
(2003) 12 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 739 of 1998

Branch Manager H.P.F.C.and Another

APPELLANT

Vs

Vidhi Singh and Another

RESPONDENT

Date of Decision : 01-12-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 25F
State Financial Corporations Act, 1951 — Section 29

Citation : (2004) 1 ShimLC 306

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : Kuldip Singh and Bimal Gupta, for the Appellant; Ramakant Sharma, for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—The above-noted two writ petitions which involve common questions are being disposed of by this single judgment.

2. In CWP No. 739 of 1998, the facts leading to the filing of the writ petition, briefly are that Respondent No. 1 Vidhi Singh was employed by the Petitioner on 1.2.1991 as Chowkidar on daily rated basis. He worked as such till 14.7.1992 when his services were orally terminated. An industrial dispute was raised by Respondent No. 1 on the basis of such a reference came to be made to the Labour Court on 18.12.1993 u/s 10 of the Industrial Dispute Act, 1947. It was claimed by the Respondent all that his services were wrongly and illegally terminated by the Petitioners without following the described procedure laid down under the law.

3. In CWP No. 741 of 1998, Respondent No. 1 Hem Raj was employed by the Petitioner as a Chowkidar on daily rated basis on 24.7.1990. He worked as such till 27.8.1992 when his services were orally terminated. On an industrial dispute having been raised by him qua his wrongful and illegal termination, a reference u/s 10, Industrial Disputes Act, 1947 came to be made to the Labour Court on

18.2.1993.

4. The Petitioners in their replies filed before the Labour Court admitted the engagement of the two Respondents as Chowkidars on daily rated basis. They also admitted the period of service rendered respectively by each of the two Respondents Vidhi Singh and Hem Raj. It was pleaded that the two Respondents were employed/engaged on daily rated basis for a limited purpose and period to watch and guard the properties of Messrs. Chenab Rubber Pvt. Ltd. and Messrs. BVR Food Products, which were taken over by the Petitioners u/s 29 of the State Financial Corporation Act, 1951. The employment of the two Respondents as Chowkidar was co-terminus with the transfer of the above properties by the Petitioners. It was pleaded that the nature of employment of the two Respondents was the one falling under exception (bb) of Section 2(o) of the Industrial Disputes Act, 1947.

5. The learned Labour Court vide the two separate impugned awards dated 28.5.1998, on the basis of evidence coming on record, came to the conclusion that the termination of the two Respondents without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947 was bad. It accordingly directed the reinstatement of the two Respondents in service as Chowkidars forthwith. However, the claim for backwages made by the two Respondents was declined.

6. Aggrieved by the awards of the learned Labour Court the Petitioners are before this Court by way of the present writ petitions for issuance of appropriate writ, order or direction for quashing and setting aside the Awards dated 28.5.1998 (Annexure P6).

At the very outset, the admitted facts may be detailed as under :

(i) The two Respondents were engaged/employed as Chowkidars on daily rated basis orally. No written appointment letter was issued;

(ii) Respondent Vidhi Singh was employed on 1.2.1991 and he remained employed as such till 14.7.1992. His services were orally terminated;

(iii) Respondent Hem Raj was employed on 24.7.1990 and he worked till 27.8.1992 when his services were orally terminated;

Section 25F of the Industrial Disputes Act, 1947 provides :

25-F. Conditions precedent to retrenchment of workmen:

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

7. Admittedly, as stated above, each of the two Respondents has been in continuous service for a period of more than one year. Therefore, unless it is shown that their termination did not amount to retrenchment within the meaning of excepted or excluded categories mentioned in Section 2(oo) of the Industrial Disputes Act, 1947, Section 25F of the Act would come into play and their termination would be bad.

8. The Hon'ble Supreme Court in *Hari Mohan Rastogi v. Labour Court and Anr.* (1984) Suppl. SCC 428, has held that termination of service not covered within the excepted or excluded categories mentioned in Section 2(oo) amounts to retrenchment and non-compliance with Section 25F, Industrial Disputes Act, 1947 would vitiate such termination.

Section 2(oo) of the Industrial Disputes Act, 1947, reads :

retrenchment? means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health.]

According to the Petitioners the employment of the two Respondents falls within the excluded or excepted category falling under Clause (bb) above.

The onus to prove that the employment of a workman falls within the excepted or excluded categories mentioned in Section 2(oo) above is heavily on the employer. In the present case, the Petitioners, who are the employers, have miserably failed to discharge the onus placed upon them.

9. In the absence of evidence as to the terms of the employment of the two Respondents and in view of the admitted fact that the two Respondents have

been in continuous service for a period of more than one year, the learned Labour Court has rightly held that the termination of services of the two Respondents by the Petitioners without complying with the requirements of Section 25F is bad.

10. It is by now well settled that an attempt is to be made by the Courts exercising powers of judicial review, as far as possible, to sustain the awards made by Industrial Tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire judicial process before the Tribunals by striking down the awards on hyper-technical grounds. [See : Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Others, and Sidhartha Super Spinning Mills Ltd. v. State of Himachal Pradesh and Ors. 1997 (2) Sim. L.C. 224].

11. Resultantly, the present writ petitions, being devoid of merits, are dismissed leaving the parties to bear their own costs.