
(2011) 04 SHI CK 0185
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 3925 of 2008

Krishna Devi

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39B
Industrial Disputes Act, 1947 — Section 2, 25, 25F

Citation : (2011) 04 SHI CK 0185

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldeep Singh, J.—The Petitioner has prayed a direction to the Respondents to continue engaging the Petitioner as Clerk and to pay her wages equivalent to regularly deployed Clerk with a further direction to the Respondents to treat the Petitioner on duty from 23.2.1989 without any break and pay her wages for the period from 23.2.1989 till the date of appointment with interest accrued thereupon. A prayer has also been made seeking a direction to the Respondents for bringing the Petitioner on work charged strength of the Respondents and to declare the act /order of the Respondents dated 23.2.1989 in discontinuing the engagement of the Petitioner illegal, void and without jurisdiction.

2. The facts, in brief, are that the Petitioner had passed her matriculation examination, she obtained diploma in stenography. The Petitioner was engaged as daily rated helper (Clerk) on 13.2.1985 in the office of the Land Acquisition Officer, B.S.L. Project, Mandi. The Petitioner continuously worked as Clerk-cum-Steno-typist in Hindi and English from 13.2.1985 to 23.2.1989. It has been alleged that many Clerks were engaged on daily wage basis in the Circle. After the engagement of the Petitioner, one Smt. Vidya was also engaged in the same Division in the office of Executive Engineer, Baggi, Division No. 1 (I and PH).

3. The Petitioner had put in 240 days continuous service, her services could not

have been dispensed with otherwise in due course of law. On 23.2.1989 the services of the Petitioner had been discontinued without any prior notice and without following due process of law. No reasons have been assigned as to why the services of the Petitioner had been dis-engaged. The disengagement of the Petitioner amounts to retrenchment under the Industrial Disputes Act, 1947 (for short "Act").

4. The Petitioner had been performing same work as performed by regular Clerk-cum-Steno-typist. The Petitioner was not paid wages/salary as paid to regular Clerk-cum-Steno-typist. The Petitioner is entitled to the wages of regular Clerk-cum-Steno-typist.

5. The Petitioner after her dis-engagement, met the authorities but without any positive result. At no point of time any casual card was issued to the Petitioner. The act of Respondents in dis-continuing the engagement of the Petitioner is illegal and violative of Articles 14, 16 and 39-B of the Constitution.

6. The Petitioner earlier challenged her retrenchment in CWP No. 196 of 1989 in this Court, in which interim order dated 23.8.1990 was passed. The Petitioner was not offered any job by the Respondents in pursuance of order dated 23.8.1990. CWP No. 196 of 1989 was dismissed on 30.9.1996 on the point of jurisdiction. Thereafter, the Petitioner filed the petition in the erstwhile Tribunal and on abolition of the Tribunal; the petition has been transferred to this Court.

7. The Respondents have contested the petition by filing reply. It has been stated that the Land Acquisition Collector, B.S.L. Project Mandi had engaged the Petitioner as Helper. The Muster- Rolls for Petitioner were issued by Respondent No. 3 from time to time on monthly basis to the Land Acquisition Collector, B.S.L. Project, Mandi till 20.2.1989 on the demand of Land Acquisition Collector. On 16.7.1985 the Land Acquisition Collector desired to issue Muster-Roll for the engagement of Clerk-cum-Typist in place of Helper and accordingly, the Muster-Roll for engagement of daily rated Typist -cum-Clerk was issued on 21.1.1989 to the Land Acquisition Collector. On the completion of the work of Land Acquisition papers, it was desired to dis-engage the services of the daily rated Helper-cum-Typist. Therefore, the Muster-Roll after 20.2.1989 was not issued to Land Acquisition Officer, B.S.L. Project, Mandi.

8. The Petitioner was junior most Typist-cum-Clerk in the IPH Circle, Sundernagar. There was no daily rated Clerk working in IPH Circle, Sundernagar except Petitioner. The IPH Circle, Sundernagar has different divisions and one of such division is IPH Division No. 1, Baggi. Smt. Vidya working in I and PH Sub Division No. 1, Baggi was never appointed as Clerk in the said Division, she had been working in the said Division only as Beldar on daily wages. There is no daily wage Clerk working in IPH Circle, Sundernagar. The Petitioner engaged by the Land Acquisition Collector was paid according to the minimum wages Act prescribed by the Government from time to time. The Petitioner was not discharging same and similar duties and responsibilities as that of a regular Clerk.

9. The Petitioner was employed for a particular job, there was no need to continue her services. She was the junior most Typist-cum-Clerk working in IPH Circle, Sundernagar. The action taken by the Department is within law.

10. In pursuance to the interim order dated 23.8.1990, the Petitioner was offered the job of Beldar vide Muster-Roll No. 777 w.e.f. 9.10.1990 to 31.10.1990 but the Petitioner did not report for duty. The Respondents have prayed for dismissal of the petition.

