

(1999) 04 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 603 of 1991

Dila Ram Verma

APPELLANT

Vs

Purewal Associates Limited and Others

RESPONDENT

Date of Decision : 13-04-1999

Acts Referred:

Citation : (1999) 3 ShimLC 320

Hon'ble Judges : D. Raju, C.J; L.S. Panta, J

Bench : Division Bench

Advocate : D.D. Sood and Ankush Sood, for the Appellant; K.D. Sood and J.K. Verma, Assistant A.G. for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Lokeskwar Singh Panta, J.—The above writ petition has been filed by the workman seeking to direct the Respondents to reinstate the Petitioner as a Watch Maker and to assign him the duties alongwith all consequential benefits including back wages, prohibiting Respondent-Management from taking any discriminatory action against him: restraining the Respondent-Management from asking the Petitioner to work near heavy machines for which he has no training etc.; that Annexure-PH be modified to the extent it does not grant back wages to the Petitioner, for the period w.e.f. 7.7.1989 to 14.2.1991 alongwith actual medical expenditure incurred by him or in the alternative remanding the case back to Respondent No. 4 (Presiding Officer, Labour Court) for decision in accordance with law and also directing the Respondent-Management to pay to the Petitioner the expenditure incurred on his medical treatment for which purpose details have already been submitted.

2. The Petitioner is a matriculate and holds diploma from I.T.I., Shimla as Watch Maker. He was offered appointment by the Respondent-Management vide appointment letter dated 3.7.1979 marked Annexure-PA. He was engaged in manufacture and assembly of Wrist Watches by Respondent-Management. At the time of his appointment he was medically examined at the Primary Health

Centre, Dharampur and thereafter at the Cantonment Hospital at Kasauli. The Petitioner alleged that he continued working with Respondent-Management satisfactorily and his services were appreciated and he was also given Commendation Certificates/Prizes. The Petitioner abruptly fell ill on 7.7.1989 and he went to the Primary Health Centre at Dharampur, but his malady could not be diagnosed there, he went to P.G.I., Chandigarh, where it was found that he was suffering from mild Epilepsy. The Petitioner was advised to take necessary medicine regularly and to avoid swimming, driving, travelling or working near fire for about six months. Medical Certificate was issued by the Department of Neurology on 19.7.1989, whereby the Petitioner has been opined to be fit for duty of Watch Repairer. Again on 16.10.1989 another Certificate was issued to the Petitioner to the effect that he is absolutely fit for assignment of duty and copy of the Medical Certificate is placed on record marked Annexure-PB.

3. It appears that on 24.7.1989 Respondent Management wrote to the Petitioner a letter stating therein that since he was suffering from Epilepsy, it was not possible to assign any duties to him inside the Factory since there was danger that the Petitioner might sustain injuries while performing duties and he was advised to proceed on sick-leave with immediate effect. The Petitioner contended that assurance was held out to him that he would be accommodated by granting him leave without pay till such time he recovers completely and he was also assured that all help in the treatment, as permissible under the rules, would be provided to him. He placed on record letters of the Respondent-Management. In response to the Management's letters, the Petitioner is stated to have written to the Personnel Manager of the Company saying that he had been asked to proceed on sick leave, but he had already submitted a Medical Certificate from P.G.I., Chandigarh where under he had been found fully fit to join work and perform his duties and further that in case the Respondent-Management wanted that the Petitioner should remain on leave, in that event, leave with pay may be granted to him. He alleged that attitude of the Respondent-Management was so harsh that he was not allowed to resume his duties and the Management wanted to get rid of his services for the reasons that he was involved in Union activities being the Organising Secretary of the Purewal Employees Union.

4. The Petitioner took up the matter before the Labour Officer and conciliation proceedings failed. Ultimately, the State of Himachal Pradesh vide Notification dated 3.9.1990, Annexure-PG, referred the matter to the Labour Court for decision under the Industrial Disputes Act. The reference reads as under:

Whether it is valid and legal for M/s. Purewal & Associates, Jubbar, District Solan, Himachal Pradesh, not to take Sh. Dila Ram son of Sh. Sees Ram, Watch Repairer on work after 9.7.1989? If not, then what relief including reinstatement is Sh. Dila Ram entitled to.

