

(2022) 12 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 859 Of 2021

Prem Raj

APPELLANT

Vs

Himachal Pradesh Tourism Development Corporation And
Another

RESPONDENT

Date of Decision : 05-12-2022

Acts Referred:

Citation : (2022) 12 SHI CK 0008

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Nishant Khidtta, S.S. Panta

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

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

i) That the impugned orders dated 07.08.2019 (Annexure P-5), 28.09.2019 (Annexure P-6) and order dated 07.08.2020 (Annexure P-9) 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/leave kind due such as casual leaves, medical leave and earned leave to the petitioner w.e.f. 31.08.2010 with all consequential benefits in consequence to the award passed by the learned Labour Court on 31.08.2010 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 18.04.1997 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 18.03.2000, 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 31.08.2010 in Reference No. 64 of 2005 in the following terms:

"As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e. 8.3.2000. Consequently, the reference stands answered in favour of the petitioner and against the respondents. 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.4441 of 2011. 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. 10 of 2019, 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.

7. The petitioner had to avail leave w.e.f. 13.08.2019 to 20.06.2020 on account of serious ailment of his son which ultimately proved fatal. Vide Annexure P-9, office order dated 07.08.2020, respondent No.1 accorded ex-post-facto sanction for leave of 313 days as extra-ordinary leave without pay.

8. 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 31.08.2010, 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 07.08.2020, Annexure P-9, is also harsh and arbitrary as the petitioner is entitled for his regularization w.e.f. 17.01.2009 on actual basis and in that event sufficient leave would stand credited to his leave account and as such, he was entitled to sanction of such leave.

9. 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.

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

11. 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. 10 of 2019.

12. 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 31.08.2010 passed by learned Tribunal.

13. 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.

14. 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. 31.08.2010.

15. 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.

16. 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 07.08.2020 (Annexure P-9) are quashed and set-aside. The petitioner is held entitled to all service benefits on actual basis from 17.01.2009 and on monetary benefits on actual basis w.e.f. the date of passing of award i.e. 31.08.2010. 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. The respondents are further directed to credit the leave of 313 days availed by the petitioner w.e.f. 13.08.2019 to 20.06.2020 to the leave of kind due to him.

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