courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 13/09/2026

(2015) 08 SHI CK 0069

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2365 of 2013

Krishan Chand — APPELLANT

Vs

State of Himachal Pradesh and Others — RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:
Constitution of India, 1950 — Article 14, 16
Industrial Disputes Act, 1947 — Section 2(ka), 25F, 25G, 25N

Citation : (2015) 3 LLJ 745

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Vijay Chaudhary, for the Appellant; Ramesh Thakur, Asstt. AG, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J—This petition is instituted of against the award dated 11.12.2012, rendered by the learned Presiding Officer, Labour Court-cum-Industrial Tribunal, Dharamshala, in Reference No. 54 of 2008. "Key facts" necessary for the adjudication of this petition are that the petitioner Court was engaged as Beldar on 17.5.1996. He was retrenched on 30.6.2006. He raised the industrial dispute. The Labour High Commissioner referred the matter to the Labour Court-cum-Industrial Tribunal, Dharamshala, bearing Reference No. 54 of 2008. The petitioner filed claim petition before the learned Labour Court-cum-Industrial Tribunal, Dharamshala. The reply was filed to the same by the respondents. The issues were framed by the Labour Court-cum-Industrial Tribunal, Dharamshala, on 26.12.2008. The Labour Court-cum-Industrial Tribunal, Dharamshala, rejected the reference on 11.12.2012. Hence, this petition.

2. The petitioner has appeared as PW-1. He has led his evidence by filing affidavit Ext. PW-1/A. According to the averments made in the affidavit, he was engaged on 17.5.1996. He worked uninterruptedly, without any break up to

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/krishan-chand-appellant-hash-state-…

30.6.2006. He was qualified to be regularized as Beldar after completion of 10 years of service. He has made reference to the notification dated 9.6.2006. There was violation of Section 25N and 25G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). In his cross-examination, he denied that he was paid one month''s wages amounting to Rs. 13,650/-. He denied the suggestion that he refused to accept the notice. He also available in Court Government Seed Store and work was still available. Volunteered that now the same was being done by contract labour. He denied that the copy of the same was sent to him through Chaman Lal, Beldar, which he has refused to accept. He also denied that the Department sent a draft to him and he refused to accept the same.

3. PW-2 H.R. Rahi, has deposed that earlier the work was also admitted that after 2006, except Khub Ram and Krishan Chand, no fresh hands were reengaged.

4. Sh. A.R. Sharma, Dy. Director Agriculture, Mandi, has appeared as RW-1. He has led evidence by filing affidavit RW-1/A. High Para 2 of the affidavit reads as under:

"2. That the applicant was engaged in violation of the Govt. Policy at Seed Grading Unit, Bhangrotu as such the services of the petitioner was dispensed with on dated 30.6.2006 in pursuant to the Govt. order."

5. He was cross-examined. He has proved man days chart the postal authorities Ext. RW-1/D, acknowledgement RW-1/E, notice. Ext. RW-1/B, retrenchment order Ext. RW-1/C, endorsement made by dated 4.10.2006 Ext. RW-1/G and envelope Ext. RW-1/. He has admitted that the petitioner has worked for 240 days in each calendar year except for 1996 and 2006. He has also admitted that the Seed Grading Unit at Bhangrotu was still functional.

6. RW-2 Chaman Lal deposed that he has taken the cheques to Khub Ram and Krishan Chand. They have refused to accept the of same. He proved his report Ext. RW-1/A.

7. The man days chart of the petitioner is Ext. RW-1/B. It is evident from the man days chart that the petitioner was engaged in the month of May, 1996. He has worked uninterruptedly till 30.6.2006.

8. Mr. Vijay Chaudhary, Advocate, for the petitioner has drawn the attention of the Court to communication Ext. PW-1/B dated Court 9.6.2006. It is evident from Ext. PW-1/B that daily waged/contingent paid workers who had completed 8 years continuous service (with a minimum of 240 days in a calendar year except where specified otherwise for the tribal areas) as on 31.3.2004, were to be considered for regularization. The terms and conditions for regularization of daily High waged/contingent paid workers were to be governed as per Annexure-A.

9. The Court has perused the man days chart. It is evident from man days chart that the petitioner had completed 264 days in the year 1997, 359 days in the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/krishan-chand-appellant-hash-state-…