The Presiding Officer of the Labour Court, Himachal Pradesh, entered into the reference and on 4.2.1991 passed an award Annexure-PH in favour of the Petitioner which is reproduced hereunder:

Ref. 130/90

4.2.1991 Present : Shri A.K. Sharma, AR of the Petitioner with the Petitioner in person.

Shri V.K. Gupta, AR of the Respondent with Shri V.K. Khurana, Personnel Manager of the Respondent Factory.

The AR of the Petitioner wants time to file the claim. Allowed. List for filing the Claim Petition on. At this stage, I have seen the medical record of the Petitioner i.e. E.G. Report of Janta E.G. Laborator, Manimajra. According to the report, the study of E.G. is normal and stimuli good. The Petitioner has told me in the Court that he was repairing watches and not doing jobs on heavy machines. In case of fits, the Patient is advised not to work on the heavy machinery but they are not debarred from getting employment or to continue employment, if they are declared normal after treatment. The Petitioner has been attending the Court for the last six months and I have found him normal. He states that he is still taking medicines. I direct the Respondent-management to employ him immediately by giving the suitable assignment akin to his previous assignment and it should not involve his working of the hazardous machine. In case of a sudden relapse, of the Petitioner from the disease, the Respondent management shall not be responsible. The compliance report be filed in this Court within 15 days. I further direct the Respondent-management to give him token money of compensation amount to Rs. 1,000/- on account of medical expenses without back wages. No dispute survives. Reference is answered accordingly. Copy of this award be sent to the Government of Himachal Pradesh for publication in the official Gazette, i.e. Himachal Pradesh Rajpatra in accordance with law. Copy be supplied to the parties free of costs, if applied for. The parties are left to bear their own costs of these proceedings. The file after its due completion be consigned to the record room. The termination order is set aside and continuity of service is given to the Petitioner. Announce, this day, the 4th of February, 1991 at Shimla. Respondent is directed that Demand Notice be enclosed with reference if it is not done as ordered by me.

Sd/- Presiding Officer Labour Court, Himachal Pradesh Shimla (4.2.1991)

5. The Petitioner has challenged the impugned award in this Writ Petition on the premises that the award of the Labour Court has been passed in hot haste manner wherein although the Petitioner has been ordered to be taken back into service, no consequential benefits available to him under law has been granted to him. Shri K.D. Sood, learned Counsel for the Respondent-Management has very fairly conceded that the impugned award is not sustainable in the eyes of law. We have given our thoughtful consideration to the validity and legality of the impugned award and we find that the learned Tribunal has mis-directed itself in not considering the dispute which was pending before it in its right perspective. The Tribunal has also mis-directed itself in not answering the reference made to it by the Government in its entirety. The Tribunal has given interim award

directing the Respondent-Management to employ the Petitioner immediately by giving him suitable assignment akin to his previous assignment and further directing the Respondent-Management to give him token money of compensation amounting to Rs. 1,000/- on account of medical expenses without back wages and thereafter closed the claim. If we see the reference extracted hereinabove, the Tribunal was duty bound to answer the reference on merit and pass an appropriate award in accordance with law. In the present case the Tribunal has short circuited its jurisdiction and gave the award which impliedly could be treated as interim award and not final one. Since there is no serious objection raised by the Respondent-Management in allowing the Writ Petition and setting aside the impugned award, we are also of the considered view that the award is not legally sustainable for the reasons stated hereinabove.

6. In order to avoid the multiplicity of the litigation and remanding the case back to the Tribunal for decision, we granted time to the parties to settle the disputes amicably outside the Court, but at the time of hearing of the Writ Petition both the learned Counsel on either side informed us that there was no possibility of amicable settlement of the dispute between the parties. In the facts and circumstances of the case, no other alternative was left to us save and except to remand the reference to the Tribunal for its fresh decision in accordance with law.

7. Accordingly, the Writ Petition is allowed and the impugned award is set aside. Parties to bear their own costs. The Labour Court is directed to restore the reference to its original number and decide the dispute in accordance with law as expeditiously as possible after giving due and reasonable opportunities to the parties. Record of the Labour Court be remitted by the Registry forthwith.