
(2025) 04 SHI CK 1108
In the High Court Of Himachal Pradesh
Case No : CWP No.1569 Of 2016

Managing Director, H.P. Financial Corporation, Shimla	APPELLANT
Vs	
Anil Kumar And Another	RESPONDENT

Date of Decision : 01-04-2025

Acts Referred:

Citation : (2025) 04 SHI CK 1108

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : G.R. Palsra, Devender K. Sharma

Final Decision : Allowed

Judgement

Ajay Mohan Goel, J

1. By way of this writ petition, the petitioner has assailed the award dated 15.03.2016, passed by learned Labour Court-cum-Industrial Tribunal, Shimla, in terms whereof, the Reference made by the appropriate Government to the learned Labour Court was answered as under:-

"As a sequel to my above discussion and findings on issues No. 1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records."

2. Brief facts necessary for the adjudication of this writ petition are that the respondent/workman, raised an industrial dispute that he was engaged as a Chowkidar by the petitioner-Corporation for watch and ward at M/s S.L. Industries, Village Kandisar on 28.02.2006 and his services were terminated on 02.11.2006, without following the procedure provided in the Industrial Disputes

Act despite the fact that he had put in 287 days without any break. On the said industrial dispute raised by the respondent, following Reference was made by the appropriate Government for adjudication by the learned Labour Court:-

"Whether verbal termination of the services of Shri Anil Kumar S/o Shri Ami Chand Thakur, daily wage Chowkidar by The Managing Director HP Financial Corporation, Shimla w.e.f. 21.11.2006 without serving notice and without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, to what back-wages, service benefits and relief the above named daily wage Chowkidar is entitled to?"

3. After the reference was made, the respondent herein put forth his claim petition, in terms whereof, he took the stand that he was engaged as a Chowkidar on 28.02.2006 and he worked without any break till 02.11.2006. Despite the fact that he had put in 287 days as on 02.11.2006, his services were terminated without complying with the provisions of the Industrial Disputes Act.

4. On the other hand, defence of the employer was that the claimant was engaged as a Chowkidar, on contract basis, for watch and ward of assets of an industrial unit taken over under Section 29 of the State Financial Corporations, Act. In terms of the contract, the claimant had to perform his duties for a limited period and his engagement was co-terminus with the sale of the industrial unit. As the unit was sold, being a sick unit, the same also led to the termination of the contract entered into between the claimant and the Corporation.

5. On the basis of pleadings of the parties, the following Issues were framed by the learned Labour Court:-

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 21.11.2006, is in violation of the provisions of Industrial Disputes Act, 1947?

2. If issue No. 1 is proved in affirmative, to what relief, the petitioner is entitled to?

3. Whether there were no industrial activities in the closed units at the time of take-over of the assets?

4. Relief.

6. On the strength of the evidence, which was led by the parties, the Issues so framed were decided as under:-

Issue No. 1 : Yes

Issue No. 2 : Entitled to reinstatement with seniority and continuity but without back wages.

Issue No. 3 : Yes

Relief : Reference answered in favour of the petitioner and against the

respondent per operative part of award.

7. The Reference was answered by learned Labour Court in terms already quoted by me hereinabove.

8. Feeling aggrieved, the Corporation has preferred this writ petition.

9. Learned Senior Counsel appearing for the petitioner has argued that the award is per se bad as learned Labour Court erred in not appreciating that the State Finance Corporation is not an industry as defined under the Industrial Disputes Act and therefore, no Award could have been passed against the Corporation. Learned Senior Counsel further submitted that as it is not disputed even by the claimant that he stood engaged on contract basis for watch and ward of a sick unit, which was taken over by the Corporation and as his engagement was co-terminus with the sale of the Industrial Unit, there was nothing wrong in termination of service of the workman once the unit stood sold. Accordingly, learned Senior Counsel has submitted that as the Award is not sustainable in law, the same be quashed and set aside.

10. On the other hand, learned Counsel for respondent No. 1-workman submitted that a perusal of the Award would demonstrate that what is being argued before this Court was not the defence or the stand of the Corporation before the learned Labour Court. He further submitted that the Corporation cannot be allowed to put forth a new case before this Court. He has argued that even otherwise as this Court is exercising its power of judicial review as far as the Award is concerned, therefore, the correctness of the award has to be gone into by the Court in light of the pleadings and evidence which was led by the parties before the learned Labour Court. He further argued that as there was no illegality in the award passed by learned Labour Court, the present writ petition being devoid of merit, deserves to be dismissed.

11. I have heard learned Counsel for the parties and also carefully gone through the award passed by learned Labour Court.

12. In terms of the claim petition filed by the claimant, his case before the learned Labour Court was that the act of the Corporation of terminating the services w.e.f. 02.11.2006 was bad for the reason that as he had already completed more than 240 days in the preceding 12 months as on the date when his services were terminated, the same violated the provisions of the Industrial Disputes Act. It was further the contention of the claimant that after doing away with services of the claimant, the Corporation engaged one Roshan Lal w.e.f. 04.12.2006. Accordingly, as per the claimant, there was violation of provisions of Sections 25-H and 25-F of the Industrial Disputes Act.

13. On the other hand, learned Senior Counsel for the petitioner-Corporation submitted that as the engagement of the workman was on contract basis, as a Chowkidar, for watch and ward of a sick unit, therefore, as soon as said unit was sold, the contract came to an end, thus, there is no violation of the provisions of

the Industrial Disputes Act by the Corporation.

14. A perusal of the award demonstrates that learned Labour Court while deciding Issue No. 1, took note of the fact that it stood proved from the record that the claimant had worked for 287 days continuously prior to his retrenchment. Learned Labour Court also held that no record was produced by the Corporation to demonstrate that engagement of the petitioner was Co-terminus with the sale of the taken over unit. Learned Labour Court also took note of the fact that it stood admitted on behalf of the Corporation that after the disengagement of the workman, two fresh persons were appointed as Chowkidars in the taken over units. On these basis, learned Labour Court held that as the petitioner had completed more than 240 days in a calendar year preceding his termination, the verbal termination of his services by the employer without complying with the provisions of the Industrial Disputes Act, was bad.

15. Learned Labour Court also held that as respondent had retained persons who were junior to the workman, therefore, this amounted to violation of provisions of Section 25-H of the Industrial Disputes Act.

16. A perusal of the award demonstrates that these findings are borne out from the record of the case and as it is established from the record that the provisions of the Industrial Disputes Act were not adhered to while terminating the services of the petitioner despite the fact that he has completed more than 240 days in 12 months preceding his termination, obviously, the award passed by learned Labour Court cannot be faulted with. It is also borne out from the record that later on again Chowkidars were engaged by the Corporation without asking the workman to opt for reengagement. The contention of learned Senior Counsel for the petitioner that the Corporation is not an industry, as defined in the Industrial Disputes Act, was not agitated before the learned Labour Court. That being the case, as in exercise of its power of judicial review, this Court has to test the award passed by learned Labour Court on the basis of material which was before said Court, this Court has no hesitation in holding that in terms of the record which was before the learned Labour Court, the award passed by it suffers from no illegality. The issue raised by learned Senior Counsel for the petitioner that the Corporation is not an industry, as prayed for, is left open.

Accordingly, in light of the above observations, as this Court does not find any illegality in the award passed by learned Labour Court, this writ petition is dismissed. Pending miscellaneous application(s), if any, also stand disposed of accordingly.