year 1998, 362 days in the year 1999, 365 days in the year 2000, 365 days in the year 2001, 365 days in the year 2002 and 334 days in the year 2003. The petitioner had worked for 227 days in the year 1996 and thereafter he had continuously completed more than 240 days in the year 2004 and 2005. He has worked for 171 days in the year 2006. The respondents, instead of terminating his services vide Ext. RW-1/C should have regularized the petitioner taking into consideration the un-interrupted service rendered by him for almost 8 years. There was of shortage of only 13 days in computing 240 days in the year 1996. This period should have been condoned to enable the petitioner to be regularized after completion of 8 not available Court in the Seed Grading Unit, Bhangrotu/ SMF Bhangrotu. It is necessary as per Section 25F of the Act to give one month''s notice in writing indicating the reasons for retrenchment. The reason for years w.e.f. 31.3.2004 as per Ext. PW-1/B. The respondents, instead of regularizing the petitioner have retrenched him vide Ext. RW-1/C. The reason assigned for retrenchment of the petitioner is that the work was High retrenchment is not that the work was not available in the Seed Grading Unit Bhangrotu but as per the evidence led by RW-1 Sh. A.R. Sharma, the petitioner has been retrenched since he was engaged in violation of the Government Policy at Seed Grading Unit Bhangrotu. Thus, the petitioner has not been retrenched for the non-availability of the work but has been retrenched that he was engaged initially on 17.5.1996, in violation of the Government Policy.

10. Their lordships of the Hon''ble Supreme Court in the case of Ajaypal Singh Vs. Haryana Warehousing Corporation , have held that the services of the appellant was not terminated on the ground that his initial appointment was in violation of Articles 14 & 16 of the Constitution of India and no such reasons were shown in the order of retrenchment nor was such plea raised while reference was made by the appropriate Government for adjudication of the dispute between the employee and the employer. The High Court could not deny the benefit for which the appellant was entitled on the ground that his initial appointment was made in violation of Articles 14 and 16 of the Constitution of India. Their lordships have further held that Industrial Disputes Act, 1947 is a beneficial legislation enacted with an object for settlement of industrial disputes and for certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for a long period without giving them the status and privileges of permanent employees. Their lordships have held as follows:

"(5) The Industrial Disputes Act, 1947 is a beneficial legislation enacted with an object for settlement of industrial disputes and for a certain other purpose. Section 2(ka) of the said Act defines industrial establishment or undertaking.

(18) We have noticed that Industrial Disputes Act is made for settlement of industrial disputes and for certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for a long period without giving

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/krishan-chand-appellant-hash-state-…

them the status and privileges of permanent employees.

(24) In the present case, the services of Appellant was not terminated on the ground that his initial appointment was made in violation of Articles 14 and 16 of the Constitution of India. No such reasons was shown in the order of retrenchment nor was such plea raised while reference was made by appropriate Government for adjudication of the dispute between the employee and the employer. In absence of such ground, we are of the opinion that it was of not open for the High Court to deny the benefit for which the Appellant was entitled on the ground that his initial appointment was made in violation of Articles 14 and 16 of the Constitution of India."

11. In the instant case also, it is not mentioned in the retrenchment order that the services of the petitioner were terminated Court on the ground that his initial appointment was in violation of Articles 14 and 16 of the Constitution of India or was not in accordance with the policy decision. Even, such plea was not raised when the reference was made by the Labour Commissioner to the Labour Court-cum-Industrial Tribunal. This plea was also not open to the respondent-State after a period of 10 years.

12. Mr. Ramesh Thakur, learned Asstt. Advocate General for the State has vehemently argued that the petitioner was paid one month''s wages in lieu of notice along with the compensation under the provisions of Section 25F of the Act, but he has refused to accept the same. He has relied upon the statement of RW-1 Chaman Lal that the same. He also argued that in the endorsement draft was also sent to amount was sent to the petitioner but he has refused to accept the petitioner but he refused to accept the same. It is evident from PRW-1/H that the petitioner was not found at home. Thus, he has not refused to accept the draft, as argued by Mr. Ramesh Thakur, learned Asstt. Advocate General.

13. The reason assigned for retrenchment of the petitioner as per Ext. RW-1/C, as noticed here in above, of is that the work was not available in Seed Grading Unit at Bhangrotu. But, the fact of the matter is that the petitioner has been retrenched since his initial engagement was in violation of some decision of the State Government, as per the statement of RW-1 Sh. A.R. Sharma, quoted hereinabove. The copy of the decision has not been placed on record by RW-1. The action of the respondents of terminating the services of the petitioner Court instead of regularizing him when there was only shortfall of 13 days in completion of 240 days in the year 1996, amounts to unfair labour practices.

14. PW-2 H.R. Rahi has testified that the work was available in the Seed Store but the work was being extracted by engaging contract High labour. Thus, the petitioner was to be regularized instead of terminating his services vide Ext. RW-1/C. In view of this Ext. RW-1/C is void ab initio. Accordingly, the Writ Petition is allowed. Ext. RW-1/C is declared void ab initio. The petitioner would be deemed to be in continuous service. The respondents are directed to regularize the petitioner w.e.f. 31.3.2004, as per Ext. PW-1/B dated 9.6.2006, by

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/krishan-chand-appellant-hash-state-…

condoning shortage of 13 days in the year 1996, with Pall the consequential benefits. Pending application(s), if any, shall stand disposed of.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/krishan-chand-appellant-hash-state-…