

(2011) 04 SHI CK 0211
In the High Court Of Himachal Pradesh
Case No : CWP No. 6830 of 2010

Himachal Pradesh State Electricity Board and Another	APPELLANT
Vs	
Bhaga Ram and Others	RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 04 SHI CK 0211

Hon'ble Judges : Kurian Joseph, C.J;V.K. Ahuja, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.K. Ahuja, J.—This writ petition under Article 226 of the Constitution of India has been filed by the Petitioners/H.P. State Electricity Board against the award, dated 18.5.2010, passed by the Presiding Judge, H.P. Industrial Tribunal-cum-Labour Court, Shimla vide which Respondents No. 1 and 2 have been ordered to be reinstated in service with seniority and continuity in service.

2. Brief facts of the case are that a reference was made to the Presiding Judge, H.P. Industrial Tribunal-cum-Labour Court, Shimla as to whether the termination of services of present Respondents No. 1 and 2 by the Executive Engineer, HPSEB was without complying the provisions of Industrial Disputes Act, 1947 and as such, whether it was proper and justified. The learned Tribunal entered upon the reference, gave opportunity to the parties to lead their evidence and thereafter answered the reference in favour of the present Respondents No. 1 and 2 (Petitioners before the learned Tribunal). Being aggrieved, the Electricity Board has challenged the said order passed by the learned Tribunal.

3. A notice of the petition was sent to Respondents No. 1 and 2. We have heard the learned Counsel for the parties.

4. From a perusal of the impugned award passed by the learned Tribunal, it is clear that a plea of abandonment of the job was taken by the HPSEB that since

Respondents No. 1 and 2 had abandoned the job and did not join in spite of the notice, therefore, the impugned order is liable to be set aside. The learned Tribunal had considered the evidence placed before it and had concluded that this fact stands duly proved that the present Respondents No. 1 and 2 had not abandoned their jobs. The learned Tribunal has also made a reference to a decision of this Court in State of H.P. and Ors. v. Bhagat Ram and Anr. Latest HLJ 2007(HP) 903, wherein it was held as under:

Plea of abandonment of job - merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.

5. It is clear that on the basis of the findings of fact recorded by the learned Tribunal on the basis of the evidence produced, it had come to this conclusion. No evidence has been led by the HPSEB before the learned Tribunal that Respondents No. 1 and 2 had abandoned their jobs. In the present petition, the Petitioners have enclosed Annexure P-1, a copy of the notice dated 12.4.1993 issued to Respondents No. 1 and 2 in regard to their absence from duty. The said notices have been simply attached with the present writ petition without any prayer for allowing the Petitioners to lead evidence or consider these documents which could not be produced by the Petitioners before the learned Tribunal. No evidence can be allowed at this stage in the writ petition once the parties had been given opportunity to lead their evidence to prove the fact of abandonment, if any. The learned Tribunal had taken nearly five years to decide the reference since the reference was filed on 20.4.2005 and was decided on 18.5.2010. The present documents filed along with the writ petition cannot be considered or allowed to be placed on record since no case is made out for allowing the evidence to be led at this stage. A perusal of the impugned order passed by the learned Tribunal shows that it had allowed the reference petition and had directed the Petitioners to grant seniority and continuity in service to Respondents No. 1 and 2, but had rightly not granted the relief in regard to back wages since Respondents No. 1 and 2 had not, admittedly, worked for this period.

6. In view of the above discussion, the impugned order does not suffer from any illegality and the same does not call for an interference by this Court. Accordingly the present writ petition is dismissed, so also the pending application(s), if any.