
(2015) 09 SHI CK 0020
In the High Court Of Himachal Pradesh
Case No : CWP No. 10544/2012-E

Lachman

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 12(5)

Citation : (2015) 09 SHI CK 0020

Hon'ble Judges : Piar Singh Rana, J

Bench : Single Bench

Advocate : Avinash Jaryal, for the Appellant; M.L. Chauhan, A.A.G and J.S. Rana, Asstt. A.G., Advocates for the Respondent

Final Decision : Allowed

Judgement

Piar Singh Rana, J—Present petition is filed under Article 226 of Constitution of India against the order of learned Labour Commissioner Himachal Pradesh Shimla dated 15.05.2012 whereby learned Labour Commissioner Himachal Pradesh while exercising powers under Section 12(5) of Industrial Disputes Act 1947 refused to refer the dispute to Labour Court-cum-Industrial Tribunal Himachal Pradesh for adjudication.

BRIEF FACTS OF THE CASE

2. It is pleaded that petitioner was appointed as daily waged worker in H.P.P.W.D. department in the year 1996. In the year 1999 service of petitioner was dis-engaged. It is further pleaded that thereafter petitioner filed O.A.(D) No. 48/99 before H.P. State Administrative Tribunal and H.P. State Administrative Tribunal on dated 27.11.2001 disposed of O.A.(D) No. 48/99 with the directions that service of petitioner would be re-engaged as per his seniority as and when the work and funds would be available. Thereafter demand notice was issued by petitioner and matter could not be settled in conciliation proceedings before Labour-cum-Conciliation Officer and thereafter the matter was examined by

learned Labour Commissioner Himachal Pradesh under Section 12(5) of Industrial Disputes Act 1947 and learned Labour Commissioner Himachal Pradesh held that petitioner had raised demand notice after a lapse of about 6 years. Learned Labour Commissioner Himachal Pradesh further held that petitioner did not keep the matter alive during intervening period and learned Labour Commissioner Himachal Pradesh held that the matter had faded away with the passage of time. Learned Labour Commissioner Himachal Pradesh further held that demand notice is prima facie vexatious and frivolous. Learned Labour Commissioner Himachal Pradesh further held that there is no justification to refer the dispute to learned Labour Court-cum-Industrial Tribunal Himachal Pradesh for adjudication. Feeling aggrieved against the order of learned Labour Commissioner Himachal Pradesh petitioner filed present civil writ petition with the prayer to accept civil writ petition as mentioned in relief clause.

3. Per contra response filed on behalf of non-petitioners No. 1 & 2 pleaded therein that petitioner had worked w.e.f. January 1998 to November 2002. It is further pleaded that demand notice was issued on dated 08.04.2008 after a lapse of 6 years. It is further pleaded that in view of rulings given by Hon'ble High Court of Himachal Pradesh in CWP No. 1619/2007 titled Kamlesh v. State of H.P. & Ors. and in CWP No. 1486/2007 titled Liaq Ram v. State of H.P. & Others present civil writ petition be dismissed.

4. Per contra separate response filed on behalf of non-petitioner No. 3 pleaded therein that demand notice is prima facie vexatious and frivolous. It is further pleaded that petitioner had left the job without any intimation to the non-petitioners and non-petitioner No. 3 has not retrenched service of petitioner. It is further pleaded that due to own conduct of petitioner present civil writ petition is not maintainable. It is further pleaded that petitioner cannot claim parity with others who have discharged their duties with punctuality and sincerity. It is further pleaded that present dispute is stale dispute and same cannot be referred to Labour Court for adjudication. Prayer for dismissal of civil writ petition sought.

5. Petitioner also filed rejoinder and re-asserted the allegations mentioned in the civil writ petition.

6. Court heard learned Advocate appearing on behalf of petitioner and learned Additional Advocate General appearing on behalf of non-petitioners. Court also perused the entire records carefully.

