

Before J. V. Gupta, J.

RAM LAKHAN SINGH,—Petitioner.

versus

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

Civil Writ Petition No. 4200 of 1982

January 21, 1988.

Industrial Disputes Act (XIV of 1947)—Section 25-F—Petitioner-workman employed as part-time Mali for two hours and subsequently for four hours—Office shifted from residential building to commercial site on first floor—Petitioner/workman appointed as Chowkidar on ad-hoc and temporary basis for 89 days—Whether the appointments are separate and distinct—Whether petitioner/workman has completed 240 days or not as to claim the benefit of Section 25F.—Part time employees—Such employees if covered by the Act.

Held, that admittedly, the petitioner was appointed as Chowkidar on 6th February, 1981 and his services were terminated on 18th June, 1981. By that time he had not completed 240 days. The earlier period when he was appointed as Mali for two hours only with effect from 14th July, 1980 and then for four hours only with effect from 6th November, 1980 could not be counted towards 240 days. The appointment of the petitioner as Mali for two hours and four hours subsequently was altogether separate and distinct appointment, taking into consideration that the office was situated in a residential building. Part time employees are not covered by the Act. (Para 7).

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that after calling for the record of the Petitioner in this case :

- (a) a writ of Certiorary quashing the impugned award Annexure P-3 may be issued;*
- (b) a writ of Mandamus directing the Respondents to take the Petitioner back into service with all back wages, back benefits and continuity in service may be issued;*
- (c) any other appropriate writ order or direction as deemed fit under the circumstances of the case may be issued;*
- (d) the operation of the impugned award—Annexure P-3 may be stayed during the pendency of the Writ Petition;*
- (e) the services of notices on Respondents as required under the High Court Rules and Orders and filing of certified copies of Annexures may be dispensed with; and*
- (f) The Petition may be accepted with cost.*

K. L. Arora, Advocate, for the Petitioner.

Vinod Sharma, Advocate, for the Respondent No. 2.

JUDGMENT

J. V. Gupta, J.

This writ petition is directed against the award of the Labour Court, Union Territory, Chandigarh, dated 19th March, 1982.

(2) On 14th July, 1980 Ram Lakhan Singh — the petitioner-workman — was employed as a part-time Mali for two hours a day at a remuneration of Rs. 73 per month. On 6th November, 1980 the employment of the workman was modified to four hours a day at a salary of Rs. 113.50 P. per month. On 6th February, 1981 the petitioner was given an *ad hoc* and temporary appointment as a Chowkidar for a period of 89 days. His services as Chowkidar were eventually terminated on 18th June, 1981,—*vide* order Annexure P1. An industrial dispute was raised by the workman with regard to the termination of his services, for which reference was made under clause (c) of sub-section (1) of section 10 of the Industrial Dispute Act. The matter referred for adjudication being:—

“Whether the services of Shri Ram Lakhan Singh were terminated illegally by the Management of Punjab Agro Industrial Corporation Ltd., Chandigarh ? If so, to what effect and to what relief he is entitled to, if any ?”

According to the claim of the workman before the Labour Court, he had been in continuous and uninterrupted employment of the Punjab Agro Industries Corporation Ltd. from 14th July, 1980 to 18th June, 1981 and the termination of his services was retrenchment under the Industrial Disputes Act. Since there was non-compliance with the provisions of Section 25-F of the Act, his termination was thus illegal. He claimed reinstatement with full back wages.

(3) The stand taken by the Management was that the workman was not covered by the provisions of section 25-F of the Act, as he had not worked for more than 240 days, nor was he appointed for a year. It was pleaded that he was appointed only on *ad hoc* basis for a period of 89 days and had been removed from service as per the terms and conditions of his appointment letter. It was also made clear in the written statement that initially Ram Lakhan Singh was appointed for two hours a day and then for four hours a

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day. At that time the office of the respondent was situated in a residential building in Sector 19-A, Chandigarh. Later when the office was shifted to the first floor of Shop-cum-Office No. 315-16, Sector 35-B, Chandigarh, there being no need for a Mali, the petitioner was then appointed as a Chowkidar on *ad hoc* basis for 89 days. Since the petitioner was only a part-time employee till 6th February, 1981 while he worked as a Mali this period could not be treated as his continuous period of employment as Chowkidar under the management. It was only on 6th February, 1981 that the petitioner was appointed as Chowkidar and that too on *ad hoc* basis for 89 days. He was relieved from service on 18th June, 1981 when during regular selection for the post of Chowkidar he was found to be over-age for appointment to this post.