11. I have heard the learned Counsel for the parties. It has been submitted on behalf of the Petitioner that Petitioner has been retrenched in violation of Section 25-F of the Act. No notice was given to the Petitioner nor any retrenchment compensation was paid by the Respondents before dis-engaging the Petitioner. The juniors were retained in service. The principle of first come last go was not followed. The learned Additional Advocate General has submitted that no fault can be found with the dis-engagement of the services of the Petitioner w.e.f. 23.2.1989.

12. The retrenchment has been defined in Clause [oo] of Section 2 of the Act:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf.

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health

The perusal of aforesaid Clause (bb) indicates that retrenchment does not include termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry. The Petitioner was engaged on a specific project for preparation of Land Acquisition papers.

13. The Respondents No. 1 to 4 have taken stand that the land acquisition work in the project was over and therefore, after 20.2.1989 the Muster-Roll was not issued to the Petitioner for her engagement on Muster-Roll as Clerk-cum-Typist. No person junior to Petitioner was engaged. Smt. Vidya was engaged in another Division as Beldar and not as Clerk-cum-Typist. In fact there was no Clerk-cum-Typist on daily wage in IPH Circle, Sundernagar except Petitioner. It was implicit in the engagement of Petitioner that her employment will continue only till the

project work was over. Once the project work was over, the Respondents were not under legal obligation to engage the Petitioner on Muster-Roll or on daily wages. They were also not under legal obligation to renew her contract. Dis-engagement of the Petitioner due to the completion of the project does not amount to retrenchment and, therefore, Section 25-F of the Act is not applicable. It has been stated by the Respondents in the reply that Respondent-Department had issued Muster-Roll for the period 13.2.1985 to 20.1.1987 as Helper and 21.1.1987 to 20.2.1989 as Typist-cum-Clerk for engaging the Petitioner. The work of Helper/Typist -cum-Clerk in the office of Land Acquisition Officer, B.S.L. Project had completed, therefore, Muster-Rolls for the month of March i.e. 21.2.1989 to 20.3.1989 and thereafter were not issued for engaging the Petitioner.

14. In *Kishore Chandra Samal Vs. The Divisional Manager, Orissa State Cashew Development Corporation Ltd., Dhenkanal*, the Appellant was appointed as Junior Typist on NMR basis by the Respondent with effect from 12.7.1982. He continued in the said post for more than one year. Another order was issued appointing him for 44 days with effect from 1.10.1983. On its expiry on 15.11.1983 another appointment order was issued on 5.12.1983 for a fixed period giving effect from 16.11.1983. Thereafter, he was allowed to continue for about 8 months. Later he was appointed on ad hoc basis in the usual scale of pay of Rs. 255-5-285-EB-7-306-12-390 with effect from 23.7.1985. Thereafter, he was kept on NMR on payment of Rs. 10 per day for a period of 90 days from 1.12.1985 to 28.2.1986. Thereafter he was allowed to continue from 29.6.1986 to 25.9.1986 and further from 27.9.1986 to 24.12.1986. Thereafter he was allowed to continue without any break till 11.8.1989. It was alleged that refusal of work beyond 11.8.1989 amounted to retrenchment. The Labour Court held that Section 25 of the Act has not been complied with, termination of his services is illegal and unjustified. The High Court held that the contractual period of engagement ended on 3.5.1989 and there was no renewal thereafter. The engagement was for a fixed period, the High Court held that the award of the Labour Court was to be set-aside.

15. The Supreme Court held that in that case in all the orders of engagement, specific periods have been mentioned. Therefore, the High Court order does not suffer from any infirmity. In the present case the Petitioner was engaged on Muster-Roll and the specific period of last engagement of the Petitioner completed on 20.2.1989, thereafter she was not engaged on Muster-Roll as the land acquisition papers of the project were completed. Therefore, in view of *Kishore Chandra Samal (supra)* it cannot be said that Petitioner was retrenched, hence Section 25-F of the Act has not been violated by the Respondents.

16. The learned Counsel for the Petitioner has relied judgment dated 26.4.2010 in CWP(T) No. 9554 of 2008 *Mohinder Singh v. State of H.P. and Anr.* In that case, the service of the Petitioner was abruptly terminated on 21.7.2003, it was held that termination of services on 21.7.2003 was not in conformity with Section 25-F of the Act. There is no finding in the judgment dated 26.4.2010 that

the work was over and thereafter the Petitioner was disengaged. In the present case, the Petitioner was dis-engaged due to completion of work and her last engagement was upto 20.2.1989. Thereafter work was not available for her in the project for her engagement, hence "Mohinder Singh" case is not applicable.

17. The Respondents have taken the stand that the Petitioner had been paid the wages in accordance with the minimum wages Act during her engagement with Respondent No. 4. The Petitioner has failed to make out a case for wages equivalent to regular Clerk-cum-Typist when she worked as Clerk-cum-Typist on daily wage basis with Respondent No. 4. The Petitioner was offered job of Beldar in pursuance of interim order dated 23.8.1990 but she did not accept the offer. Thus seen from any angle, there is no merit in the petition which is accordingly dismissed.