

appeal within the time of appeal commencing from the date of his knowledge. In all such cases where there is no proper proof of service the period of limitation would be deemed to commence from the date of the knowledge of the aggrieved party.

(8) Both the collector and the learned Additional District Judge apparently appear to have assumed wrong presumption of law with the result the petitioner was deprived of his valuable right of being heard in the matter which has adversely affected him as he has been directed to pay stamp duty on the enhanced value of the property purchased by him. The orders impugned in this petition, Annexure P/1 and P/2, are, therefore, liable to be quashed.

(9) Accordingly the writ petition is allowed and the orders impugned in this petition are set aside. The case is remanded back to the collector, Gurgaon for affording the petitioner an opportunity of being heard before passing appropriate orders under Section 47-A of the Act. The petitioner through his counsel is directed to appear before the Collector, Gurgaon on 6th February, 1995. In case the petitioner does not appear before the Collector on the date fixed, the Collector, Gurgaon shall be at liberty to proceed *ex parte* against the petitioner and in that event, the petitioner will not raise any objection regarding the non-service upon him.

J.S.T.

Before Hon'ble Ashok Bhan & H. S. Brar, JJ.

PEPSU ROAD TRANSPORT CORPORATION, PATIALA.  
—Petitioner.

versus

PRESIDING OFFICER, LABOUR COURT, PATIALA & ANOTHER.  
—Respondents.

C.W.P. No. 15981 of 1991

19th July, 1994

Constitution of India, 1950—Articles 226/227—Industrial Disputes Act, 1947—Section 25-F—Termination of employee—Loss of lien from service—Such termination whether amounts to retrenchment.

*Held*, that the order of loss of lien from service would amount to retrenchment as defined under Section 2(oo) of the Act. Provisions of Section 25-F of the Act are attracted and the order passed without complying with the provisions of the said Section is bad in law.

(Para 9)

Raman Mahajan, Advocate, for the Petitioner.

Arun Palli, Advocate, for the Respondent.

JUDGMENT

*Ashok Bhan, J.*

(1) This writ petition was admitted to Division Bench as the correctness of law laid down in *Siri Ram v. Pepsu Road Transport Corporation and another* (1), was in doubt wherein it was held that termination of a workman employed with Pepsu Road Transport Corporation (hereinafter referred to as the PRTC) remaining absent from duty would not amount to retrenchment and, therefore, the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), would not be attracted. The learned Single Judge in *Siri Ram's case* (supra) relied upon an unreported Division Bench judgment of this Court in *Pepsu Road Transport Corporation, Patiala through Shri N. S. Cheema, General Manager v. The Labour Court, Patiala and others*, C.W.P. No. 4299 of 1981 decided on 5th April, 1984 (this reliance was wrongly placed as this judgment had taken a view to the contrary to the proposition referred to above).

(2) Gurkirat Singh respondent No. 2 (hereinafter referred to as the workman) admittedly remained absent from duty for more than ten days without sanctioned leave. Notice was sent to him asking him to report for duty which he did not comply with. Action was taken under the provisions contained in PRTC (Condition of Appointment and Regulations) 1981 which provides that a workman would lose his lien on the job if he remains absent from duty without sanctioned leave for more than ten days. The workman being aggrieved claimed a reference under the Act.

(3) The following dispute was referred to the Labour Court for adjudication under section 10 (1) (C) of the Act :—

Whether termination of services of Shri Gurkirat Singh, workman is justified and in order ? If not, to what relief/ exact amount of compensation is he entitled ?

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Case of the petitioner was that he had put in six years of service under PRTC—respondent as Driver and that his services had been wrongly terminated without any notice, charge-sheet enquiry or compensation. He claimed reinstatement with continuity of service with full back wages.

(4) Petitioner-management contested the reference on the ground that the services of the workman have been terminated by the Senior Depot Manager, Chandigarh, as the workman was wilfully absent from duty ; that the action was taken against the workman under the rules applicable i.e. P.R.T.C. (Conditions of Appointment and Regulations) 1981. A preliminary objection was also taken to the effect that the reference was not maintainable and that the Labour Court had no jurisdiction to adjudicate upon the reference.

(5) On the pleadings of the parties, the following issues were framed :—

1. Whether the reference is not maintainable and this Court has no jurisdiction to try this reference ?
2. Whether the order of termination of services of the workman is justified and in order ?
3. Relief.

