
(2012) 10 SHI CK 0049
In the High Court Of Himachal Pradesh
Case No : CWP No. 1715 of 2010-B

Krishan Lal

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 29-10-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B, 25F, 25G, 25H, 29

Citation : (2013) LabIC 59

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Advocate : Shashi Shirshoo, for the Appellant; Shubh Mahajan, Dy. Advocate, for the Respondent

Final Decision : Allowed

Judgement

V.K. Sharma, J.—The petition has been filed on the following substantive prayer:--

It is, therefore, humbly prayed that the petition may kindly be allowed and the impugned order dated 16.2.2010 passed by the Ld. Presiding Judge, Shimla, Annexure-P/6 may kindly be quashed and set aside and the respondent Nos. 1 and 2 may kindly also be directed to assign the seniority to the petitioner w.e.f. November, 1996 when the petitioner was initially engaged on work.

Background facts may be stated thus. The petitioner had joined the employment of the respondent-Irrigation and Public Health department (in short "I and PH Deptt.") as daily rated beldar in November, 1996. He was disengaged on 1.9.2001. On a dispute raised by him the matter was referred to the Court for adjudication on 11.12.2002, wherein the following consent order dated 3.7.2006, Annexure-P/6, was passed:--

The reference has been received for adjudication from the appropriate Government by this Court.

Claim filed wherein the petitioner has alleged that his services were wrongly

terminated by the respondent by retaining the Junior. The allegations were denied by the respondent, but it has been admitted that the petitioner has worked for more than 240 days during 1998. At the time of argument, conciliation tried. Sh. Balbir Singh, Assistant Engineer, IPH Sub Division, Sarahan who is present has stated that the department will provide the work to me petitioner according to his seniority and availability of the work. He has further stated that Junior of the applicant will only be accommodated if the work is available. The statement has been accepted by Sh. Shashi Shirshu, Ld. counsel for the petitioner and stated that the present reference be allowed in terms of statement of Sh. Balbir Singh, Assistant Engineer.

In view of the settlement, the present reference is allowed and the respondent is directed to re-engage the petitioner according to his seniority and availability of the work. It is further made clear that no junior to the petitioner shall be accommodated ignoring the petitioner. The reference is accordingly answered. Let a copy of this order be sent to the appropriate Government for publication in the Official Gazette.

Announced

Sd/- Presiding Judge, Labour Court, 3-7-2006.

2. Pursuant to the above order dated 3.7.2006, Annexure-P/6, the petitioner was reengaged in July, 2007. Thereafter, he filed an application u/s 29 of the Industrial Disputes Act, 1947 (in short "the Act") Annexure-P/7 for execution of the aforesaid consent award/settlement dated 3.7.2006, Annexure-P/6 regarding seniority, which was contested by the respondent-department and was ultimately dismissed by the learned Labour Court, vide order dated 16.2.2010, Annexure-P/9, operative part whereof is as under:--

After scrutinizing the order dated 3.7.2006, it is clear that the only direction issued by this Court was to re-engage the petitioner according to his seniority on the availability of work. Shri Kanwar, learned DDA submits at the bar that no junior to the petitioner was accommodated ignoring the petitioner and further more there is nothing on record which could show that the respondent department has accommodated the juniors to the petitioner by ignoring him and thus having regard to entire available material on record, I am of the firm opinion that no further action in the matter is called for especially when the petitioner has been re-engaged according to his seniority and on the availability of work. Accordingly, the application u/s 29 of Industrial Disputes Act, 1947 is dismissed as devoid of force. File, after completion, be consigned to records.

3. I have heard Mr. Shashi Shirshoo, learned counsel for the petitioner, Ms. Shubh Mahajan, learned Deputy Advocate General for respondent Nos. 1 and 2 and gone through the record.

