
(1996) 09 SHI CK 0017
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 762 of 1996

Jagdish Chand

APPELLANT

Vs

M.C. Shimla and Others

RESPONDENT

Date of Decision : 17-09-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 —
Section 4, 7

Citation : (1997) 1 ShimLC 297

Hon'ble Judges : M. Srinivasan, C.J.; Kamlesh Sharma, J

Bench : Division Bench

Advocate : Archana Vaidya, for the Appellant; K.L. Bali, for Respondents 1 and 3, R.S. Jamalta, for Respondent 2 and Indar Singh, A.G. for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—This is a case in which the Petitioner's father was an employee in the Electrical Wing of the Municipal Corporation which was transferred to H.P. State Electricity Board on 1-1-1974. The Petitioner's father expired on 12-1-1981. The Himachal Pradesh Government by their Order No. LSG-A (1)/1/74-II dated 7th July, 1982 appointed an Arbitrator namely Shri B.C. Negi to consider/examine the claims/ counterclaims of the H.P. State Electricity Board and the Municipal Corporation, Shimla, arising out of transfer of Electricity Wing of Municipal Corporation, Shimla to the H.P. State Electricity Board. The terms of the reference are set out in the award which is produced as Annexure P-I to the petition. It is not necessary to refer to the entire terms of the reference and suffice it to point out that under Clause (ii) of the Order the Arbitrator was directed to consider the claim preferred against the Board by the Municipal Corporation on account of the value of the assets transferred to the Board with effect from 1-1-1974.

2. When the arbitration was proceeding the Petitioner's father died on 12-1-1981. The Petitioner got employment on compassionate grounds under the Electricity Board. On 13-11-1982, the premises which was occupied by the Petitioner's father was allotted to the present Petitioner by the Board. Thereafter, the Arbitrator passed an award on 31-3-1983 deciding the dispute between the Municipal Corporation on one hand and the Electricity Board on the other. In the award, following paras are relevant in this case:

As a consequence of the discussions that took place between the Government, the H.P.S.E.B and the Municipal Corporation and the notification referred to earlier the electric supply system stood transferred to H.P.S.E.B. with effect from 1-1-1974 subject to terms and conditions of its transfer being sorted out in due course.

... .. Residential buildings in occupation of the H.P.S.E.B. employees in Suji Lines and market lines (near Sabji Mandi) will continue to remain with them till the present incumbents retire. Thereafter, those buildings will revert to the Municipal Corporation.

The H.P.S.E.B. will pass on whatever rent they have been collecting from the occupants with effect from 1-8-1982 which will notice less than what was being charged by the Municipal Corporation when these buildings were with them.

3. The award was not challenged by either of the parties thereto. The Municipal Corporation filed an application on 11-11-1987 against the Petitioner herein for ejectment under Sections 4 and 7 of the H.P. Public Premises Land Eviction and Rent Recovery Act, 1971 on the ground that the Petitioner herein was an unauthorised occupant, as the allotment was made to the Petitioner by the Electricity Board and not by the Corporation which according to the corporation had no right to do so. The Assistant Commissioner passed an order on 7-8-1995 granting the prayer of the Municipal Corporation and while doing so the Assistant Commissioner considered the award passed by the Arbitrator and gave an interpretation thereof. The relevant portion of the Order reads as under:

This award, no doubt, has been announced in 1983, but it has the effect since 1974. So it was incumbent upon the Respondent No. 2 to have vacated this premises and be handed over to the applicant. These acts on behalf of Respondent No. 2 were arbitrary, unjust and illegal.

4. The Petitioner filed an appeal before the Divisional Commissioner, Shimla. The appeal was decided on 29-3-1996. The Order of the Assistant Commissioner was confirmed and the appeal was dismissed. The appellate authority has also interpreted the order in the following terms:

There is no doubt that the award of the Arbitrator clearly specifies that the residential buildings in occupation of H.P.S.E.B. employees in Suzi line will continue to remain with them till the present incumbents retire. The Arbitrator has also stated that the rent collected by H.P.S.E.B. will be deposited with the

Municipal Corporation. As is clear from the award, this decision was in the context of residential buildings which were under occupation of the Electrical Wing of the Municipal Corporation at the time of the transfer of the Wing to H.P.S.E.B. Therefore, in the present case, the award in effect allowed Shri. Dhani Ram to occupy the premises. The H.P.S.E.B., on Shri. Dhani Ram's death allotted the premises to his son before the award was announced. But clearly in terms of the award it was not entitled to do so, since the concession was only with respect to the incumbent who was transferred with the Electrical Wing.

5. The present Petitioner has filed this writ petition challenging the correctness of the orders passed by the Assistant Commissioner and Divisional Commissioner and seeking them to be quashed. The contention of the Petitioner is that the award can be given effect to only from 31-3-1983 and not from 1-1-1974 when the Electrical Wing of the Municipal Corporation was transferred to the Electricity Board. In our opinion this contention does not hold good as rightly pointed out by the Divisional Commissioner that the dispute before the Arbitrator was to decide the rights of the parties as on 1-1-1974. The Arbitrator had no jurisdiction to permit any person who was not an incumbent in the office as on 1-1-1974 and who became an employee of the Electricity Board thereafter to continue in the premises. In this case, it is seen that the Petitioner became an employee of the Board only after 12-1-1981 when his father died and the premises was also allotted thereafter on 13-11-1982. Hence, the Arbitrator had no jurisdiction to say that the Petitioner's possession should continue till he retires.

6. It is contended on behalf of the Petitioner that in the award, the Arbitrator used the expression "retire" and it does not contemplate one who died in harness. We are unable to accept this contention. It only means in the content that the incumbent ceases to be an employee. In other words, it can include the case of death of an employee. In this case, it is seen that the Petitioner herein got into service long after the electrical wing of Municipal Corporation was taken over by the Electricity Board and the Petitioner got allotment of the premises thereafter. Hence, the contention of the Petitioner cannot be accepted.

7. There is also an angle from which this matter can be looked into. The award of the Arbitrator was placed before the two authorities who decided the matter under the provisions of H.P. Public Premises Land Eviction and Rent Recovery Act, 1971. They had to interpret the award and come to a particular conclusion. Both the authorities have accepted one interpretation which is possible on the facts and circumstances of the case. It is not for this Court to interfere with that interpretation sitting in jurisdiction under Article 226 of the Constitution of India. It is a well settled principle that when two interpretations are possible and one has been accepted by the concerned authority, it is not open to the writ Court to interfere with the same and quash the order passed by the authorities as the order cannot be said to suffer from an error apparent on the face of the record.

In the result, the writ petition fails and is hereby dismissed.

No costs.

C.M.P. No. 1724 of 1996:

In view of the order passed in the writ petition, this C.M.P. is dismissed.