
(2016) 01 SHI CK 0027
In the High Court Of Himachal Pradesh
Case No : CWP No. 387 of 2007

Chuni Lal and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227
Industrial Disputes Act, 1947 — Section 25, Section 25(f)

Citation : (2016) 01 SHI CK 0027

Hon'ble Judges : Piar Singh Rana, J.

Bench : Single Bench

Advocate : G.R. Palsara, Advocate, for the Appellant; M.L. Chauhan, Additional Advocate General and J.S. Rana, Assistant Advocate General, for the Respondent

Final Decision : Disposed off

Judgement

Piar Singh Rana, J.—1. Present civil writ petition is filed under Article 226/227 of the Constitution of India.

2. Brief facts of the case as pleaded are that on 7.10.1998 petitioners were engaged as labourers in PWD National Highway 20. It is pleaded that on 1.1.2002 services of petitioners were terminated by verbal orders. It is pleaded that thereafter on 2.1.2002 conciliation proceedings were initiated by the Labour Commissioner. It is pleaded that thereafter reference No. 855 of 2002 was sent to Labour Court at Dharamshala. It is pleaded that learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala on 23.2.2006 dismissed the claim petition. Feeling aggrieved against the award passed by Presiding Judge Industrial Tribunal-cum-Labour Court Dharamshala present petition filed and following reliefs sought. It is prayed that non-petitioners be directed to re-engage the petitioners on same place and post as on 31.1.2002 with all consequential benefits and seniority after setting aside the award of learned Labour Court dated 23.2.2006. It is further prayed that seniority of petitioners be also ordered to be maintained and artificial breaks given to petitioners by non-

petitioners be set aside. It is also prayed that non-petitioners be directed to release the arrears of daily wages of petitioners w.e.f. 1.2.2002 till decision of writ petition. It is also prayed that non-petitioners be directed to count the period of artificial breaks of petitioners qua seniority of petitioners.

3. Per contra response filed on behalf of non-petitioners Nos. 1 and 2 i.e. State of H.P. and Executive Engineer HPPWD pleaded therein that petitioners Nos. 1 to 6 were engaged under N.H.-20 Division Jogindernagar in the year 1998 purely on temporary basis. It is pleaded that petitioners did not complete continuous service of 240 days in calender year till the year 2006. It is pleaded that Sanjeev Kumar and Roop Chand were engaged under B & R Sub-Division Jogindernagar and not under N.H.-20 wing. It is pleaded that Keshav and Devinder filed OA (M) No. 426 of 2000 and OA (M) No. 342 of 2000 against the termination and they were retained by Tribunal order. It is pleaded that petitioners were daily wager Beldars and were casual workers and are not entitled to claim seniority and regularisation. It is pleaded that petitioners were engaged for doing temporary work. It is also pleaded that petitioners voluntarily left the job. It is pleaded that allegations of personal bias and discrimination are totally wrong and false. Prayer for dismissal of civil writ petition sought.

4. Petitioners filed rejoinder and re-asserted the allegations mentioned in civil writ petition. Court heard learned Advocate appearing on behalf of petitioners and learned Additional Advocate General appearing on behalf of non-petitioners.

5. Following points arise for determination in this civil writ petition:-

Point No. 1

Whether civil writ petition filed under Article 226/227 of Constitution of India is liable to be accepted for the reasons as mentioned in memorandum of grounds of petition?

Point No. 2

Whether the present civil writ petition is bad for non-joinder of necessary parties?

Point No. 3

Relief.

Findings upon Point No. 1 with reasons

6. Submission of learned Advocate appearing on behalf of petitioners that fictitious artificial break was given to petitioners so that petitioners could not complete 240 days within twelve months and some labourers namely Bhup Singh, Nagnu Ram, Kishan Chand, Kaushlya Devi, Hukum Chand, Sanjeev Kumar and Roop Chand who were juniors to them were retained in service and were allowed to complete 240 days in calender year is rejected being devoid of any force for the reasons hereinafter mentioned. Petitioners did not implead Bhup Singh, Nagnu Ram, Kishan Chand, Kaushalya Devi, Hukum Chand, Sanjeev and

Roop Chand as co-party in petition. It is well settled law that no one should be condemned unheard in judicial proceedings on the concept of audi alteram partem. Hence it is held that as petitioners did not implead the above said persons as co-party no findings can be given by writ Court without hearing them.

