

(2010) 06 SHI CK 0161

In the High Court Of Himachal Pradesh

Case No : C.W.P. No's. 308 and 309 of 2009

Himachal Pradesh State Electricity Board and Others

APPELLANT

Vs

Ghanshyam and Others
 Himachal Pradesh State
Electricity Board and Another Vs Molak Ram and Another

RESPONDENT

Date of Decision : 18-06-2010

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 77, 78

Industrial Disputes Act, 1947 — Section 2, 25A, 25C, 25D, 25E

Citation : (2010) 06 SHI CK 0161

Hon'ble Judges : Kurian Joseph, C.J;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Since common questions of law and facts are involved in these petitions, the same were taken up together and are being disposed of by this common judgment.

2. The employer, i.e., Himachal Pradesh State Electricity Board has assailed the awards passed by the learned Industrial Tribunal-Cum-Labour Court, Shimla and Dharamshala, dated 3.11.2008, 27.10.2008, 26.11.2008, 27.12.2008, 27.12.2008, 28.2.2009, 20.1.2009, 20.07.2009, 3.8.2009, 17.8.2009 and 31.08.2009.

3. The Respondents (hereinafter referred to as "the workmen" for convenience sake) were engaged by the employer on daily wage basis. They were retrenched. Thereafter, they raised demand notice. The State of Himachal Pradesh after the failure of conciliation proceedings, made references to the Industrial Tribunal-Cum-Labour Court, Shimla and Dharamshala.

4. The case of the workmen, in a nut-shell, before the Industrial Tribunal-Cum-Labour Court, Shimla & Dharamshala, was that they had completed 240 days in a block of 12 calendar months preceding their retrenchment. They have also

pleaded before the Labour Court that the persons junior to them have been retained, which violates Section 25G of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity sake). The workmen had also pleaded that persons junior to them were re-engaged and the cases of the workmen were not considered, which violates Section 25H of the Act.

5. The case of the Management precisely before the learned Labour Court was that the workmen had not completed 240 days preceding their retrenchment and the persons junior to them, had neither been retained nor fresh hands were engaged. The workmen filed claim petitions before the learned Labour Court. The Management also filed replies thereto. The learned Labour Court, on the basis of the evidence adduced by the workmen and the Management, came to a definitive conclusion that the workmen had not completed 240 days in a block of 12 calendar months preceding their retrenchment. However, after appreciation of oral and documentary evidence, the learned Labour Court came to the conclusion that the persons junior to the workmen had been retained. The learned Labour Court had also concluded that after the retrenchment of the workmen, fresh hands were engaged. Consequently, the learned Labour Court held that there was violation of Sections 25G & H of the Act. The learned Labour Court directed the reinstatement of the workmen alongwith seniority and continuity in service, however, denied the back wages.

6. Mr. Vinod Thakur, learned Counsel for the Petitioners-Electricity Board has strenuously argued that since the workmen had not completed 240 days in a block of 12 calendar months, they could not be held entitled to the benefit of Section 25G & H of the Industrial Disputes Act, 1947. He has also argued that the Petitioners have abandoned their jobs.

7. The issue raised by Mr. Vinod Thakur, learned Counsel for the Petitioners-Electricity Board is no more *res integra* in view of the law laid down by the Supreme Court in following judgments.

8. Their lordships of the Hon'ble Supreme Court in *Central Bank of India Vs. S. Satyam and others*, have held that it is not necessary for a workman to complete 240 days to get the benefit of Section 25G & 25H of the Industrial Disputes Act, 1947. Their Lordships have held as under:

6. On the rival contentions, the real question for decision is: whether the provisions for re-employment of retrenched workmen made in Section 25H should be confined only to the category of retrenched workmen covered by Section 25F by restricting the meaning of "retrenchment" in Section 2(oo) for this purpose? Chapter V-A containing Sections 25A to 25J was inserted by Act No. 43 of 1953 with effect from 24-10-1953. This Chapter relates to "Lay off and Retrenchment". Section 25F prescribes the conditions precedent to retrenchment of workmen. It applies only to the retrenchment of a workman employed in any industry 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.

Section 25B defines continuous service for the purposes of this chapter and it says, inter alia, that a workman shall be deemed to be in continuous service under an employer for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days. In other words, the expression "continuous service for not less than one year" in Section 25F has to be so construed by virtue of Section 25B. The benefit of applicability of Section 25F can therefore, be claimed by a workman only if he has been in continuous service for not less than one year as defined in Section 25B. Any other retrenched workman who does not satisfy this requirement of continuous service for not less than one year cannot avail the benefit of Section 25F which prescribes the conditions precedent to retrenchment of workman of this category. Section 25G prescribes the procedure for retrenchment of ordinarily applies the principle of last come first go".

7. Section 25H then provides for re-employment of retrenched. It says that then the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizen of India to offer themselves" for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons. Rules 77 and 78 of the Industrial Disputes (Central) Rules, 1957 prescribe the mode of re-employment. Rule 77 requires maintenance of seniority list of all workmen in a particular category from which retrenchment is contemplated arranged according to seniority of their service in that category and publication of that list. Rule 78 prescribes the mode of re-employment of retrenched workmen. The requirement in Rule 78 is of notice in the manner prescribed to every one of all the retrenched workmen eligible to be considered for re-employment. Shri Pai contends that Rules 77 and 78 are unworkable unless the application of Section 25H is confined to the category of retrenched workmen to whom Section 25F applies. We are unable to accept this contention.

