

(2012) 09 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : LPA No. 375 of 2012

Bharat Sanchar Nigam Ltd. and Another	APPELLANT
Vs	
Ramesh Chand	RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 25G, 25H

Citation : (2013) LabIC 62

Hon'ble Judges : Kurian Joseph, C.J; Dharam Chaudhary, J

Bench : Division Bench

Advocate : Ashok Sharma, for the Appellant; Archana Dutt, for the Respondent

Final Decision : Dismissed

Judgement

Dharam Chaudhary, J.—The challenge herein is to the judgment dated 4th July, 2012 passed by the learned single Judge in CWP No. 7464 of 2010, whereby award passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Chandigarh on 30.7.2010 in reference No. I.D. 301/2004, has been upheld to the extent of reinstatement of the respondent-workman with seniority over and above the five workmen engaged afresh in the year 1994 and 100 in the year 1995 i.e. after his disengagement whereas to the extent of award of back wages quashed. The legality and validity of the impugned award has been assailed on the ground, inter alia, that there was no tangible evidence produced by the respondent-workman before the Tribunal below and as such, the award as a whole, should have been quashed and set aside. Further, according to the petitioner-company, since the respondent-workman was a casual labourer and not engaged through employment exchange and rather his engagement was a back door entry, therefore, he was not entitled to be re-engaged. The engagement of the petitioner being in violation of the constitutional mandate is thus stated to be illegal. The instances of workers engaged in 1994 and 1995 are not stated to be attracted in this case, as they were engaged after their names having been sponsored by the concerned employment exchange.

2. It has further been submitted that the learned single Judge did not appreciate the fact that the specific work on which the respondent-workman was engaged, had come to an end and his services stood dispensed with automatically. Further, the fact that the third party rights accrued in between 1988 to 1995 have also not been taken into consideration and the impugned judgment passed behind the back of those who would be affected by the re-engagement of the petitioner is not legally sustainable.

3. On going through the record carefully and also considering the rival contentions, we find that the Tribunal below has not only directed the re-engagement of the respondent-workman, but also to pay him full backwages. Learned single Judge while quashing the impugned award to the extent of payment of full back wages has, however, upheld the direction qua his reinstatement with seniority over and above the five persons appointed in the year 1994 and 100 in the year 1995 afresh. The findings so recorded by the learned single Judge, to our mind, are not only legally but factually also sustainable for the reasons that the name of the respondent-workman was sponsored by the employment exchange when he was initially engaged by the petitioner-company. It was noted so by the High Court of Punjab and Haryana in its judgment rendered in a writ petition preferred by the respondent-workman, immediately after his disengagement. The Tribunal below has reproduced the relevant portion of that judgment in its award, which was assailed before this Court by the writ petitioner which has been decided by the learned single Judge vide impugned judgment. Such evidence available before the Tribunal below thus belies the stand of the petitioner-company that the name of the respondent-workman was not sponsored by the employment exchange at the time of his initial engagement in the year 1985.

4. On the other hand, the petitioner company has made recruitment in the year 1994 and 1995 and engaged fresh hands in preference to the respondent-workman on the work available with it. Such approach on its part cannot be upheld by any stretch of imagination and rather amounts to violation of the provisions contained under Sections 25-G and 25-H of the Industrial Disputes Act. As a matter of fact, it was obligatory on the part of the petitioner-company to have offered the work on its availability first to the respondent-workman, in preference to the fresh hands.

5. Thus, there being violation of mandatory provisions enshrined under the Industrial Disputes Act, the learned single Judge has not committed any illegality or irregularity while maintaining that part of the award whereby the respondent-workman was ordered to be re-engaged and held entitled to seniority over and above the five workmen engaged afresh in the year 1994 and 100 in the year 1995 after the disengagement of the petitioner. The impugned judgment thus does not suffer from any illegality or irregularity and rather the same being legally and factually sustainable deserves to be upheld. For the foregoing reasons, this appeal fails and the same is accordingly dismissed.