
(2010) 07 SHI CK 0002
In the High Court Of Himachal Pradesh

Kulbir Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 12-07-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2010) 07 SHI CK 0002

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—The petitioner was engaged with effect from 26th May, 1987 on daily wage basis as Beldar. He worked for 217 days in the year 1987 as per Annexure R-B. He worked for 355 days in 1988. He was retrenched on 21st December, 1988. He assailed his retrenchment/termination by way of CWP No. 1298 of 1993 before this Court. The petitioner was re-engaged as per the interim order passed by this Court on 16th September, 1993. Thereafter the CWP No. 1298 of 1993 was disposed of on 7th September, 1994 by passing the following order by a Division Bench of this Court:

In view of the reply of the respondents, which has been filed on the affidavit of Shri B.P. Handa, Superintending Engineer, Irrigation-cum-Public Health Circle, Una, that the petitioners have been re-engaged as daily wage Beldars, no other order is required to be passed save and except that their services will not be terminated except in accordance with law and they will be entitled to all the benefits as per the Scheme for Betterment/Appointment/Regularization of Muster Roll Daily Wagers in Himachal Pradesh, as modified and approved by the Supreme Court of India in Shri Mool Raj Upadhyaya v. The State of Himachal Pradesh and Ors. 1994 (2) SLR 377.

The writ petition is accordingly disposed of.

C.M.P. No. 2847 of 1993.

In view of the order of the day passed in the main matter, the application stands disposed of.

2. It is evident from the order dated 7th September, 1994 that the respondents have re-engaged the petitioner and thereafter the writ petition was disposed of with a further direction not to terminate petitioner's services except in accordance with law, and to consider his case for regularization/appointment as per the Scheme modified and approved by the Hon'ble Supreme Court in Mool Raj Upadhyaya v. The State of Himachal Pradesh and Ors. 1994 (2) SLR 377.

3. A bare perusal of Annexure R-B, man-days chart reveals that the petitioner had completed 355 days preceding his termination on 21.12.1988. Petitioner has neither been issued any notice nor he has been paid compensation in lieu thereof, as stipulated u/s 25F of the Industrial Disputes Act, 1947. His retrenchment was bad in law. Respondents were aware of this fact. It is in these circumstances that this Court has granted interim relief to the petitioner, which led to his re-engagement on 25th October, 1993. Respondents knew that they have not complied with Section 25F of the Industrial Disputes Act, 1947. Once the petitioner had been re-engaged, they had not contested the writ petition. Since there was non-compliance with the provisions of Section 25F of the Industrial Disputes Act, the retrenchment of the petitioner was void ab initio. Consequently, the period with effect from 21.12.1988 to 24.10.1993 was required to be counted for continuity in service and seniority. As per Annexure R-B, petitioner had completed 240 days in each calendar year with effect from 24.10.1993 onwards.

4. Accordingly, in view of the above discussion, the writ petition is allowed. Respondents are directed to count the period with effect from 21.12.1988 to 24.10.1993 for the purpose of seniority and continuity in service and to consider the case of the petitioner for conferment of work charge status as per Mool Raj Upadhyaya's case, within a period of ten weeks from today.