
(2015) 04 SHI CK 0064
In the High Court Of Himachal Pradesh
Case No : CWP No. 1930 of 2015

Gurdial

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(c), 25-H

Citation : (2015) 04 SHI CK 0064

Hon'ble Judges : Rajiv Sharma, J;Sureshwar Thakur, J

Bench : Division Bench

Advocate : Anjali Soni Verma, for the Appellant; M.A. Khan, Additional Advocate General and Ramesh Thakur, Assistant Advocate General, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Rajiv Sharma, J.—Petitioner was engaged on daily wage basis in the year 1998. He was retrenched on 2.4.2005. Petitioner raised industrial dispute in the year 2012. The Labour Officer-cum-Conciliation Officer submitted failure report to the Labour Commissioner on 26.12.2013. The Labour Commissioner has refused to refer the matter to the Labour Court-cum-Industrial Tribunal on the ground that the demand notice was raised after 7 years.

2. Petitioner has specifically averred in his demand notice that Sher Singh and Raj Kumar were engaged/retained by the Department as Beldar, though junior to him, and they are still working. This aspect has been overlooked by the Labour Commissioner while passing order dated 8.5.2014. The employer was liable to issue notice to the petitioner before the engagement of new hand. Thus, there is a breach of Section 25-H of the Industrial Disputes Act, 1947. The Department has also retained persons junior to petitioner while retrenching him in the year 2005. The demand notice should be raised within a reasonable period. But in this case, taking into consideration the facts and circumstances of the case, mentioned herein above, delay cannot be held to be inordinate.

3. Their lordships" of the Hon"ble Supreme Court in the case of Raghubir Singh Vs. General Manager, Haryana Roadways, (2014) AIRSCW 5515 : (2014) 10 SCALE 135 , have held that the State Government can make the reference at any time. Their Lordships have held as under:

"13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services and Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka, AIR 2003 SC 3553 : (2003) 97 FLR 608 : (2003) 3 JT 436 : (2003) 2 LLJ 359 : (2003) 3 SCALE 533 : (2003) 4 SCC 27 : (2003) SCC(L&S) 380 : (2003) 3 SCR 156 : (2003) AIRSCW 2196 : (2003) 3 Supreme 53 it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree in Ratan Chandra Sammanta and others Vs. Union of India and others, AIR 1993 SC 2276 : (1993) 3 JT 418 : (1993) LabIC 1672 : (1993) 2 LLJ 676 : (1993) 2 SCALE 974 : (1993) 4 SCC 67 Supp : (1993) 3 SCR 751 , it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief "

(Emphasis laid by the Court)

14.1 In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay

in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

42. It is an undisputed fact that the dispute was raised by the workman after he was acquitted in the criminal case which was initiated at the instance of the respondent. Raising the industrial dispute belatedly and getting the same referred from the State Government to the Labour Court is for justifiable reason and the same is supported by law laid down by this Court in Calcutta Dock Labour Board (supra). Even assuming for the sake of the argument that there was a certain delay and latches on the part of the workman in raising the industrial dispute and getting the same referenced for adjudication, the Labour Court is statutorily duty bound to answer the points of dispute referred to it by adjudicating the same on merits of the case and it ought to have moulded the relief appropriately in favour of the workman. That has not been done at all by the Labour Court. Both the learned single Judge as well as the Division Bench of the High Court in its Civil Writ Petition and the Letters Patent Appeal have failed to consider this important aspect of the matter. Therefore, we are of the view that the order of termination passed by the respondent, the award passed by the Labour Court and the judgment and order of the High Court are liable to be set aside. When we arrive at the aforesaid conclusion, the next aspect is whether the workman is entitled for reinstatement, back wages and consequential benefits. We are of the view that the workman must be reinstated. However, due to delay in raising the industrial dispute, and getting it referred to the Labour Court from the State Government, the workman will be entitled in law for back wages and other consequential benefits from the date of raising the industrial dispute i.e. from 02.03.2005 till reinstatement with all consequential benefits."

4. Moreover, the issue of delay can always be considered by the Labour Court-cum-Industrial Tribunal at the time of answering the reference by moulding relief.

5. Accordingly, the writ petition is allowed. Annexure P-2 dated 8.5.2014 is quashed and set aside. The Labour Commissioner is directed to make a reference to the Labour Court-cum-Industrial Tribunal within a period of four weeks from today and the Labour Court-cum-Industrial Tribunal shall decide the same within a period of six months after the receipt of references. Pending application(s), if any, also stands disposed of. No costs.