

(2016) 07 SHI CK 0090

In the High Court Of Himachal Pradesh

Case No : CWP No. 2997 of 2009.

**Himachal Pradesh State Electricity Board and Another - Petitioners
@HASH Bahadur Singh and another**

Date of Decision : 29-07-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, Section 25FG, Section 25N

Citation : (2017) 152 FLR 676 : (2016) 4 LLJ 460

Hon'ble Judges : Sandeep Sharma, J.

Bench : Single Bench

Advocate : Mr. Vivek Sharma, Advocate, for the Petitioners; Mr. Vishal Panwar, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Sandeep Sharma, J.(Oral) - By way of present writ petition under Article 226 & 227 of the Constitution of India, the petitioner has laid challenge to the award dated 20.4.2009, passed by learned Presiding Judge, Industrial Tribunal-Cum-Labour Court Shimla, in reference No. 162 of 2002, whereby respondents have been directed to reinstate the petitioner in service forthwith with seniority and continuity in service.

2. Briefly stated facts, as emerge from the record are that respondent No. 1 (hereinafter referred to as "petitioner-workman" for convenience sake) was engaged on daily wage basis as Beldar with effect from 26.11.1983 and as such, he continued to work with the petitioner-Board (hereinafter referred to as "respondent-Board" for convenience sake) upto 20.1.1990. As per petitioner-workman, his services were orally terminated in the year, 1990 by the respondent-Board without following due process of law.

3. Petitioner-Workman being aggrieved with his illegal termination, raised a Industrial Dispute by invoking the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") and State Government after the receipt of failure report made following reference to the Labour Court:-

1. Whether the termination of services of Shri Bahadur Singh son of Sh.Ganga Ram, daily wager working in Electrical Division, HPSEB, Chopal, District Shimla is legal or justifiable, without following the proper procedure under Section 25-F and 25-N of Industrial Disputes Act if not, Bahadur Singh son of Sh.Gangu Ram is entitled to service benefits like seniority etc.

2. Whether Sh.Bahadur Singh left the job of his own as alleged, if so?

4. Petitioner-workman by way of filing claim petition before the learned Tribunal, claimed that he was initially engaged as Beldar with the respondent-Board in the year 1982 and as such, he continued to work till the year, 1990, on which date, his services were orally terminated without giving any notice as required under the Act. The petitioner-workman claimed that before his alleged termination, he had completed 240 working days in the calendar year and as such, he is entitled for the protection of Section 25-F of the Act. He claimed that despite repeated requests to the respondent-Board for his re-engagement, no action whatsoever, was taken to reengage him, rather respondent-Board engaged fresh persons namely S/Sh. Kalam Singh and Murti Ram in violations of the provisions of "Last Come First Go" and as such, he prayed for reinstatement along with all consequential benefits.

5. Respondent-Board by way of reply resisted and contested the claim of the petitioner-workman by stating that there was no occasion, whatsoever, for the Board to resort to the provisions of Act at the time of alleged termination because petitioner-workman himself abandoned the job. Respondent-Board specifically stated that the petitioner-workman was initially engaged in the year, 1982 and as such, worked on daily wages basis till 1990. However, respondent-Board denied that the services of the petitioner-workman were orally terminated by them. The workman further contended that he was engaged as daily wages Beldar w.e.f. 26.8.1983 to 20.1.1990 with breaks and as such, it cannot be said that during above period, he never completed 240 days in the calendar year. Workman further contended that he again worked with them w.e.f. 1.4.1995 to 30.4.1995 and as such, contention put forth on behalf of the respondent-Board that the workman had not completed 240 days in preceding calendar year to his alleged termination is incorrect and contrary to records. Respondent-Board specifically stated that the since the petitioner-workman himself abandoned the job, there was no occasion, whatsoever, for the respondent-Board to resort the provisions of the Act and as such, rightly not issued any notice under Section 25-F of the Act. Similarly, respondent-Board while refuting the claim of the petitioner-workman that at the time of his retrenchment, S/Sh. Kalam Singh and Murti Singh were engaged/retained by the respondent-Board stated that aforesaid persons had worked with respondent-Board on daily wages during the year, 1982 to 1984 and 1985 to 1986 with breaks and left the job of their own and as such, respondent-Board had no occasion to maintain the seniority of the persons. In the aforesaid background, respondent Board prayed for the dismissal of the claim put forth on behalf of the petitioner-workman.

