
(2022) 12 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1112 Of 2021

Narender Kumar

APPELLANT

Vs

Himachal Pradesh Tourism Development Corporation And
Another

RESPONDENT

Date of Decision : 05-12-2022

Acts Referred:

Citation : (2022) 12 SHI CK 0009

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Nishant Khidtta, S.S. Panta

Final Decision : Disposed Of

Judgement

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Satyen Vaidya, J

1. By way of instant petition, petitioner has prayed for following substantive reliefs:

i) That the impugned order dated 09.03.2020 (Annexure P-8), order dated 07.08.2019 (Annexure P-5) and order dated 28.09.2019 (Annexure P-6) may kindly be quashed and set-aside.

ii) That writ in the nature of mandamus may kindly be issued directing the respondents to grant wages/salary to the petitioner w.e.f. 31.11.2009 with all consequential benefits in consequence to the award passed by the learned Labour Court on 30.11.2009 and further respondents may be directed to pass the fixation order w.e.f. 20.01.2009 with all consequential benefits including the arrear of salary with interest throughout.

2. The petitioner was engaged as beldar on daily wage basis by respondent No.1 on 14.05.1997 and worked as such till 30.04.1998. With effect from 01.05.1998 the designation of the petitioner was changed to Junior Draughtsman. He

continued to work in such capacity till 08.03.2000, on which date the services of the petitioner were terminated.

3. Petitioner raised an industrial dispute. The appropriate Government referred the dispute for adjudication of the Industrial Tribunal-cum-Labour Court, Shimla (for short, "The Tribunal"). Learned Labour Court decided the reference in favour of the petitioner and passed the award dated 30.11.2009 in Reference No. 121 of 2004 in the following terms:

"As a sequel to my above discussion and findings on issue Nos. 1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records."

4. The upshot of the award clearly was that petitioner was to be reinstated and his reinstatement was to entail seniority and continuity in service, only back wages were denied to the petitioner.

5. The respondent assailed the aforesaid award before this Court by way of CWP No.1627 of 2010. A co-ordinate Bench of this Court upheld the award passed by learned Tribunal while dismissing the writ petition filed by the respondent. The respondent further assailed the judgment passed by learned Single Judge of this Court before a Division Bench by way of LPA No. 193 of 2016, which was also dismissed on 11.03.2019.

6. On 16.05.2019, respondent No.1 ordered the engagement of petitioner as Junior Draughtsman on daily wage basis with immediate effect. It was specifically noted that seniority of petitioner, in terms of the judgment passed by a Division Bench of this Court, would be decided separately. On 07.08.2019, respondent No.1 issued an office order whereby the services of the petitioner were ordered to be regularized w.e.f. 17.01.2009 on notional basis (without financial benefits) and on actual basis (with financial benefits) from the date of his joining. Consequent to aforesaid orders, the pay of the petitioner was fixed vide office order dated 28.09.2019 (Annexure P-6).

7. The grievance raised by the petitioner by way of instant petition is that the order dated 07.08.20019 (Annexure P-5) whereby his services have been regularized retrospectively on notional basis w.e.f.17.01.2009, is wrong, illegal and arbitrary. Vide award dated 30.11.2009, the petitioner had become entitled to continue in job from the date of his illegal retrenchment and such continuation was to have benefits of continuity and seniority in service as if the petitioner had continuously worked. The contention of petitioner is that he cannot be penalized for no fault of his. Had the award passed by learned Tribunal been implemented by the respondent immediately, petitioner would have earned his salary and

other service benefits, from time to time, from which he has remained divested due to reason of pending litigation at the instance of respondents. He further contends that consequent fixation of pay vide office order dated 28.09.2019, Annexure P-6, is also wrong and illegal. It is further alleged that office order dated 09.03.2020, Annexure P-8, is also non-speaking and no reasons have been spelled out while rejecting the claim of the petitioner.

8. On the other hand, learned counsel for the respondents has submitted that the petitioner accepted the office orders Annexures P-4 and P-5 and joined without any reservation, as such, he is not entitled to raise the issues subsequently.

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

10. The learned Tribunal had clearly held that the termination of the services of petitioner were against law and accordingly, the petitioner was granted the relief of reinstatement from the date of his retrenchment alongwith continuity in service and seniority. The clear import of aforesaid award is that the petitioner would be deemed to be in continuous service since the initial date of his engagement. He has been mandated to be conferred all the benefits of continuity and seniority except back wages. The award passed by learned Tribunal has been upheld by learned Single Judge of this Court and then by a Division Bench vide judgment dated 11.03.2019 passed in LPA No. 193 of 2016.

11. Petitioner was not re-engaged by the respondents immediately after passing of award at their own peril. Merely because the litigation, that too, at the instance of respondents continued for considerable long period cannot be held to be a factor to dis-entitle the petitioner from all actual benefits, which he would have got had he been re-engaged in compliance to the award dated 30.11.2009 passed by learned Tribunal.

12. The respondents cannot derive benefits of their own wrong. There is nothing on record to suggest that petitioner had remained gainfully employed during all these years. On his re-engagement, petitioner has joined, which prima-facie evidences the fact of his unemployment.

13. The respondents cannot be allowed to say that since the re-engagement of petitioner was ordered without back wages, the decision of respondents to grant him regularization notionally, was justified. The petitioner was denied back wages only for the period that had elapsed between the date of his retrenchment and the date of award. Therefore, the petitioner would definitely be entitled for all financial benefits w.e.f. the date of award i.e. 30.11.2009.

14. The contention of learned counsel for the respondents that petitioner after accepting his re-engagement without reservation is not entitled to raise issue subsequently deserves to be rejected. The petitioner had no option but to join. Merely because he had not reserved his right while joining, does not mean that

he had given up his rights available to him in accordance with law. In view of the fact that the petitioner is held to be entitled to actual financial benefits from the date of award and all other service benefits from 17.01.2009, the petitioner has also become entitled to paid leave in accordance with the service rules applicable in respondent No. 1-Corporation.

15. In light of above discussion, petition is allowed. Office orders dated 07.08.2019 (Annexure P-5), 28.09.2019 (Annexure P-6) and order dated 09.03.2020 (Annexure P-8) are quashed and set-aside. The petitioner is held entitled to all service benefits on actual basis from 17.01.2009 and monetary benefits on actual basis w.e.f. the date of passing of award i.e. 30.11.2009. The respondents are directed to re-fix the salary of petitioner accordingly and pay the entire arrears to the petitioner within six weeks from the date of passing of the judgment.

16. The petition stands disposed of in the aforesaid terms, so also the pending miscellaneous application(s), if any.