
(2014) 10 SHI CK 0119
In the High Court Of Himachal Pradesh
Case No : CWP Nos. 1715 and 1716 of 2010-B

Krishan Lal

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 25, 25G, 29

Citation : (2014) 10 SHI CK 0119

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Shashi Shirshoo, Advocate for the Appellant; Virender Kumar Verma, Meenakshi Sharma, Additional Advocate Generals, Parul Negi, Deputy Advocate General and H.S. Rawat, Advocate for the Respondent

Judgement

Tarlok Singh Chauhan, J.—Since common question of law and facts arises in both these petitions, therefore, the same are taken up together for decision.

2. Undisputed facts are that the petitioner(s) against their illegal retrenchment approached the H.P. Industrial Tribunal-cum-Labour Court, Shimla (hereinafter referred to as "Tribunal") and vide award dated 03.07.2006 the following orders came to be 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 the 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."

3. The petitioner's grievance is that after the passing of the aforesaid orders on 03.07.2006, the petitioner(s) were not engaged till July, 2007 and even seniority was not assigned to them till 20.08.2008. They again approached the Tribunal under Section 29 of the Industrial Disputes Act, 1947 (for short "the Act") for execution of the award/settlement praying therein that the award be enforced and they be assigned seniority. The learned Tribunal vide order dated 16.02.2010 rejected the application by according the following reasons:-

"After scrutinizing the order dated 3.7.2006, it is clear that the only direction issued by this Court was to reengage 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 reengaged according to his seniority and on the availability of work. Accordingly, the application under Section 29 of the Industrial Disputes Act, 1947 is dismissed as devoid of force. File, after completion, be consigned to records."

4. It is this order of the Tribunal which has been assailed before this Court on the ground that the respondents had been directed to engage the petitioner(s) according to the seniority and availability of work and it had been further made clear that no junior to the petitioner(s) shall be accommodated ignoring the claim of the petitioner(s). In terms of the award, the petitioner(s) were required to be placed above their alleged juniors Seema Kumari and Vijay Kumar, who have been arrayed as respondents No. 4 and 5 and had been engaged in the year 1998 while the petitioner(s), on the other hand, had been engaged in November, 1996.

5. The respondents filed their reply wherein they have maintained that they have strictly complied with and implemented the award passed by the learned Tribunal below.

Heard learned counsel for the parties.

6. The petition(s) on the face of it are not maintainable because they are based upon complete misreading and misinterpretation of the award passed by the learned Tribunal. What was stipulated in the award was that the respondents had been directed to re-engage the petitioner(s) according to their seniority and availability of work. It was further made clear that no juniors to the petitioner(s) shall be accommodated ignoring the petitioner(s). Now what this essentially meant was that services of the petitioner(s) were to be engaged subject to availability of work, but in no way, the petitioner(s) were ever held entitled to the benefit of seniority. Since the award itself was passed on a settlement as set out in Para-2 (supra) and no benefit had been granted under the provisions of the Act, particularly, Sections 25 or 25-G thereof. The petitioner(s) have no cause to approach this Court as admittedly no juniors to the petitioner(s) have been appointed after passing of the award. Infact, what the petitioner(s) now want by way of these petitions is to surreptitiously introduce a claim which was not even allowed by the learned Tribunal in its award dated 03.07.2006.

7. At this stage, it may be noted that the petitioner(s) have not challenged the award passed on 03.07.2006 and have rather relied upon the same. The directions contained therein are absolutely clear and unambiguous and were prospective in their operation because the petitioner(s) were not held entitled for the intervening seniority or back wages.

8. In view of the aforesaid discussion, both these petitions are totally misconceived and the same are accordingly dismissed, so also the pending application (s), if any.