
(2015) 11 SHI CK 0055
In the High Court Of Himachal Pradesh
Case No : CWP No. 353 of 2011

Nagin Chand

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 21-11-2015

Acts Referred:

Citation : (2015) 11 SHI CK 0055

Hon'ble Judges : Sureshwar Thakur, J.

Bench : Single Bench

Advocate : Ramesh Kaundal, Advocate, for the Appellant; Vivek Singh Attri, Deputy Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.—The hereinafter extracted reference was to be answered by the Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla.

"Whether the demand raised by the State Organizing Secretary, Him Shakti, PWD Karamchari Sangh, HP O/o Mechanical Sub Division, HPPWD, Kamla Nagar, Shimla 171006 through their demand notice dated 3.10.2002 (copy enclosed) from the Executive Engineer, National Highway Division, HPPWD, Solan, HP not to promote Shri Nagin Chand S/o. Shri Keshaw Ram beldar against the post of work inspector whereas junior to him Shri Anil Kumar S/o. Shri Chinna Ram has been promoted w.e.f. 10.6.2002 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If yes, what relief of service benefits the above aggrieved workman is entitled, as per demand notice? If not, what its legal effects?"

2. On consideration on an incisive discernment of the available material before it, it answered the reference against the petitioner herein. The petitioner herein stands aggrieved by the award of the Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla, hence, has preferred the instant petition before this Court.

3. Undisputedly, the petitioner stood engaged as a daily waged beldar on

2.11.1998 by the Executive Engineer, National Highway Division, Solan, for performing work in the capacity aforesaid under the Assistant Engineer, NH Sub Division, Dhali. In January, 1999 the petitioner was asked to perform the work of a works Inspector/Supervisor on a daily rated basis. On the other hand, respondent No. 6 stood engaged as a daily rated Beldar in the year 2000 in which capacity he performed work with the Executive Engineer, National Highway Division, Rampur, whereafter he performed the work of a daily rated Beldar at Katrain Sub Division under National Highway Division, Pandoh, whereat in the aforesaid capacity he worked from September, 2001 to December, 2001. However, when a vacancy of a Works Inspector on a daily rated basis became available in the office of Assistant Engineer, NH Sub Division, Dhali, the respondent No. 6 was engaged afresh on a daily rated basis against an available vacancy aforesaid w.e.f. 1.1.2002 to 9/2003 whereafter he was shifted to perform the duties of a works inspector on a daily rated basis with the Executive Engineer, HPPWD, Chamba.

4. The learned counsel for the petitioner has contended that given the factum of his having stood engaged as a daily rated workman with the Executive Engineer, NH Division, Solan for performing work in the capacity aforesaid under the Assistant Engineer, National Highway Sub Division, Dhali, prior to the engagement of respondent No. 6 as a daily rated beldar with the Executive Engineer, National Highway Division, Rampur, besides prior to the occurrence of a vacancy of a daily rated works inspector his having purportedly performed duties of a works inspector/supervisor with the Assistant Engineer, National Highway Division at Dhali, on a daily rated work basis necessarily on accrual of a vacancy of a Works Inspector for its being filled up on a daily rated basis he possessed a claim superior to the one possessed by respondent No. 6, for hence his being entitled for engagement against it by the respondents, which claim having come to be discarded leaves the impugned award to be interferable by this Court.

5. The aforesaid submission addressed by the learned counsel for the petitioner is extremely frail both on the factual as well as on the legal side moreso in the face of an imminent fact, of the respondent No. 6 having stood engaged as a works inspector on a daily rated basis by the respondents concerned in the year 2002 on occurrence of a vacancy of a daily rated works inspector with the Assistant Engineer, Sub Division, Dhali, whereafter the respondent No. 6 stood engaged afresh as a works inspector on a daily rated basis with Executive Engineer, Chamba, in the year 2003, sequels the inevitable effect of the prior engagement of the respondent No. 6 as a works inspector on a daily rated basis by the Executive Engineer, National Highway, Solan to perform work in the aforesaid capacity with Assistant Engineer, National Highway, Dhali, getting evaporated or effaced, as a corollary the petitioner herein cannot now canvass before this Court of his at the stage of engagement of respondent No. 6 as a work inspector on a daily rated basis for performing work in the aforesaid capacity with the Assistant Engineer, NH, Dhali, the respondents concerned have committed any legal fallibility in discarding his claim viz-a-viz the claim of

