
(2015) 12 SHI CK 0072
In the High Court Of Himachal Pradesh
Case No : CWP No. 3614/2014-B

Beli Ram

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 23-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25(F)

Citation : (2015) 12 SHI CK 0072

Hon'ble Judges : Piar Singh Rana, J.

Bench : Single Bench

Advocate : H.S. Rangra, Advocate, for the Appellant; Rupinder Singh Thakur, Addl. A.G., for the Respondent

Final Decision : Disposed Off

Judgement

Piar Singh Rana, J.—Present petition is filed under Article 226 of Constitution of India against the award passed by learned Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) dated 06.03.2014 in Ref. No. 151/2011 titled Beli Ram v. Pradhan Gram Panchayat & Another.

BRIEF FACTS OF THE CASE

2. It is pleaded that petitioner was initially engaged as Water Guard by non-petitioners. It is further pleaded that in the month of April 2008 petitioner Beli Ram completed 240 days. It is further pleaded that in the month of April 2008 non-petitioners terminated the services of the petitioner without assigning any reason. It is further pleaded that in the month of June 2008 petitioner made his demand notice to learned Labour Inspector. It is further pleaded that in the year 2011 Government referred the matter to the Court of learned Labour Court-cum-Industrial Tribunal Dharamshala (H.P.). It is further pleaded that on 06.03.2014 learned Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) passed the award. It is further pleaded that award passed by learned Labour Court-cum-Industrial Tribunal Dharamshala be modified with the directions to non-

petitioners to reengage the petitioner in the same place and post. It is further pleaded that non-petitioners be directed to maintain the seniority of the petitioner from his initial engagement and period from engagement to disengagement be considered for seniority purpose. Prayer for acceptance of civil writ petition sought.

3. Per contra response filed on behalf of non-petitioners No. 1 & 2 i.e. State of H.P. and Executive Engineer IPH Department pleaded therein that petitioner had not worked under the control of replying non-petitioners at any point of time. It is further pleaded that State of H.P. had framed the scheme for transfer of operation and maintenance of rural water supply schemes to the Panchayati Raj Institutions. It is further pleaded that as per guidelines water supply scheme was to be transferred to the concerned Panchayat after signing the Memorandum of Understanding between I&PH department and the Gram Panchayat. It is further pleaded that after signing the Memorandum of Understanding the entire responsibility for operating and maintenance of water supply scheme below the storage tank was of concerned Gram Panchayat. It is further pleaded that Gram Panchayat was at liberty to employ the workers and I&PH department was to provide financial assistance of Rs. 750/- per month. It is further pleaded that petitioner was appointed as worker by the Gram Panchayat vide resolution No. 4 dated 27.06.2007 on payment of consolidated sum of Rs. 750/- per month. It is further pleaded that now the Government has enhanced the payment to the tune of Rs. 1350/- per month. It is further pleaded that petitioner was not appointed by non-petitioners No. 1 & 2 i.e. State of H.P. and Executive Engineer Irrigation & Public Health Division Mandi (H.P.). It is further pleaded that no payment of wages were paid to the petitioner by non-petitioners No. 1 & 2 but only financial assistance under the guidelines was given to the concerned Panchayat. It is further pleaded that wages to the petitioner were paid by Gram Panchayat. It is further pleaded that petitioner was not employed by non-petitioners No. 1 & 2 and civil writ petition is not maintainable. It is further pleaded that petitioner was not employee of non-petitioners No. 1 & 2 hence notice under Section 25(F) of Industrial Disputes Act 1947 was not required to be given to the petitioner. Non-petitioner No. 3 i.e. Pradhan Gram Panchayat did not file any response despite opportunity granted. Prayer for dismissal of civil writ petition sought.

4. Petitioner also filed rejoinder and re-asserted the allegations mentioned in the civil writ petition.

5. Court heard learned Advocate appearing on behalf of petitioner and learned Additional Advocate General appearing on behalf of non-petitioners No. 1 & 2 at length and also perused the entire records carefully.

6. Following points arise for determination:

"1) Whether petition filed under Article 226 of Constitution of India is liable to be accepted as mentioned in memorandum of grounds of civil writ petition and whether Charanji Lal is necessary party for effective disposal of case?

2) Final order."

