

(2016) 07 SHI CK 0086
In the High Court Of Himachal Pradesh
Case No : CWP No. 2762 of 2010.

Gopal - Petitioner @HASH State of H.P. and Others

Date of Decision : 15-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25(C), Section 25(F), Section 25(H)

Citation : (2017) 152 FLR 50 : (2016) 4 LLJ 305

Hon'ble Judges : Vivek Singh Thakur, J.

Bench : Single Bench

Advocate : Mr. R.R. Rahi, Advocate, for the Petitioner; Mr. Pankaj Negi, Deputy Advocate General, for the Respondents

Final Decision : Allowed

Judgement

Mr. Vivek Singh Thakur, J.(Oral) - Petitioner has challenged communication dated 31.03.2010 (Annexure P-4) vide which rejection of his demand notice raised under Industrial Disputes Act (hereinafter referred to be as "the Act") was conveyed on the ground that he had not completed 240 days continuously in preceding 12 months prior to his termination.

2. Petitioner has disputed the said ground and has submitted that he has completed 240 days in a calendar year during 2004 to 2009. Besides, violation of provisions of Section 25 (F) of the Act, petitioner has also raised issue of violation of principle of "Last come First go" envisaged in Section 25(G) and 25 (H) of the Act by Respondent-Department by referring names of juniors who were retained or engaged by Respondent-Department after termination of service of petitioner in the year, 2009.

3. It is submitted on behalf of Respondent-Department that all other causal labourer, juniors to petitioner, were also disengaged at the time of disengagement of petitioner by following principal of "First come Last go". Respondent-Department has enclosed mandays chart with reply reflecting that petitioner had not completed 240 days in a calendar year but only in the year 2006.

4. In para-8 of demand notice (Annexure P-1) filed before Labour and Conciliation Officer petitioner had pointed out that in violation of principle of "Last come First go" Respondent-Department had been continuing that large number of other persons junior to petitioner whose names had also been mentioned in demand notice.

5. Aforesaid contention of petitioner was of denied by respondent-department in reply (Annexure P-2) to the Demand Notice of petitioner and it was claimed that no person junior had been continuing as all such casual labourers had been disengaged on cessation of work. However said plea of Respondent-Department was disputed by petitioner in his rejoinder(Annexure P-3).

6. From perusal of Demand Notice (Annexure P-1), reply to same (Annexure P-2) and rejoinder (Annexure P- 3) filed before Labour and Conciliation Officer, it is evident that there was dispute regarding compliance and noncompliance of provision of Sections 25 (G) and 25(H) of the Act which was to be decided by Labour Court after adjudication of matter on reference. However, concerned Authority has not considered this aspect at the time of rejection of Demand Notice raised by petitioner. This issue has not been dealt with in impugned rejection communicated vide Annexure P-4.

7. Section 25-F of the Act, deals with condition precedent to retrenchment of workmen. Section 25-G deals with procedure for retrenchment. Section 25-H contains provision for Re-employment of retrenched workmen. As per Section 25-F a workman, having continuous service for not less than one year under the employer, shall not be retrenched unless one month notice as prescribed in Section 25-F is given, workman has been paid and notice is served to the appropriate Government or such authority as prescribed in the Section 25-F. Admittedly, petitioner had served for more than one year and but had completed 240 days during the year, 2006. Section 25-G provides that employer shall ordinarily retrench the workman who was the last person employed in that category. Section 25-H provides that after retrenchment of workman if employer proposes to engage any persons later on then employer shall give opportunity to the retrenched workman for re-employment in preference to other persons. So far as provisions of Section 25-G and Section 25-H are concerned there is no condition precedent of continuous service of one year under an employer.

8. The Apex Court in case titled as Central Bank of India v. S. Satyam and Others, (1996) 5 SCC 419 has held as under:-

"9. The plain language of Section 25-H speaks only of re-employment of retrenched workmen". The ordinary meaning of the expression "retrenched workmen" must relate to the wide meaning of "retrenchment" given in Section 2 (oo). Section 25-F also uses the word "retrenchment" but qualifies it by use of the further words "workman..who has been in continuous service for not less than one year". Thus, Section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein

by use of the further words " workman.. who has been in continuous service for not less than one year". It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25-F".

10. The next provision is Section 25- H which is couched in wide language and is capable of application to all retrenched workmen, not merely those covered by Section 25-F. It does not require curtailment of the ordinarily meaning of the word "retrenchment" used therein. The provision for reemployment of retrenched workmen merely gives preference to a retrenched workman in the matter of reemployment over other persons. It is enacted for the benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman.

11. Chapter V-A providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25-F applies but for all cases of retrenchment and, therefore, there is no reason to restrict application of Section 25-H therein only to one category of retrenched workmen. We are, therefore, unable to accept the contention of Shri Pai that a restricted meaning should be given to the word retrenchment" in Section 25-H. This contention is, therefore, rejected".

9. In present case, besides dispute of violation of Section 25(F), dispute regarding violation of Section 25(G) and 25(H) of the Act has also been raised. Respondent-department has not placed on record anything indicating that after retrenchment of petitioner no one was employed by the respondent-department or after retrenchment of petitioner, petitioner was ever given notice or option to join respondent-department prior to engaging fresh persons being a person engaged and retrenched by respondent-department at earlier point of time. Petitioner has a right to be considered for reemployment in preference to other who are engaged subsequent to retrenchment of petitioner. Without adjudicating this issue on merit herein this petition it can be inferred on the basis of documents available on record and pleadings at parties that there is dispute regarding violation of Sections 25(G) and 25(H) of the Act which has not been considered by the Labour Commissioner.

10. It is settled law that even violation of Section 25(G) and 25(H) of the Act entitles workman to have reference to Labour Court for consideration in pursuance to Demand Notice raised by workmen. But the Labour Commissioner

has failed to consider the demand notice with respect to violation of Sections 25(G) and 25(H) of the Act.

11. In view of the facts and circumstances of the case and ratio laid down by the Apex Court, present petition is allowed and impugned refusal to refer the matter to Labour Court conveyed vide communication dated 31.03.2010 (Annexure P-4) is quashed and Labour Commissioner is directed to make reference to the Industrial Disputes-cum-Labour Court within six weeks from today on issues raised by petitioner in his Demand Notice. Pending application (s), if any, stand disposed of. No order as to cost.