7. Submission of learned Advocate appearing on behalf of petitioners that non-petitioners have given artificial breaks to the petitioners so that petitioners could not complete 240 days in calendar year and committed unfair labour practice and non-petitioners have violated the rule first come last go and also violated Section 25 of Industrial Disputes Act is rejected being devoid of any force for the reasons hereinafter mentioned. The fact whether non-petitioners have given artificial breaks to the petitioners is a complicated question of fact and it is well settled law that complicated question of facts cannot be decided in writ proceedings. See , (2015) 4 SCC 204 titled Swati Ferro Alloys Private Ltd. vs. Orissa Industrial Infrastructure Development Corporation (IDCO) and others.

8. Submission of learned Advocate appearing on behalf of petitioners that there is clear violation of Section 25(f) of Industrial Disputes Act and on this ground petition filed by petitioners be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. Petitioners did not place on record any retrenchment order issued by non-petitioners. On contrary non-petitioners have pleaded that petitioners have voluntarily left the daily wages service. The fact whether petitioners have voluntarily left the daily wages service is also complicated question of facts which cannot be decided in writ petition.

9. Submission of learned Advocate appearing on behalf of petitioners that there is tampering in mustroll by non-petitioners and writ petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. Issue of tampering in mustroll is complicated question of fact and same cannot be decided by writ Court because it requires elaborate oral as well as documentary evidence. Dispute inter se parties is relating to complicated question of facts.

10. Submission of learned Advocate appearing on behalf of petitioners that some persons have not been given artificial breaks by non-petitioners in order to give undue benefits to them and on this ground writ petition be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. Petitioners did not implead the persons as co-party to whom undue benefits have been given by non-petitioners. Judicial findings relating to undue benefits cannot be given without hearing effected persons on the concept of audi alteram partem.

11. Submission of learned Advocate appearing on behalf of petitioners that service of junior persons cannot be allowed to be retained by non-petitioners under Industrial Disputes Act is also rejected being devoid of any force for the reasons hereinafter mentioned because petitioners did not implead the petitioners to whom undue benefits have been given by non-petitioners. Without impleadment of persons to whom undue benefits have been given and without hearing the effected persons judicial findings cannot be given by writ Court in

present writ petition on the concept of audi alteram partem.

12. Submission of learned Advocate appearing on behalf of petitioners that learned Labour Court did not apply its mind judicially is also rejected being devoid of any force for the reasons hereinafter mentioned. Court has carefully perused the award passed by learned Labour Court Dharamshala and learned Labour Court has given proper reasoning in award. There is no evidence on record in order to prove that petitioners have completed 240 days of continuous service in calendar year. In absence of positive evidence relating to 240 days continuous service in calendar year it is not expedient in the ends of justice to accept the petition filed by petitioners. Point No. 1 is answered in negative.

Findings on point No. 2 with reasons

13. It is admitted case of parties that petitioners were employed in National Highway-20. It is well settled law that National Highway is under the control of Central Government and petitioners did not implead Central Government as co-party in civil writ petition. As per National Highways Act 1956 all national highways would vest in union and it will be responsibility of Central Government to develop and maintain national highway. As per National Highway Act 1956 Central Government in official gazette will declare competent authority relating to National Highway. Hence present civil writ petition is bad for non-joinder of necessary parties i.e. (1) Central Government, (2) Bhup Singh, (3) Nagnu Ram, (4) Kishan Chand, (5) Kaushlya Devi, (6) Hukum Chand, (7) Sanjeev Kumar, (8) Roop Chand. Point No. 2 is decided in affirmative.

Point No. 3 (Relief)

14. In view of findings on points Nos. 1 and 2 petition filed under Article 226/227 of Constitution of India is dismissed. No order as to costs. Petition stands disposed of. All pending miscellaneous application(s) if any also stands disposed of.