

(2012) 10 SHI CK 0029
In the High Court Of Himachal Pradesh
Case No : CWP No. 3164 of 2009-G

Ashwani Kumar and Shri Lekh Ram

APPELLANT

Vs

The Secretary, HP State Electricity Board, Vidyut Bhavan,
Kumar House, Shimla, Himachal Pradesh, Executive Engineer,
HP State Electricity Board, Division Joginder Nagar, District
Mandi, Himachal Pradesh and Labour Commissioner,
Government of Himachal Pradesh, Shimla District, Shimla

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2012) 10 SHI CK 0029

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : Neel Kamal Sharma, for the Appellant; Vinod Thakur, Advocate for Respondents No. 1 and 2 and Mr. Rajinder Dogra Addl. A.G., for the Respondent

Judgement

Justice Dharam Chand Chaudhary, Judge

1. Aggrieved by the action of the 3rd respondent declining thereby the prayer of the petitioners to refer the dispute raised under the provisions of Industrial Disputes Act to the Labour Court-cum-Industrial Tribunal for adjudication vide impugned order Annexure P-3, the petitioners have approached this Court for quashing the same with the further prayer to direct the said respondent to refer the dispute to the Labour Court-cum-Industrial Tribunal. The record reveals that the petitioners were engaged on daily wage basis by the 2nd respondent in September, 1996 and February, 1998 respectively. They allegedly continued as such till December, 2000 when their services were dis-engaged without serving them with the notice, as required u/s 25F of the Industrial Disputes Act. The petitioners raised dispute on 11.12.2005 by issuing demand notice, Annexure P-1. The Conciliation Officer-cum-Labour Officer called upon the respondent-management to file reply, if any, to the application. Consequently, reply Annexure P-2 was filed stating therein that petitioner No. 1 was engaged on

23.9.1996 for a specific period for providing 11 KV, HT line and transformers under Electrical Sub-Division, Padhar and continued as such till 24.12.1996. Petitioner No. 2 was engaged on the same work on 25.2.1998 and continued till 24.1.1999. On the completion of the work, their services stood terminated automatically and as per para 14 (2) (a) of the standing orders of the Board, no notice was required to be served upon them before termination.

2. The conciliation failed and the matter was referred to the 3rd respondent for making a reference to the Labour Court-cum-Industrial Tribunal for adjudication of the dispute raised by the petitioners. The said respondent, however, has declined the prayer so made in the demand notice on the ground that the petitioners had not completed 240 days continuously preceding 12 months and the dispute having been raised after 5 years had faded away. It is this order passed by the 3rd respondent which has been challenged before this Court in the present writ petition.

3. The respondents when put to notice have contested the petition and annexed with the reply, the man-days chart Annexures A and B in respect of the petitioners. The man-days chart Annexures A and B reveals that while petitioner No. 1 has worked for 75 days during the period 25.5.1996 to 29.12.1996, petitioner No. 2 has worked for 76 days during the period 25.5.1998 to 25.12.1998. The present is thus not a case where the petitioners had completed 240 days in a calendar year. There is no dispute to the stand so taken by the respondents. It is not established that services of the petitioners were dispensed with in the year 2000 and rather as per man-days chart, the services of petitioner No. 1 were dispensed with on 29.12.1996, whereas, that of petitioner No. 2 on 24.1.1999. The dispute having been raised on 11.12.2005 is thus more than 9 years old in the case of petitioner No. 1 and 6 years in the case of petitioner No. 2.

4. A Division Bench of this Court in CWP No. 1225 of 2010, titled Devinder Kumar & another Vs. H.P. State Electricity Board & others, having identical facts, decided on 19th March, 2012 has held as under:-

The petitioners are aggrieved since their dispute has not been referred to by the Labour Commissioner for adjudication before the Industrial Tribunal/Labour Court. It is seen from the impugned order that the Labour Commissioner has considered the demand and the report on conciliation. It has been found that the petitioners staked the claim only after 11 years of their disengagement. Therefore, the reference has been declined in light of the decision of this Court in M.C. Paonta Sahib vs. State of Himachal Pradesh. There is nothing on record to show that the dispute was otherwise kept alive. The claim has thus become stale. We find that recently a Full Bench of this Court has also taken the same view in Liaq Ram vs. State of H.P., decided on 6.1.2011. The issue is, thus, covered against the petitioners.

2. With the above observations, the writ petition stands dismissed, so also the

pending application(s), if any. However, it is made clear that in case any juniors have been retained by the 2nd respondent, it will be open to the petitioner to point out the same before the 2nd respondent, in which case the matter will be duly considered by the said respondent.

5. It is seen that the facts of this case more or less are identical to that of the case of Devinder Kumar cited supra. Therefore, the present case is covered against the petitioners by the judgment in Devinder Kumar's case supra. Consequently, I, find no merit in this writ petition and the same is accordingly dismissed. However, with a direction to respondent No. 2 to reengage the petitioners, if work is available and additional man power is required, no doubt, as fresh hands and in preference to new recruits. With the above observations, the writ petition stands disposed of, so also the pending application(s), if any.