

(2011) 07 SHI CK 0249
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 901 of 2011

Himachal Road Transport Corporation and Another	APPELLANT
Vs	
Raghubir Singh	RESPONDENT

Date of Decision : 14-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10(1), 25F

Citation : (2012) 132 FLR 1045

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

Bench : Division Bench

Advocate : S.C. Sharma, for the Appellant;

Judgement

V.K. Sharma, J.—Award dated 1.6.2010 (Annexure P-4), passed by the learned Presiding Judge, H.P. Industrial Tribunal-cum-Labour Court, Dharamshala (H.P.), in Reference No. 193 of 2007, Shri Raghuvir Singh v. Managing Director, H.R.T.C. Shimla, H.P. and another, u/s 10(1) of the Industrial Disputes Act, 1947 (in short "the I.D. Act") quashing termination of the services of the respondent-workman w.e.f. 26.12.1996, with a direction to reengage him forthwith alongwith continuity in service and seniority with 50% backwages from the date of his illegal termination, is under challenge in this petition, under Articles 226/227 of the Constitution of India at the instance of the appellants-employer. It is pleaded on behalf of the appellants-employer that the respondent-workman was appointed as Blacksmith Helper on probation for a period of two years w.e.f. 14.10.1991. However, during the period of probation his work and conduct was not found satisfactory and as such his services were dispensed with, as no longer required, w.e.f. 16.2.1993. Being aggrieved, he preferred an appeal against the above order to the Managing Director of the respondent-Corporation, which was allowed and he was re-engaged on probation for a period of two years w.e.f. 14.3.1995.

2. On 4.5.1996 the respondent-workman proceeded on one day casual leave.

However, he did not join duty on 5.5.1996 and remained willfully absent w.e.f. 5.5.1996 to 26.12.1996 without submitting any application for leave and getting the same sanctioned from the competent authority. He failed to join duty even despite issuance of telegrams dated 8.5.1996 and 11.6.1996 sent at his home address with a direction to join duty which were duly received by him, Consequently, he was served with a show cause notice dated 30.9.1996 which was sent at his home address through registered post, but the same was received back with the remarks that the addressee was not available at the given address. When the show cause notice was sent again through registered post on 14.10.1996, the same was received back with the report that the addressee refused to take delivery. It was in such circumstances that the notice was published in daily Hindi newspaper "Punjab Kesari" on 4.12.1996 requiring the respondent-workman to join duty within 15 days, but he failed to comply with the direction.

3. Against the above backdrop, the work and conduct of the respondent-workman was not found satisfactory and his services were again dispensed with vide order dated 26.12.1996 as no longer required by taking resort to the probation clause. According to the appellants-employer, the respondent-workman was given ample opportunities to mend his ways, but he failed to do so. It is further averred that the respondent-workman availed leave w.e.f. 14.3.1995 to 26.12.1996 without getting the same sanctioned from the competent authority. The appeal filed by the respondent-workman was rejected vide memo dated 21.5.1998.

4. Copies of the claim filed by the respondent-workman before the Labour Court, reply thereto filed on behalf of the appellants-employer and affidavit in evidence filed by the respondent-workman have been brought on record as Annexures P-1 to P-3.

On the above averments the petition has been filed on the following prayer:

That this Civil Writ petition may kindly be allowed and impugned order vide Annexure P-4 may kindly be quashed. Any other suitable relief under the fact and circumstances of the case may also be granted in favour of the petitioner and against the respondent.

Notice of the petition was issued to the respondent-workman, who failed to appear despite due service.

5. There is a recital in the impugned award dated 1.6.2010, Annexure P-4, that "the respondents despite service has chosen not to appear and as such have been proceeded ex-parte". However, it appears that the appellants-employer was proceeded against ex parte only after it filed reply to the claim filed by the respondent-workman in the Labour Court. The averments set up on behalf of the appellants-employer in the writ petition had also been incorporated in the reply filed on its behalf in the Labour Court.

6. While granting relief to the respondent-workman the Labour Court has relied upon his deposition as PW-1 and the documentary evidence adduced by him such as the appointment letter, medical certificates, order of termination dated 5.3.1997 w.e.f. 26.12.1996 and order dated 9.6.1998, whereby the appeal preferred by the respondent-workman was dismissed by the Managing Director of the respondent-Corporation.

7. A perusal of the impugned award dated 1.6.2010, Annexure P-4, would go to show that termination of services of the respondent-workman has been held to be violative of section 25F of the I.D. Act. To this extent no fault can be found with the impugned award and this position, both on facts and in law is also not very seriously disputed on behalf of the appellants-employer. There can also not be any dispute with regard to the legal position that once termination is held to be illegal, the workman is entitled for reinstatement alongwith continuity in service and seniority. However, as far as the relief of grant of backwages to the extent of 50%, as in this case, is concerned, the same is based on the sole self serving statement of the respondent-workman before the Labour Court as PW-1. It would be seen that grant of such relief is not a natural corollary consequent upon quashing of illegal termination followed by reinstatement alongwith continuity in service and seniority and more so in a case as the present one as has been held by the Hon''ble Apex Court in Kallakurichi Taluk Co-op. Housing Society Ltd. Vs. M. Maria Soosai and Others, . It being so, the impugned award dated 1.6.2010, Annexure P-4, is liable to be modified to this extent.

8. In view of the above, the petition succeeds partly and is accordingly allowed in part. Consequently, whereas the impugned award dated 1.6.2010, Annexure P-4, is upheld to the extent the same has quashed termination of the petitioner w.e.f. 26.12.1996 alongwith a direction to the appellants-employer to re-engage him alongwith continuity in service and seniority, the direction with regard to payment of 50% backwages to the respondent-workman from the date of his illegal termination contained therein is set aside. To be explicit, the respondent-workman shall not be entitled for any backwages. The petition is disposed of in the above terms, so also pending application(s), if any.