6. Mr. Satyen Vaidya, learned Senior Advocate duly assisted by Mr. Vivek Sharma, Advocate, representing the respondent-Board vehemently argued that the impugned award, passed by the learned Tribunal is not sustainable and same is not based upon the correct appreciation of the evidence adduced on record. Mr. Vaidya, vehemently argued that the learned Tribunal, while extending the relief of reinstatement of the petitioner-workman, failed to appreciate that at no point of time services of the petitioner-workman were ever terminated by the respondent-Board, rather petitioner-workman himself abandoned the job on 20.1.1990. As per Mr. Vaidya, once it stood proved on record that the petitioner-workman had himself abandoned the job, there was no occasion, whatsoever, for the respondent-Board to resort the provisions of the Act and as such, learned Tribunal has wrongly come to the conclusion that the termination of the petitioner-workman is bad and in violation of the provisions of section 25-F and 25-N of the Act. He also stated that the petitioner-workman led no evidence on record suggestive of the fact that at the time of his retrenchment, junior persons, if any, were retained and as such, impugned award passed by the learned Tribunal deserves to be quashed and set-aside.

7. Mr. Vishal Panwar, learned counsel representing the petitioner-workman supported the impugned award passed by the learned Tribunal. He forcibly contended that bare perusal of the impugned award suggests that the same is based upon the correct appreciation of the evidence adduced on record by the petitioner-workman and as such, calls for no interference whatsoever, of this Court. Mr. Panwar, also contended that close scrutiny of the mandays chart Ex. RA placed on record, clearly suggest that petitioner-workman had completed 307 working days in a calendar year, 1984 and thereafter petitioner have given fictional breaks and at no point of time he was allowed to complete 240 days in a calendar year, but fact remains that he remained on the rolls of the respondent-board we.f. 26.11.1983 till 20.1.1990 and as such, at the time of his termination of services, it was incumbent upon the respondent-Board to serve him notice under Section 25-N, 25-F of the Act, but in the present case neither notice under Section 25-F was issued nor any retrenchment compensation, as envisaged under Section 25-N of the Act was paid and as such, termination of the petitioner-workman has been rightly held to be in violation of the aforesaid provisions of the Act. During arguments, he made this Court to travel through the statements of RW-1, Er. Hans Raj, who while deposing before the learned Labour Court was unable to disclose that whether junior persons to the petitioner-workman were ever retained by the respondent-Board at the time of alleged termination of the petitioner-workman. Similarly, he stated that he did not possess any record indicating therein that how many workmen were employed after the year, 1995.

8. Learned counsel for the petitioner-workman invited the attention of this Court to the judgment passed by this Court in case titled as State of Himachal Pradesh & Ors v. Bhatag Ram & Anr, reported in latest HLJ 2007 (H.P) 943, which has been also relied upon by the learned Labour Court while answering the reference, wherein it was held as under:-

"Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of Section 25-G and 25-H of the Act."

9. Mr. Panwar, also invited the attention of this Court to the judgment passed by Division Bench of this Court in CWP No. 2588 of 2009, decided on 18.6.2010 pertaining to similar situate person, whose services were illegally terminated by the respondent-Board without resorting to the provisions of the Act.

10. I have heard learned counsel for the parties and have gone through the record carefully.

11. Conjoint reading of the pleadings as well as minute scrutiny of the evidence led on record by the respective parties, clearly suggest that the petitioner-workman was engaged as Beldar by the respondent-Board in the year, 1982 and he continued to work till 1990 and thereafter services of the petitioner-workman were orally terminated without giving any notice.

12. Petitioner-workman with a view to substantiate his claim himself examined as PW-1 and specifically stated by way of tendering his affidavit Ex.PA in his evidence that he was engaged as Beldar on muster roll basis in April, 1982 in Chopal Division and thereafter his services were orally terminated in April, 1995 without resorting to the provisions of the Act. He further stated that since he had completed 240 in preceding 12 months, respondent-Board ought to have issued him notice under Section 25-F of the Act. He also stated that at the time of his illegal termination, persons junior to him were also retained.