FINDINGS UPON POINT No. 1 with reasons:

7. PW-1 Sh. Narayan Dass has stated that petitioner is known to him. He has stated that in the year 2007 he and petitioner were posted as Supervisor in I&PH department. He has further stated that he had verified the attendance of petitioner. He has stated that copy of daily attendance register is Ext. PW-1/A which is signed by him. He has admitted that water supply scheme was transferred to Panchayat and he has admitted that Pradhan had engaged the petitioner for supply of water distribution. He has further admitted that payment was given by the Panchayat. He has further admitted that I&PH department did not pay any amount to the petitioner. He has stated that attendance register Ext. PW-1/A is not issued by the department. He has stated that he is not authorised by the department to record entry in the attendance register. He has further stated that Pradhan used to verify the attendance of Panchayat employees.

8. PW-2 Smt. Reshma Devi has stated that in the year 2007 she was posted in I&PH department. She has stated that she is employed even now. She has further stated that petitioner is known to her. She has stated that now Charanji Lal is working in place of petitioner. She has stated that petitioner was also working under the scheme in which she is working. She has admitted that water supply scheme is under the control of Panchayat. She has further admitted that she and Khem Chand were employed by Panchayat vide resolution dated 10.04.2008. She has stated that she was not employed by Irrigation & Public Health Department. She has stated that earlier a resolution dated 27.06.2007 was passed by the Panchayat. She has further stated that she and petitioner were employed by Panchayat as per resolution. She has further stated that she does not know that petitioner was removed from service because his service was not satisfactory.

9. PW-3 Smt. Bhawna Sharma Labour Inspector has stated that she has brought the summoned record. She has stated that after demand notice given by the petitioner reconciliation proceedings were initiated. She has further stated that copy of notice given by petitioner is Ext. PW-3/A. She has stated that employer of the petitioner was Pradhan Gram Panchayat Bandhi.

10. PW-4 Sh. Karam Singh Secretary Gram Panchayat Bandhi has stated that he has brought the summoned record. He has stated that Vouchers Ext. PW-4/A to Ext. PW-4/A/1 issued by the Gram Panchayat and the same are correct as per the original record. He has stated that earlier petitioner used to work as water guard and now Sh. Charanji Lal is working as water guard. He has stated that he is not the Secretary of the Panchayat. He has further stated that he is the assistant of the Panchayat. He has stated that Secretary of the Panchayat is Sh. Ravinder Thakur. He has further stated that copy of resolution Ext. R-1 is signed by Secretary. He has stated that in the year 2007 Assistant Secretary of the Panchayat was Sh. Kamal Singh. He has further stated that entire payment of

petitioner was paid by the Panchayat.

11. PW-5 Sh. Beli Ram petitioner has filed affidavit in examination-in-chief Ext. PW-5/A. There is recital in the affidavit that deponent was appointed as daily wagger water guard for Gram Panchayat Bandhi Sub Tehsil Aut Distt. Mandi (H.P.) by non-petitioner No. 3 Gram Panchayat Bandhi w.e.f. 01.07.2007 and worked upto 05.04.2008 and completed 240 days in his continuous service. There is further recital in the affidavit Ext. PW-5/A that on 05.04.2008 services of the deponent were terminated by oral order of co-respondent No. 3 i.e. Gram Panchayat Bandhi without assigning any reason and without giving any opportunity of being heard to deponent. There is further recital in the affidavit that deponent discharged his duty with best of his ability, honesty with full devotion and to the satisfaction of his department and there was no complaint against the deponent. There is further recital in the affidavit that termination/retranchment of deponent from the service was completely illegal and without following the procedure laid down under Section 25(F) & (G) of Industrial Disputes Act 1947. There is further recital in the affidavit that Panchayat has engaged junior person namely Charanji Lal in place of deponent who is cousin of non-petitioner No. 3 which act of non-petitioner No. 3 is arbitrary. There is further recital in the affidavit that deponent has also raised dispute before the Labour Officer-cum-Conciliation Officer and also issued demand notice and thereafter matter was referred to Labour Court. There is further recital in the affidavit that services of deponent terminated unilaterally without giving any opportunity of being heard. There is further recital in the affidavit that in the month of May 2008 deponent approached the Pradhan and requested him to engage him but Pradhan did not response. In cross-examination deponent has admitted that he was appointed as water guard by the Panchayat. Deponent has admitted that in the year 2007 entire control of water supply scheme was handed over to Panchayat. He has further admitted that I&PH department did not pay him remuneration directly. He has stated that he does not know that on 10.04.2008 resolution was passed by the Panchayat that services of petitioner were not satisfactory. He has admitted that Sh. Charanji Lal is appointed as water guard as of today. He has further admitted that Sh. Charanji Lal is not co-party in the case. He has denied the suggestion that his services were terminated by the Panchayat because his services were not satisfactory.