8. Rule 77 requires the employer to maintain a seniority list of workmen in that particular category from which retrenchment is contemplated arranged according to the seniority of their service. The category of workmen to whom Section 25F applies is distinct from those to whom it is inapplicable. There is no practical difficulty in maintenance of seniority list of workmen with reference to the particular category to which they belong. Rule 77, therefore, does not present any difficulty, Rule 78 speaks of retrenched workmen eligible to be considered for filling the vacancies and here also the distinction based on the category of workmen can be maintained because those falling in the category of Section 25F are entitled to be placed higher than those who do not fall in that category. It is no doubt true that persons who have been retrenched after a longer period of service which places them higher in the seniority list are entitled to be considered for re-employment earlier than those placed lower because of a lesser period of service. In this manner a workman falling in the lower category

because of not being covered by Section 25F can claim consideration for re-employment only if an eligible workman above him in the seniority list is not available. Application of Section 25H to the other retrenched workmen not covered by Section 25F does not, in any manner, prejudice those covered by Section 25F because the question of consideration of any retrenched workman not covered by Section 25F would arise only, if and when, no retrenched workman covered by Section 25F is available for re-employment. There is, thus, no reason to curtail the ordinary meaning of "retrenched workmen" in Section 25H because of Rules 77 and 78, even assuming the rules framed under the Act could have that effect.

9. The plain language of Section 25H 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 25F 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 25F 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 25F 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 retrenchment while Section 25F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25G 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, of ordered by Section 25F.

10. The next provision is Section 25H which is couched in wide language and is capable of application to all retrenched workmen, not merely those covered by Section 25F. It does not require curtailment of the ordinary meaning of the word "retrenchment" used therein. The provision for re-employment of retrenchment workmen merely gives preference to a retrenched workman in the matter of re-employment 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 25F applies but for all cases of retrenchment and, therefore, there is no reason to restrict application of Section 25H 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 25H. This contention is, therefore, rejected.

9. In *Samishta Dube Vs. City Board, Etawah and Another*, their lordships of Hon"ble Supreme Court have held that the procedure u/s 6P of U.P. Industrial Disputes Act, 1947 is not subject to any particular period of service. Their Lordships have held as under:

7. We shall next deal with the point whether, in case employees junior to the Appellant were retained, the directions issued by the Labour Court could be treated as valid. Section 6-P of the U.P. Act (which corresponds to Section 25G of the Central Act of 1947) states that where any workman in an industrial establishment is to be retrenched and he belongs to a particular category of workmen in the establishment, - in the absence of any agreement between the employer and the workmen in this behalf - the employer shall ordinarily retrench the workmen who was the last person to be employed in that category, unless for reasons to be recorded, the employer retrenches any other person. Now this provision is not controlled by conditions as to length of service contained in Section 6(N) (which corresponds to Section 25F of the Industrial Disputes Act, 1947). Section 6-P does not require any particular period of continuous service as required by Section 6-N. In *Kamlesh Singh v. Presiding Officer* in a matter which arose under this very Section 6-P of the U.P. Act, it was so held. Hence the High Court was wrong in relying on the fact that the Appellant had put in only three and a half months of service and in denying relief. See also in this connection *Central Bank of India Vs. S. Satyam and others*,

10. Their lordships of the Hon"ble Supreme in *Regional Manager, S.B.I. Vs. Rakesh Kumar Tewari*, have again reiterated that there is no need for a workman to have been in continuous employment within meaning of Section 25B, for applicability of Sections 25G and 25H of the Act.

13. Section 25G provides for the procedure for retrenchment of a workman. The Respondents have correctly submitted that the provisions of Sections 25G and 25H of the Act do not require that the workman should have been in continuous employment within the meaning of Section 25B before he could said to have been retrenched. The decision in *Central Bank of India Vs. S. Satyam and others*, is clear authority on the issue. We see no reason to take a contrary view.

11. Similarly, in *Jaipur Development Authority Vs. Ram Sahai and Another*, , their lordships of the Hon"ble Supreme Court have held that continuous work in terms of Section 25B of the Act is not necessary insofar as statutory requirements under Sections 25G and 25H are concerned. Their Lordships have held as under:

24. Mr Jain appears to be right when he submits that continuous work in terms of Section 25B of the Act is not necessary insofar as statutory requirements under Sections 25G and 25H are concerned. The said question appears to have been considered by this Court in some decisions.

12. Now, we will advert to the submission made by Mr. Vinod Thakur, learned

Counsel for the Petitioners-Board that the workmen had abandoned their jobs. The Board had not placed any tangible evidence on record to suggest, even remotely that the workmen had abandoned their jobs. Whether there is voluntary abandonment of service or not, is a question of fact and is required to be proved by leading cogent evidence.

13. Their Lordships of the Hon"ble Supreme Court in G. T. Lad and Others Vs. Chemical and Fibres of India Ltd., have held as under:

6. From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another, it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.

14. There is thus neither any jurisdictional error nor procedural irregularity in the awards passed by the learned Industrial Tribunal-Cum-Labour Court.

The writ petitions are hence dismissed, so also the pending application(s), if any. No costs.