13. On the other hand, respondent-Board with a view to refute the claim of the petitioner-workman examined RW-1 Er. Hans Raj, who admitted that the petitioner-workman was engaged as daily wages workman on 26.8.1983 and as such, he continued to work till 25.6.1990. Respondent-workman was re-engaged on 1.4.1995 to 30.4.1995 with fictional breaks and thereafter he abandoned the job of his own and never moved any application to the respondent-Board to re-engage him. But RW-1 categorically stated that at no point of time services of the petitioner-workman were terminated and no junior persons were ever retained by them. With a view to substantiate the aforesaid contention put forth on behalf of the respondent-Board, aforesaid witness also proved on record mandays chart EX. RA.

14. In nutshell, the case of the petitioner-workman is that since he had completed 240 days in preceding 12 months prior to his termination, it was incumbent upon the respondent-Board to issue notice under Section 25-F and as such, in the absence of the same, his termination deserve to be held bad. Similarly, at the time of his illegal retrenchment, junior persons were retained by the respondent-Board, hence, he was entitled to the protection of Sections 25-F, 25-G and 25-H of the Act, whereas respondent-Board have stated that the petitioner-workman had himself abandoned the job and no junior persons to the petitioner-workman were engaged/retained by the respondent-Board after his

abandonment.

15. Close scrutiny of the mandays chart EX.RA, clearly suggest that the petitioner had completed 307 days in a calendar year 1984 and moreover RW-1, Hans Raj, Junior Engineer, who appeared as witness, was unable to inform the learned tribunal below that whether junior persons to the petitioner were retained by the respondent-Board or not. Similarly, he stated that there was no record with him, which could show that how many employees were employed after 1995. Since RW-1, who was admittedly departmental witness was unable to substantiate the averments contained in the written statement filed by the respondent-Board, with the record brought by him at the time of his deposition before the learned tribunal, this Court sees no illegality and infirmity with the findings returned by the learned Tribunal. Similarly, taking note of the law laid down by this Court in Bhatag Ram's case supra, this Court is of the view that it is not necessary for the workman to complete 240 working days in a preceding calendar year for taking benefit of Section 25-F, 25-G and 25-H of the Act. In the instant case, since petitioner-workman had completed 307 days in a calendar year, 1984, notice under Sections 25 of the Act was required to be issued to the workman. Though, in the present case, services of the petitioner were illegally retrenched in the year, 1990 but fact remains that the petitioner workman had completed 240 days in a calendar year, 1984. As per judgments relied upon herein above, it is not necessary to the workman to complete 240 days during 12 months for taking benefits of Section 25-G and 25-H of the Act. Though, in present case, services of the petitioner were illegally retrenched in the year, 1990, but fact remains that the workman had completed 240 days in the year, 1984 and that period would be counted for reckoning period of working days to cover his case under Section 25-F of the Act. Admittedly, in the present case petitioner has been able to prove on record that he worked for more than 307 days in a calendar year, 1984 as clearly emerged from Ex.RA and as such, there is no force in the contention put forth on behalf of the respondent-Board that since petitioner-workman had not completed 240 days in preceding 12 months prior to his termination in the year, 1990, there was no requirement to resort to the provisions of the Act. This Court after perusing the aforesaid judgments having been relied upon on behalf of the petitioner-workman is of the view that there is no illegality and infirmity in the award passed by the learned tribunal, wherein termination of the petitioner has been held to be bad. Similarly, perusal of the record clearly suggest that respondents have not been able to refute the allegations of the petitioner-workman that junior persons were retained at the time of his termination and as such, learned tribunal has rightly concluded that respondent-Board has fallen in grave error while not issuing notice under Section 25-F-G, 25-N of the Act. As far as plea of abandonment, as has been taken by the respondent-Board, this Court in the aforesaid judgment categorically held that mere raising plea of appointment may not be sufficient to prove that workman had abandoned the job, rather it needs to be proved on record by leading cogent convincing evidence. In the present case, this court was unable to

lay its hand to any documents placed on record by the respondent-Board suggestive of the fact that the petitioner-workman himself abandoned the job. Moreover, instant case appears to be squarely covered by the judgment passed by the Division Bench of this Court in CWP No. 2588 of 2009, wherein similar situate person engaged by Electricity Board Division Chopal was terminated without following due procedure of law, as envisaged under the Act but later on he was re-engaged in terms of the judgment passed by this Court.

16. Consequently, in view of the detailed discussion made herein above, this Court sees no illegality and infirmity in the impugned award passed by learned Labour Court and as such same deserves to be upheld.

17. Accordingly, the present petition is dismissed along with pending application(s), if any.