4. The record reveals that the case of the petitioner was that though he being senior was disengaged, persons junior to him, namely, Ms. Seema Kumari and

Sh. Vijay Singh, were retained in violation of the provisions of Section 25-G of the Act. Thus, according to the petitioner the direction issued by the learned Labour Court to the respondent-department to re-engage him "according to his seniority and availability of the work" with further clarification that "no junior to the petitioner shall be accommodated ignoring the petitioner" is required to be given effect in letter and spirit, meaning thereby that once the department has re-engaged him, it means that work is available and further since PW-2 Shri Balbir Singh, AE, I and PH, Sub Division, Sarahan had deposed in his statement dated 3.12.2005, Annexure-P/4 that "the above three i.e., Seema Devi, Mathu Ram and Vijay Singh are still working", he is entitled for seniority over and above them.

5. The record further reveals that Ms. Seema Kumari and Sh. Vijay Singh were engaged in the year 1998, as is apparent from Mandays Charts, Annexure-P/10 and P/11, and since the petitioner was admittedly engaged in November, 1996, he was senior to them. True it is that Shri Shobha Ram and Shri Bir Singh, the workmen mentioned in reply to the application u/s 29 of the Act, Annexure-P/8, were senior to the petitioner. However, the fact remains that Ms. Seema Kumari and Sh. Vijay Singh were admittedly junior to the petitioner.

6. On the face of the above position emerging out of the record, the stand on behalf of the respondent-department that the petitioner is entitled for seniority only w.e.f. July, 2007 when he was re-engaged in compliance of the aforesaid consent award/settlement dated 3.7.2006, Annexure-P/6, is not legally tenable. Accordingly, the impugned order of the learned Labour Court dated 16.2.2010, Annexure-P/9, can also not be sustained in view of the law laid down by a Division Bench of this Court in State of H.P. and others v. Chet Ram, Latest HLJ 2011 (HP) 768 : (2012 Lab IC (NOC) 140 (HP)), wherein it has been held as under, vide paras 4 to 7:--

4. However, admittedly, though the workman, who had joined the employment of the employer in the year 1993, was disengaged, yet persons junior to him, namely, Het Ram son of Shri Dile Ram, who had joined in July, 2003, and Nihal Singh son of Shri Mangat Ram, engaged in January 1996, were retained and their services have since been regularized. Thus, manifestly the action on the part of the employer to retrench the workman and retain his juniors, as aforesaid, is in violation of the principle of "last come first go" as embodied in Section 25-G of the ID Act and can not be sustained in law and the learned Industrial Tribunal-cum-Labour Court has rightly held so.

5. The difference between Section 25-F read with Section 25-B and Section 25-G and 25-H is that a workman has to be in continuous service for claiming the benefit u/s 25-F read with Section 25-B, whereas for the protection of Section 25-G and 25-H one need only be a workman covered by the Industrial Disputes Act. In fact, last come first go is the crux of the consideration u/s 25-G and 25-H of the ID Act, as held by the Apex Court in Harjinder Singh Vs. Punjab State Warehousing Corporation,

6. We may also make a passing observation that the said principle of last come first go has also exceptions. In case employer is in a position to establish on evidence that the retrenchment without respecting the principle of last come first go was required in good faith and on justifiable grounds, the Court/Tribunal shall not interfere with the action, thus taken by the employer. This principle also has been settled by the Apex Court in various decisions, Workmen of Sudder Workshop of Jorehaut Tea Co. Ltd. Vs. Management of Jorehaut Tea Co. Ltd., Om Oil and Oilseeds Exchange Ltd., Delhi Vs. Their Workmen, and Swadesamitran Limited, Madras Vs. Their Workmen,

7. However, in the instant case, there is no such case for the employer. Rather it has come out in evidence to the contrary that while the juniors are being retained, the senior has been kept out.

In view of the above the petition is allowed. Consequently, the petitioner is held entitled to seniority over and above his juniors, namely, Ms. Seema Kumari and Sh. Vijay Singh or any other person junior to him. However, as an abundant caution it is made clear that grant of the benefit of seniority would not entitle the petitioner for any back-wages, whatsoever. The petition stands disposed of in the above terms. Let follow up action in terms of this judgment be taken by the respondent-department within six months from the date of production of copy of this judgment by the petitioner before respondents No. 1 and 2/competent authority.