(6) Trial Court decided issue No. 1 in favour of the workman. Under issue No. 2, it was held that the loss of lien would amount to retrenchment and as the services of the workman had been retrenched without following the provisions of Section 25-F of the Act, the order of termination of the services of the workman cannot stand. In view of the finding recorded on issue No. 2, the Labour Court ordered that the workman was entitled to reinstatement with continuity of service with full back wages. Aggrieved against the order of the Labour Court, the present writ petition has been filed by the management.

(7) We have heard the learned counsel for the parties at length.

(8) The main reliance of the petitioner was on *Siri Ram's case* (supra) in which it was held that loss of lien tantamounts to termination from service and not to retrenchment and, therefore, provisions

of section 25-F of the Act were not attracted. No doubt, **this** judgment does not support the contention raised by the counsel for the petitioner. Learned Single Judge in *Siri Ram's case* (supra) placed reliance upon the unreported Division Bench judgment of this Court in C.W.P. No. 4299 of 1981 (referred to above). We have gone through the decision in *Pepsu Road Transport Corporation, Patiala, through Shri N. S. Cheema, General Manager v. The Labour Court, Patiala and others* C.W.P. No. 4299 of 1981. The view taken by the Division Bench is contrary to the view taken by the learned Single Judge in *Siri Ram's case* (supra). The Division Bench while approving the view taken by another learned Single Judge in *Pepsu Road Transport Corporation Patiala v. Presiding Officer, Labour Court, Patiala* (2), held as under :

“The question whether loss of lien under the Standing Orders was retrenchment, arose before Tandon, J. In *Pepsu Road Transport Corporation v. Presiding Officer, Labour Court, Patiala* 1981 (2) S.L.R. 445. This too was a case of absence of the workman without leave. The workman was treated as having lost his lien under the Standing Orders which were the same as in the present case. The Labour Court had held the termination of the services of the workman to be bad for non compliance of the provisions of Section 25-F of the Act. Following the judgment of the Supreme Court in *State Bank of India v. Shri N. Sundara Money*, A.I.R. 1976 S.C. 1111, it was held that loss of lien under the Standing Orders was retrenchment in terms of section 2(oo) of the Industrial Disputes Act, 1947, attracting the provisions of Section 25-F thereto. We respectfully agree with this view.”

(9) The reliance placed by the Single Bench in *Siri Ram's case* on the Division Bench judgment in C.W.P. No. 4299 of 1981 was thus misplaced. We have also perused the view taken in *Pepsu Road Transport Corporation v. Presiding Officer, Labour Court, Patiala* (3), and that of the Division Bench carefully. We find ourselves in full agreement with the view taken in *Pepsu Road Transport Corporation v. Presiding Officer, Labour Court, Patiala* (4) and Division Bench judgment of this Court in C.W.P. No. 4299 of 1981. Counsel

appearing for the petitioner could not raise any meaningful argument to challenge the correctness of the view taken in these two judgments. Thus, we reiterate the view taken in these two judgments and hold that the order of loss of lien from service would amount to retrenchment as defined under section 2 (oo) of the Act. Provisions of Section 25-F of the Act are attracted and the order passed without complying with the provisions of section 25-F of the Act, is bad in law. Even if it is taken for the sake of argument, that the order Ex. M.8 does not amount to retrenchment but to misconduct on his part being absent from duty, there is no evidence on record to show that explanation of the workman was ever obtained. Workman was never served with any notice to show cause against his absence, if any. We uphold the view taken by the Labour Court that termination of services of the workman was bad in law. The operation of the impugned order with back wages was stayed by this Court while admitting the writ petition. The workman shall now be entitled to the back wages as ordered by the Labour Court. The writ petition is dismissed with no order as to costs.

S.C.K.

*Before Hon'ble V. K. Bali, J.*

HAZURA SINGH,—*Petitioner*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents*

*Crl. M. No. 19874/M of 1994*

11th July, 1995

*Code of Criminal Procedure (II of 1973)—Anticipatory bail—Cancellation of—Case of custodial death—Enquiry by Sessions Judge holding Police Officers prima facie guilty—Police Officer placed under suspension.*

*Held.* that normally the bail granted once should not be cancelled even though the same has been wrongly allowed unless there are compelling circumstances for doing that or there is definite information with the Court that the accused are trying to tamper with the prosecution evidence. However, the present case is exceptional one calling for interference by this Court. It is a case of custodial death at the hands of protectors of law and there is *prima facie* finding against the respondents, so recorded by the Sessions Judge on an inquiry entrusted to him by this Court. That