respondent No. 6 for engagement as a daily rated works inspector arising from the factum of his being engaged earlier to the latter besides his purportedly performing, upto the accrual of a vacancy of a works inspector on a daily rated basis with the Executive Engineer, Sub Division, Dhali, work under the latter in the aforesaid capacity. Even otherwise, the occurrence of a vacancy of a daily rated works inspector with the Assistant Engineer, Sub Division, Dhali in 2002 against which the respondent No. 6 stood appointed on a daily rated basis was obviously not a substantive vacancy necessarily hence it was not entailed upon the respondents concerned to before proceeding to fill it adhere to the apposite recruitment and promotion rules especially when hence uncontrovertedly the mandate of the apposite recruitment and promotion rules not enjoining adherence thereto by the respondents concerned while proceeding to fill any non substantive vacancy of a daily rated works inspector hence imperatively this Court is constrained to draw an inference of the respondents concerned being at the stage of engagement of respondent No. 6 as a daily rated works inspector not obliged to either advertise the said vacancy nor also it being incumbent upon the respondent concerned to elicit the participation of all the persons desirous of obtaining employment against the vacancy of a works inspector on a daily rated basis.

6. Be that as it may, imperatively the respondents concerned were not legally obliged to at the stage contemporaneous to theirs proceeding to fill the vacancy of a works inspector on a daily rated basis consider the factum of the petitioner herein having purportedly worked as a daily rated works inspector prior to the performance of work in that capacity by respondent No. 6, especially with the respondents concerned being not enjoined to adhere to the apposite mandate of the recruitment and promotion rules while filling up any vacancy of a daily rated works inspector nor when the mandate of the apposite recruitment and promotion rules was applicable at the stage of induction of respondent No. 6 as a works inspector on daily rated basis whereas their applicability standing aroused only in the event of the respondent concerting or taking to fill up a substantive vacancy of a works inspector nor hence given the unattraction of the apposite recruitment and promotion rules to a non substantive accrued vacancy of a daily rated works inspector, it was unincumbent upon the respondents concerned to (a) prepare a seniority list of daily rated workmen or (b) constitute daily rated workmen in service as a feeder category for promotion to the post of a works inspector on a daily rated basis. Consequently, with unattraction besides inapplicability of the apposite recruitment and promotion rules to a non substantive accrued vacancy of a works inspector the respondents were also neither enjoined to consider the purported longer duration of service of the petitioner as a daily rated works inspector nor was it incumbent upon them to constitute the longer rendition of service by the petitioner viz-a-viz the respondent No. 6 as a daily rated works inspector as an apt parameter for hence foisting in him a tenable right for his engagement as a daily rated works inspector on/against a non substantive vacancy thereof having occurred besides

were not enjoined to consider the purported intra se seniority of the petitioner vis-?-vis the respondent No. 6 nor were constrained to construe the previous longer rendition of service of the petitioner herein viz-a-viz of the respondent No. 6 on a daily rated basis as a computable feeder service for empowering the petitioner to on occurrence of a non substantive vacancy of a daily rated works inspector claim a right for promotion thereon. The petitioners'' purported longer length of service viz-a-viz the respondent No. 6 and his hence having a superior right to countervail the engagement of respondent No. 6 as a works inspector on a daily rated basis by the respondent more especially when the vacancy of a daily rated works inspector against which respondent No. 6 stood engaged afresh was a non substantive vacancy, is consequently of no avail to him.

In aftermath there is no merit in the petition, which is accordingly dismissed. However, it is open to the respondent concerned to consider the case of the petitioner herein for his being appointed as a works inspector on a daily rated basis especially in the face of an emanation in the reply furnished by respondent No. 6 of 27 vacancies of works inspector on a daily rated basis being available with the respondent concerned.