
(2012) 07 SHI CK 0073

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2565 of 2009

Balbir Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 25(F)

Citation : (2013) 2 LLN 155 : (2012) 3 ShimLC 1286

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Neel Kamal Sood, for the Appellant; Vikas Rathore, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Petitioner has assailed the award dated 20.6.2009 passed by the learned Industrial Tribunal-cum-Labour Court in reference No. 15 of 2004. Material facts necessary for the adjudication of this petition are that the petitioner claims that he was engaged on 1.4.1991 and has continuously worked upto 31.12.1997. His further case is that he was retrenched without complying with the provisions of Section 25(F), (G) and (H) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act" for brevity sake). He challenged his retrenchment by filing O.A. No. 1254/1999 before the erstwhile Himachal Pradesh Administrative Tribunal. The original application preferred by the petitioner was dismissed by the Tribunal for want of jurisdiction on 25.3.2002. Petitioner raised industrial dispute and served demand notice upon the respondents on 21.4.2002. State Government after receiving the failure report made the reference to the Industrial Tribunal-cum-Labour Court on 9.1.2004. Petitioner filed claim petition in reference No. 15 of 2004 on 10.6.2004. Reply was filed by the respondent-Department vide Annexure P-4, to which rejoinder was filed vide Annexure P-5. Claim set, up by the petitioner in the claim petition was that since he has completed 240 days preceding his retrenchment, his case

was covered u/s 25(F), (G) and (H) of the Act. Specific reply of the respondent-Department is that the petitioner has worked only for 34 days during 1997 and 137 days in the year 1998. Petitioner has also given the instances of the workmen, who according to him, were retained and he was retrenched. In other words, his case is that the respondent-Department has not followed the principle of "first come last go". It was also contended that fresh appointments were made without considering the case of the petitioner.

2. Learned Industrial Tribunal-cum-Labour Court framed issues on 6.7.2005. Petitioner has appeared as PW-1. According to him, he was engaged as Beldar in April, 1991 and worked till December, 1999. According to him, he was transferred to Sunni Sub Division in January, 1988. No notice or compensation has been paid to him though he has completed 240 days. According to him, the Department has engaged persons junior to him, namely Inder Dass and others. He has denied the suggestion that he was engaged Beldar in November, 1997. According to him, he was engaged on the road sites Jalog and Baloon. He denied the suggestion that he has abandoned his job in August, 1998. He has also denied the suggestion that he has not completed 240 days. He has denied that he has worked for 34 days in Jalog Sub Division. He has admitted that he has not given in writing to the Department for his re-engagement.

3. Sh. Gurbachan Singh has appeared as RW-1 on behalf of Department. According to him, petitioner has worked for 30 days in 1997 and 20 days in 1998 and thereafter petitioner abandoned his job.

4. Sh. Lekh Ram has appeared as RW-2. According to him, petitioner has worked in Jalog Sub Division with effect from November, 1997 to December 1997 for 34 days and thereafter he has worked for 18 days in August, 1998. He has also worked in Sunni Sub Division for 119 days. RW-2 Lekh Ram has also proved Ex. R-1.

5. The workman has not led any tangible evidence to establish that he was engaged with effect from 1.4.1991. He has failed to prove that he has completed 240 days proceeding his retrenchment. According to Annexure R-1 placed on record, the petitioner has worked only for 34 days in the year 1997 and for 137 days in the year 1998.

6. Mr. Neel Kamal Sood has vehemently argued that the workmen junior to his client have been retained, thus, there is violation of principle of "first come last go". It has come on record that the persons, who according to the petitioners were junior to him, had approached the erstwhile Himachal Pradesh Administrative Tribunal against their retrenchment. Learned Tribunal granted interim relief in their favour vide orders in the case of Inder Dass, Naryan Singh, Khem Raj, Niram Dass, Laiq Ram, Jeet Ram, Tikam Ram, Khem Chand, Prem Chand and Sant Ram on 6.7.2000, 27.12.1999, 23.8.1999 and 18.6.1999. These details are given in Annexure R-1 of the reply filed to the writ petition. Original applications filed by these persons were also dismissed by the Tribunal for want

of jurisdiction in the year 2004, 2005 and 2006. In these circumstances, it cannot be said that the persons junior to the petitioner have been retained since these workmen had obtained the interim order from the Tribunal. There was no interim order in favour of the petitioner. Petitioner while appearing as PW-1 has given the instance of one Inder Dass. He was engaged in the year 1998. He had obtained interim order from the learned Tribunal. The interim order was vacated by the Tribunal on 10.1.2006. Petitioner has filed the rejoinder to the reply filed by the respondents. Petitioner has given the instance of those persons, who were engaged after terminating the services of the petitioner. He has placed on record the list of these persons vide Annexure P-21. This material for the first time has been placed on record by the petitioner on 29.7.2010 and the same was not placed before the Industrial Tribunal-cum-Labour Court. The award is dated 20.6.2009. This Court cannot look into this matter at this stage. The Industrial Tribunal-cum-Labour Court has to answer the reference made by the State Government and in case the petitioner has additional material with him, he should have approached the Industrial Tribunal-cum-Labour Court seeking its permission to lead additional evidence. The material could be seen by the Industrial Tribunal-cum-Labour Court.

7. The Industrial Tribunal-cum-Labour Court should have discussed the entire evidence to see whether the persons junior to the petitioner have been retained or not. The Industrial Tribunal-cum-Labour Court is required to discuss the entire oral as well as documentary evidence. All the legal issues are to be adjudicated upon on the basis of evidence adduced by the parties.

8. Accordingly, what emerges from the discussions made hereinabove is that the petitioner was engaged in the year 1997 and not on 1.4.1991, as claimed by him. He has not completed 240 days preceding his retrenchment. Persons junior to the petitioner were also retrenched, but there was interim order in their favour. Consequently, in view of the observations and discussions made hereinabove, there is no merit in the petition and the same is dismissed. Pending application(s), if any, also stands disposed of. No costs.