

(2012) 10 SHI CK 0040
In the High Court Of Himachal Pradesh
Case No : CWP No. 1693 of 2009

Dumunu Ram

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Citation : (2012) 10 SHI CK 0040

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : Chandranarayana Singh, for the Appellant; Rajinder Dogra, Additional Advocate General for respondents No. 1 to 3 and Mr. Trilok Jamwal, Advocate for respondents No. 4 and 5, for the Respondent

Judgement

Justice Dharam Chand Chaudhary, J.—Aggrieved by order dated 6.4.2009, Annexure P-4, whereby the 2nd respondent had declined the prayer made by the petitioner to refer the dispute raised in terms of the provisions contained under the Industrial Disputes Act, 1947 (for short, referred to as "the Act"), the present writ petition has been filed in this Court with a prayer to quash the same and passing a direction to the said respondent to refer the dispute to Industrial Tribunal-cum-Labour Court for adjudication. In a nut shell, it is claimed that the petitioner was engaged as Beldar on daily wage basis by the 5th respondent in the year 1987. Though he continued to work as such and completed 240 days in a calendar year, however disengaged from the service on 30.3.1988. Some of his juniors were re-engaged pursuant to the orders Annexures P-1 and P-2 passed by this Court. He being a poor person and not in a position to bear the litigation expenses, could not approach this Court for the redressal of his grievance. He alongwith other similarly situated workmen however had raised the dispute in terms of the provisions contained under the Act before the 2nd respondent through the 3rd respondent vide Annexure P-3. The said respondent, however, declined the prayer to refer the dispute to Industrial Tribunal-cum-Labour Court vide impugned order, Annexure P-4.

2. The 1st, 2nd and the 3rd respondents when put to notice, have contested the writ petition. Their stand as emerges from the perusal of reply to the writ petition is that the dispute raised by the petitioner when examined, it transpired that the petitioner had worked only w.e.f. 26.11.1985 to 25.4.1988 on a time bound job and on its completion, he was retrenched after serving him with 30 days notice. Since the petitioner had raised the industrial dispute by way of demand notice, dated 12.1.2007, i.e. after about 18 years of his disengagement, his prayer to refer the dispute to Industrial Tribunal-cum-Labour Court was rightly declined as with the passage of time, the dispute had faded away and without there being existence of any fresh cause of action in favour of the petitioner, there was no question of existence of any dispute after the lapse of such a long period of 18 years from 25.4.1988, the day when the petitioner was disengaged from service till 12.1.2007, the day when the petitioner raised the demand notice. The decision taken by the appropriate Government not to refer the case to Industrial Tribunal-cum-Labour Court is supported by the judgment of this Court in CWP No. 398 of 2001, titled M.C., Paonta Sahib Vs. State of H.P. and others, relied on by a Division Bench of this Court in CWP No. 1619 of 2007, titled Kamlesh Vs. State of H.P. and others.

3. The 4th and the 5th respondents in separate reply to the writ petition have also taken the similar stand and submitted further that no person junior to the petitioner has been reengaged. Rather some of his colleagues, who challenged their termination before this Court, were re-engaged in accordance with law.

4. The judgments Annexures P-1 and P-2 have been rendered by this Court in view of the facts of those cases and the same have no application in the case in hand.

5. The controversy in this writ petition rather is covered by the judgment of this Court in CWP No. 1225 of 2010, titled Devinder Kumar & another Vs. H.P. State Electricity Board & others, decided on 19th March, 2012, which reads as follows:-

The petitioners are aggrieved since their dispute has not been referred to by the Labour Commissioner for adjudication before the Industrial Tribunal/Labour Court. It is seen from the impugned order that the Labour Commissioner has considered the demand and the report on conciliation. It has been found that the petitioners staked the claim only after 11 years of their disengagement. Therefore, the reference has been declined in light of the decision of this Court in M.C. Paonta Sahib vs. State of Himachal Pradesh. There is nothing on record to show that the dispute was otherwise kept alive. The claim has thus become stale. We find that recently a Full Bench of this Court has also taken the same view in Liaq Ram vs. State of H.P., decided on 6.1.2011. The issue is, thus, covered against the petitioners.

2. With the above observations, the writ petition stands dismissed, so also the pending application (s), if any. However, it is made clear that in case any juniors have been retained by the 2nd respondent, it will be open to the petitioner to

point out the same before the 2nd respondent, in which case the matter will be duly considered by the said respondent.

6. It is seen from the above extracted portion of the judgment that the facts of that case more or less are identical to that of this case. Therefore, this petition being devoid of any merit fails and the same is accordingly dismissed, however, without any prejudice to the liberty of the petitioner to point out to the 5th respondent the particulars of the persons junior to him, re-engaged by the respondent-Board, may be pursuant to the orders passed by this Court or any other Court of law, in which case, the said respondent will consider the claim of the petitioner for reengagement, no doubt, as a fresh hand and in preference to the new recruits. With the above observations, the writ petition stands disposed of, so also the pending application (s), if any.