(4) The Labour Court on the pleadings of parties framed the following issues:—

- “1. Whether the benefits of the provisions of Section 25-F of the Industrial Disputes Act are available to the workman? If not, to what effect ?
2. Whether the workman was appointed only on *ad hoc* basis for a period of 89 days and was relieved from service as per the terms and conditions of his appointment? If so, to what effect ?
3. Whether the services of the workman were terminated illegally by the management. If so, to what effect ?
4. Relief.”

The Labour Court concluded that “in this view of the matter, it cannot but be held that the appointment of Ram Lakhan Singh as Mali was a separate and distinct appointment from that of his appointment as Chowkidar without giving him the benefit of adding this period on to his subsequent employment as Chowkidar.” The Labour Court also found that “there is no dispute in this case that he was relieved from service as Chowkidar as per the terms and conditions of his appointment.” Ultimately it was concluded that the workman was not entitled to the benefit of the provisions of section 25-F of the Industrial Disputes Act as his services were not terminated illegally by the management.

(5) Learned counsel for the petitioner vehemently contended that the provisions of Section 25-F of the said Act were attracted as the workman had completed 240 days and since he was not paid compensation as required under clause (b) of Section 25-F, the termination was illegal. According to the learned counsel, termination by efflux of time also amounts to retrenchment if the workman has completed 240 days. In support of his contention he referred to *M/s Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa and others*, (1) He also referred to *Mohan Lal v. The Management of M/s. Bharat Electronics Ltd.* (2) to contend that the termination amounted to retrenchment because of the non-compliance of section 25-F of the Industrial Disputes Act. It has been wrongly held by the Labour Court that his services as a Mali could not be counted for completion of 240 days because, according to the learned counsel, the petitioner did fall within the definition of 'retrenchment' read with section 2(s) of the said Act. In support of his contention he referred to *A. M. Mazdoor Biri Co. v. Industrial Tribunal III at Allahabad and others* (3), where the persons working on piece rate basis were held to be workmen.

6. On the other hand, the learned counsel for the management-respondent No. 2 submitted that the Labour Court has given a categorical finding that the appointment of the petitioner as Mali was a separate and a distinct appointment from that of his appointment as Chowkidar and, therefore, he could not be given the benefit of adding this period to his subsequent employment as Chowkidar. According to the learned counsel, this being a finding of fact could not be interfered with in writ jurisdiction. Moreover, according to the learned counsel, the petitioner could not be said to be a workman when he was employed for a part-time of two hours and four hours a day. In support of this contention he referred to *Rangamannar (G.) (Satyanarayana Rice Mills, Nellore) v. Industrial Tribunal, Hyderabad, and another* (4).

(7) I have heard the learned counsel for the parties. The main question to be decided in this petition is whether the petitioner has completed 240 days or not as to claim the benefit of section 25-F of the Industrial Dispute Act. Admittedly, the petitioner was appointed as Chowkidar on 6th February, 1981 and his services were

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- (1) AIR 1977 S.C. 31
 - (2) AIR 1981 S.C. 1253
 - (3) AIR 1967 All. 568.
 - (4) 1959 (II) L.L.J. 565.

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terminated on 18th June, 1981. By that time he had not completed 240 days. The earlier period when he was appointed as Mali for two hours only with effect from 14th July, 1980 and then for four hours only with effect from 6th November, 1980 could not be counted towards 240 days. The appointment of the petitioner as mali for two hours and four hours subsequently was altogether separate and distinct appointment, taking into consideration that the office was situated in a residential building. That being so, there is nothing wrong or illegal in the finding of the Labour Court that it was a separate and distinct appointment from that of his appointment as Chowkidar. The matter as to whether part-time employment was an employment for the purpose of Industrial Disputes Act or not, came up for consideration before the Andhra Pradesh High Court in *Rangamannar Chetti's case* (supra). It was observed therein :—

“The point urged for setting aside the aforesaid award is that part-employment is inconsistent with the relationship of master and servant, Sastri would not be an employee within the meaning of the Industrial Disputes Act, XIV of 1958, and therefore the tribunal would not have the jurisdiction to determine the main question. It is now well settled that if a person be not an employee within the meaning of the Act, questions cannot be referred to the tribunal under the enactment. Further there are several decisions by industrial tribunals to which reference has been made before me that part-time employees are not covered by the Act.”

No judgment taking the contrary view has been cited at the bar.

(8) In this situation, the writ petition fails and is dismissed with no order as to costs.

P. C. G.

Before M. R. Agnihotri, J.

GHARSI,—Petitioner.

versus

COLLECTOR, NARNAUL AND OTHERS,—Respondents.

Civil Writ Petition No. 3310 of 1979.

February 9, 1988.

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Ss. 2(g), 13-A and 13-B as added by Amendment Act (II of