7. Submission of learned Advocate appearing on behalf of petitioner that order passed by learned Labour Commissioner Himachal Pradesh dated 15.05.2012 (Annexure R-III) placed on record be quashed and learned Labour Commissioner Himachal Pradesh be directed to refer the dispute to Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) for adjudication under Section 12(5) of Industrial Disputes Act 1947 is accepted for the reasons hereinafter mentioned. Court has carefully perused the order passed by learned Labour Commissioner Himachal Pradesh dated 15.05.2012. Learned Labour Commissioner Himachal Pradesh had

rejected the case of petitioner under Section 12(5) of Industrial Disputes Act 1947 simply on the ground that petitioner had raised demand notice after a lapse of about 6 years. It was held in case reported in *Jasmer Singh Vs. State of Haryana* (2015) 2 AD 215 : (2015) 144 FLR 837 : (2015) 1 SCALE 360 : (2015) 4 SCC 458 : (2015) 2 SCJ 391 : (2015) 2 SCT 91 : (2015) 1 SLJ 389 that provisions of Article 137 of Limitation Act 1963 would not be applicable to Industrial Disputes Act 1947 and it was held that relief would not be denied to workman merely on ground of delay. It was held in case reported in *Raghubir Singh Vs. General Manager, Haryana Roadways*, (2014) AIRSCW 5515 : (2014) 10 SCALE 135 that there is no limitation on reference to Labour Court under Section 10 of Industrial Disputes Act 1947. It was held that words "at any time" mentioned in Section 10 of Industrial Disputes Act 1947 would mean that law of limitation would not be applicable qua proceedings of reference under Section 10 of Industrial Disputes Act 1947. It was held in case reported in *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, AIR 1987 SC 1353 : (1987) 13 ECC 27 : (1988) 19 ECR 565 : (1987) 28 ELT 185 : (1987) 167 ITR 471 : (1987) 1 JT 537 : (1987) 1 LLJ 500 : (1987) 1 SCALE 413 : (1987) 2 SCC 107 : (1987) 2 SCR 387 : (1987) 66 STC 228 : (1987) 2 UJ 29 that (1) Ordinarily a litigant does not stand to benefit by lodging matter late. (2) Refusing to condone delay can result meritorious matter thrown out at the very threshold and cause of justice defeated. It was held that if delay is condoned then highest that would happen would that case would be decided on merits after hearing the parties. (3) It was held that every day's delay must be explained does not mean that a pedantic approach should be made. It was further held that doctrine must be applied in a rational common sense. (4) It was held that when substantial justice and technical considerations are pitted against each other then cause of substantial justice deserves to be preferred. (5) It was held that there is no presumption that delay is occasioned deliberately or on account of culpable negligence or on account of mala fides. It was held that litigant does not stand to benefit by resorting to delay. (6) It was held that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice.

8. Submission of learned Additional Advocate General appearing on behalf of non-petitioners that petitioner did not agitate the matter for about 6 years and on this ground civil writ petition filed by petitioner be dismissed is rejected being devoid of any force for the reasons hereinafter mentioned. Petitioner is resident of village Kotti Post Office Kiri Tehsil and District Chamba (H.P.) which is interior village in District Chamba. Petitioner is rustic villager and he has sought appointment on the post of Beldar in H.P.P.W.D. department. Keeping in view the fact that petitioner is rustic villager residing in remote area of village and keeping in view the fact that petitioner has sought appointment on the post of Beldar in H.P.P.W.D. department Court is of the opinion that it is expedient in the ends of justice that matter in dispute be referred to Labour Court for adjudication in accordance with law on the concept of justice, equity and good conscience.

9. Another submission of learned Additional Advocate General appearing on behalf of non-petitioners that in view of decision of Hon''ble High Court of Himachal Pradesh announced in CWP No. 398/2001 titled M.C. Paonta Sahib v. State of H.P. & Ors. and in view of order passed in CWP No. 1486/2007 titled Liaq Ram v. State of H.P. & Others present civil writ petition be dismissed is rejected being devoid of any force for the reasons hereinafter mentioned. Court is of the opinion that whenever there is conflict between rulings given by the High Court and Supreme Court then ruling given by Supreme Court always prevail. Hon''ble Apex Court of India had given latest ruling reported in Jasmer Singh Vs. State of Haryana(2015) 2 AD 215 : (2015) 144 FLR 837 : (2015) 1 SCALE 360 : (2015) 4 SCC 458 : (2015) 2 SCJ 391 : (2015) 2 SCT 91 : (2015) 1 SLJ 389 that provisions of Article 137 of Limitation Act 1963 would not be applicable to Industrial Disputes Act 1947.

10. In view of the above stated facts and the case law cited supra petition filed under Article 226 of Constitution of India is allowed. Order of learned Labour Commissioner Himachal Pradesh dated 15.05.2012 is set-aside. Learned Labour Commissioner Himachal Pradesh is directed to refer the case of petitioner to Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) for adjudication as per Section 12(5) of Industrial Disputes Act 1947 within one month. No order as to costs. CWP No. 10544/2012-E is disposed of. Pending application(s) if any also disposed of.