. Ltd.,Dehnkanal. □ (2006) 1 SCC 253] The question as to whether Chapter VA of the Act will apply or not would dependent on the issue as to whether an order of retrenchment comes within the purview of Section 2 (oo) (bb) of the Act or not. If the termination of service in view of the exception contained in clauses (bb) of Section 2(oo) of the Act is not a

'retrenchment', the question of applicability of Chapter VA thereof would not arise.

Central Bank of India V. S. Stayam & Ors. [1996 (5) SCC 419], whereupon reliance was placed by Mr. Singh, is itself an authority for the proposition that the definition of 'retrenchment' as contained in the said provision is wide. Once it is held that having regard to the nature of termination of services it would not come within the purview of the said definition, the question of applicability of Section 25-G of the Act does not arise.

In State of U.P. V. Neeraj Awasthi & Ors. [2006 (1) SCC 667] wherein this Court upon taking into consideration the provisions of the U.P. Agricultural Produce Markets Board (Officers and Staff Establishment) Regulations,1984 held that it is not permissible to regularize the services of the employees although they might have worked for more than 240 days within a period of twelve months preceding such termination In Regional Manager, SBI V. Rakesh Kumar Tewari [2006 (1) SCC 530] a distinction was made between the provisions of Sections 25-G and 25-H in the following terms:

"No conditions of services were agreed to and no letter of appointment was given. The nature of the respondents' employment was entirely ad hoc. They had been appointed without considering any rule. It would be ironical if the persons who have benefited by the flouting of the rules of appointment can rely upon those rules when their services are dispensed with."

Reliance placed by Mr. Mahabir Singh upon Fifth Schedule of the Industrial Dispute Act is again of no assistance. Clauses (b), (d) of Item No. 5 as also clause (10) of the Fifth Schedule are as under:

"5. To discharge or dismiss workmen *** *** ***

(b) not in good faith, but in the colourable exercise of the employer's rights;

*** *** ***

(d) for patently false reasons;

(10) to employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."

No case has been made out for attracting Clauses (b) and (d) of item No. 5. As regard applicability of clause (10) thereof, we may notice the meaning of 'status' and 'privilege'.

In P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd edition, Volume 4, at page 4469, the expression "status" has been defined as under:

"Status is a much discussed term which, according to the best modern expositions, includes the sum total of a man's personal rights and duties (Salmond, Jurisprudence 253, 257), or, to be verbally accurate, of his capacity for rights and duties. (Holland, Jurisprudence 88).

The status of a person means his personal legal condition only so far as his personal rights and burdens are concerned. Dugganna v. Ganeshayya, AIR 1965 Mys 97, 101. [Indian Evidence Act (1 of 1872), S. 41] In the language of jurisprudence status is a condition of membership of a group of whicih powers and duties are exclusively determined by law and not by agreement between the parties concerned. (Roshan Lal v. Union, 1967 SLR 832)."

[See also the judgment of this Court delivered in B.H.E.L & Anr. v. B.K. Vijay & Ors., 2006 (2) SCALE 195] The word 'privilege' has been defined, at page 3733, as under: "Privilege is an exemption from some duty, burden, or attendance to which certain persons are entitled; from a supposition of Law, that the stations they fill, or the offices they are engaged in, are such as require all their care; that therefore, without this indulgence, it would be impracticable to execute such offices, to that advantage which the Public good requires.

A right or immunity granted as a peculiar benefit; advantage or favour; a peculiar or personal advantage or right, especially when enjoyed in

derogation of a common right.

Immunity from civil action may be described also as a privilege, because the word "privilege" is sufficiently wide to include an immunity.

The word 'privilege' has been defined as a particular and peculiar benefit or advantage enjoyed by a person.

Privileges are liberties and franchises granted to an office, place, town or manor, by the King's great charter, letters patent, or Act of Parliament."

In view of the aforementioned definitions of the expressions 'status' and 'privilege' it must be held that such 'status' and 'privilege' must emanate from a statute. If legal right has been derived by the respondent herein to continue in service in terms of the provisions of the Act under which he is governed, then only, the question of depriving him of any status or privilege would arise. Furthermore, it is not a case where the respondent had worked for years. He has only worked, on his own showing, for 356 days whereas according to the appellant he has worked only for 208 days. Therefore, Fifth Schedule of the Industrial Disputes Act, 1947 has no application in the instant case. In view of the above, the dispensing with of the engagement of the respondent cannot be said to be unwarranted in law.

For the foregoing reasons, we are of the opinion that the impugned judgment cannot be sustained which is set aside accordingly. The Award of the Industrial Tribunal-cum-Labour Court is set aside. In the facts and circumstances of the case, the parties shall bear their own costs. The appeal is allowed accordingly.