

(2011) 12 SHI CK 0331
In the High Court Of Himachal Pradesh
Case No : CWP No. 297 of 2008

Bharat Sanchar Nigam Limited

APPELLANT

Vs

Krishan Kumar

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2011) 12 SHI CK 0331

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surjit Singh, Judge

1. Respondent was engaged as a daily waged labourer on 19.10.1995. No written order was issued to him. He was just engaged. He continued to work as such upto 24.8.1996, when he was told that his services stood terminated. He then got made a reference to Industrial Tribunal-cum-Labour Court, assailing the action of petitioner to terminate his services. Industrial Tribunal-cum-Labour Court, vide award dated 17.1.2007, copy annexure A-2, held that respondent's termination was in violation of the mandate of Section 25-F of the Industrial Disputes Act and, hence, the same was illegal and void. So, the Industrial Tribunal-cum-Labour Court set aside the action of the present petitioner and directed that the respondent be treated as continuing daily waged worker and given all service benefits, except back wages.

2. Petitioner, the employer, has challenged the aforesaid award. It is stated that Industrial Tribunal-cum-Labour Court has not taken into account the plea of the petitioner that respondent's appointment was by way of back door entry, as his name had not been sponsored by the Employment Exchange. It is stated that after the engagement of respondent on 19.10.1995, requisitions were sent to various Employment Exchanges and such Exchanges sponsored the names of

several candidates, including the name of the respondent between January and March, 1996. Selections were made. Respondent was not found suitable in the selection process. Some other candidates were selected and on the appointment of such candidates, respondent's engagement was dispensed with, orally as his engagement was also oral.

3. I have heard learned counsel for the parties and gone through the record.

4. Learned counsel, representing the petitioner, submits that respondent's was a case of back-door entry and, therefore, the learned Industrial Tribunal-cum-Labour Court fell in error in granting him the relief. Reliance has been placed by the learned counsel on two judgments of the Supreme Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, and *State of Karnataka and Others Vs. Sri G.V. Chandrashekar*, in support of the aforesaid contention.

5. In *Uma Devi's Case* aforesaid, workers had been temporarily engaged on daily wages contrary to the instructions issued by the department concerned that no such appointments are to be made. It was a case of appointments being in violation of the instructions that the engagement of daily waged workers was held to be back door entry.

6. In the second case, i.e. *G.V. Chandrasekhar (supra)*, appointments had been made to regular posts on adhoc posts, without following any procedure and those appointments had been allowed to continue for too long a period and that was why that the appointments were held to be back door entry.

7. In the present case, respondent was engaged as a casual labourer, without issuing any appointment letter. Probably his name was entered in the muster roll. Of course, his name was later on recommended by the Employment Exchange alongwith other candidates and he was not found suitable in the selection process, but that did not take away his right of being dealt with in accordance with the mandate of Section 25-F of the Industrial Disputes Act. Admittedly, Section 25-F of the Act had not been followed. It is also not in dispute that when the services of the respondent were dispensed with, he had already completed 240 days in the preceding calendar year.

8. Consequently, I find no flaw in the award of the Industrial Tribunal-cum-Labour Court. The present petition is, therefore, dismissed.