
(2016) 07 SHI CK 0093
In the High Court Of Himachal Pradesh
Case No : CWP No. 2860 of 2009.

Kulvinder Singh - Petitioner @HASH Executive Engineer, HPPWD

Date of Decision : 01-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 CLR 55 : (2017) 152 FLR 515 : (2016) 4 HimLR 2041 :
(2016) 4 LLJ 457 : (2016) 3 SimLC 1237

Hon'ble Judges : Ajay Mohan Goel, J.

Bench : Single Bench

Advocate : Mr. S.D. Vasudeva, Advocate, for the Petitioner; Mr. Vikram Thakur and Mr. Puneet Rajta, Deputy Advocate Generals, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Ajay Mohan Goel, J.(Oral) - By way of present petition, the petitioner has prayed for the following reliefs:-

"(i) a writ in the nature of certiorari may kindly be issued thereby modifying the impugned dated 23.6.2009 Annexure P-3 to the extent that the respondent may very kindly be directed to regularise the petitioner on the post of Motor-Mate;

(ii) a writ in the nature of mandamus may kindly be issued thereby directing the respondent to grant seniority to the petitioner along with the back-wages at least for three years and other consequential benefits with interest at the rate of 9% per annum in the interest of justice and fair play."

2. When the matter was taken up for arguments Mr. Vasudeva, learned counsel for the petitioner has submitted that he will be restricting his claim in the present petition only to the factum of the denial of back-wages to the petitioner by the learned Labour Court at least from the date when the workman had put the machinery in motion for the redressal of his grievance by way of raising the industrial dispute.

3. At the time of arguments my attention was drawn by Mr. Vasudeva, learned counsel for the petitioner to the findings returned by the learned Labour Court in

para 19 of the award which is under challenge by way of present petition. According to him, the learned Labour Court has erred in not granting back-wages to the petitioner on the ground of delay without appreciating that the petitioner at least was entitled for back-wages from the date when he had approached the appropriate authority for the redressal of his grievance.

4. Mr. Thakur, learned Deputy Advocate General has submitted that there is neither any perversity nor any infirmity with the award passed by the learned Labour Court and it has rightly refused to grant back-wages in favour of the petitioner in view of the fact that there was an inordinate delay on the part of the petitioner in approaching the appropriate authority for the redressal of his grievance and the said delay has not been explained by the petitioner.

5. I have heard learned counsel for the parties and also gone through the records of the case.

6. In my considered view there is merit in the contention of Mr. Vasudeva, learned counsel for the petitioner to the effect that learned Labour Court ought to have had awarded back-wages in favour of the petitioner at least from the date when the petitioner had raised the industrial dispute.

7. The Hon"ble Supreme Court in *Raghubir Singh v. General Manager, Haryana Roadways, Hissar*, (2014) 10 SCC 301 has held in para 45 as under:-

"45. It is an undisputed fact that the dispute was raised by the workman after he was acquitted in the criminal case which was initiated at the instance of the respondent. Raising the industrial dispute belatedly and getting the same referred from the State Government to the Labour Court is for justifiable reason and the same is supported by law laid down by this Court in *Calcutta Dock Labour Board* (supra). Even assuming for the sake of the argument that there was a certain delay and latches on the part of the workman in raising the industrial dispute and getting the same referenced for adjudication, the Labour Court is statutorily duty bound to answer the points of dispute referred to it by adjudicating the same on merits of the case and it ought to have moulded the relief appropriately in favour of the workman. That has not been done at all by the Labour Court. Both the learned single Judge as well as the Division Bench of the High Court in its Civil Writ Petition and the Letters Patent Appeal have failed to consider this important aspect of the matter. Therefore, we are of the view that the order of termination passed by the respondent, the award passed by the Labour Court and the judgment & order of the High Court are liable to be set aside. When we arrive at the aforesaid conclusion, the next aspect is whether the workman is entitled for reinstatement, back wages and consequential benefits. We are of the view that the workman must be reinstated. However, due to delay in raising the industrial dispute, and getting it referred to the Labour Court from the State Government, the workman will be entitled in law for back wages and other consequential benefits from the date of raising the industrial dispute i.e. from 02.03.2005 till reinstatement with all consequential benefits."

8. Further, the Hon"ble Supreme Court in Jasmer Singh v. State of Haryana and another (2015) 4 SCC 458 has held in para 21 and 22 as under:-

"21. The said relief in favour of the appellant-workman, particularly the full back wages is supported by the legal principles laid down by this Court in the case of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya wherein the Division Bench of this Court to which one of us was a member, after considering three-Judge Bench decision, has held that if the order of termination is void ab initio, the workman is entitled to full back wages.

22. The relevant para of the decision is extracted hereunder:-

(Deepali Gundu case, SCC p.344, para 22)

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

9. Thus, the Hon"ble Supreme Court has categorically stated in the above judgments that a workman will be entitled in law for back-wages and other consequential benefits at least from the date of raising the industrial dispute.

Therefore, keeping in view the said legal position, the award passed by the learned Labour Court is modified to the extent that in addition to the relief which have been granted in favour of the petitioner by the learned Labour Court, the petitioner shall also be entitled for back-wages from the date he raised the industrial dispute till the date he was offered reinstatement by the respondent.

The respondent is directed to pay to the petitioner the said back-wages within a period of three months. With the said modification in the award passed by the learned Labour Court, the present petition is disposed of. No order as to cost.