12. RW-1 Sh. Arun Sharma Executive Engineer has filed affidavit Ext. RW-1/A in examination-in-chief. There is recital in the affidavit that State of H.P. framed the scheme for transfer of operation and maintenance of rural water supply schemes to the Panchayati Raj Institutions as per guidelines. There is further recital in the affidavit that Memorandum of Understanding was signed on 27.06.2007. There is further recital in the affidavit that after signing the Memorandum of Understanding the entire responsibility of operation and maintenance of water supply scheme below the storage tank came to Gram Panchayat and Gram Panchayat was at liberty to employ any worker. There is further recital in the affidavit that I&PH department provides only financial assistance of Rs. 750/- per

month now enhanced to Rs. 1350/- per month. There is further recital in the affidavit that petitioner was appointed by the Gram Panchayat vide resolution No. 4 dated 27.06.2007 on payment of consolidated sum of Rs. 750/- per month. There is further recital in the affidavit that I&PH department did not appoint the petitioner and the department has no role for engaging and disengaging the petitioner. There is further recital in the affidavit that I&PH department only provides financial assistance to the Gram Panchayat on submission of bills. There is further recital in the affidavit that Gram Panchayat used to disburse payment at its own level. There is further recital in the affidavit that as I&PH department has no role either in engagement or disengagement of petitioner hence there is no question of complying the provisions of Industrial Disputes Act 1947.

13. It is proved on record that petitioner Beli Ram has sought re-appointment as water guard. It is also proved on record that services of petitioner were terminated. It is also proved on record that as of today Sh. Charanji Lal is working as water guard in the Panchayat. PW-2 Smt. Reshma Devi and PW-4 Sh. Karam Singh Secretary Gram Panchayat have specifically stated in positive manner that Sh. Charanji Lal is working as water guard as of today. Even PW-5 Sh. Beli Ram petitioner has admitted that Sh. Charanji Lal was appointed as water guard in his place. Sh. Charanji Lal is not impleaded as co-party in the present petition and Sh. Charanji Lal also not impleaded as co-party before Labour Court-cum-Industrial Tribunal Dharamshala (H.P.). Petitioner has specifically stated in his petition that he has continuously completed 240 days as water guard in the Panchayat. It is well settled law that no one should be condemned unheard on the concept of audi alteram partem. Court is of the opinion that Sh. Charanji Lal who is working as water guard as of today is necessary party in order to dispose of the case properly and effectively and to impart substantial justice inter se parties because interest of Charanji Lal will be directly effected in the present case if appointment of petitioner is re-instated in original position. Point No. 1 is decided accordingly.

Point No. 2 (Final Order).

14. In view of findings upon point No. 1 above award passed by learned Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) on 06.03.2014 in Ref. No. 151/2011 titled Beli Ram v. Pradhan Gram Panchayat & Another is set aside and the case is remanded back to learned Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) with the direction to implead Sh. Charanji Lal as co-party in the case and thereafter give due opportunity to newly impleaded co-party namely Sh. Charanji Lal to adduce evidence in support of his case in accordance with law and thereafter decide the matter afresh strictly in accordance with law. Evidence already recorded will remain part and parcel of file with liberty to Sh. Charanji Lal newly impleaded co-party to cross-examine the witnesses if he desires so in accordance with law. Learned Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) will also give opportunity to newly impleaded co-party namely Sh. Charanji Lal to file response in accordance with law. Learned Labour

Court-cum-Industrial Tribunal Dharamshala (H.P.) will decide the reference within two months after the receipt of the case file. Order of limited remand is passed keeping in view the fact that Sh. Charanji Lal who is working as water guard as of today is not impleaded as co-party in the case and keeping in view the fact that no one should be condemned unheard on the concept of audi alteram partem. Observations will not effect merits of case in any manner and will be strictly confined for disposal of CWP No. 3614/2014. Parties are directed to appear before the learned Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) on 8th January 2016. Additional Registrar (Judicial) will transmit the record of learned Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) alongwith certified copy of this order forthwith. CWP No. 3614/2014 is disposed of. Pending application(s) if any also disposed of.