
(1995) 06 SHI CK 0015
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 319 of 1992

Punjab State Electricity Board	Vs	APPELLANT
State of Himachal Pradesh and Others		RESPONDENT

Date of Decision : 26-06-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 25H, 2A

Citation : (1997) 3 LLJ 627 : (1996) 1 ShimLC 203

Hon'ble Judges : Lokeshwar Singh Panta, J; Kamlesh Sharma, J

Bench : Division Bench

Advocate : Kuldip Singh, for the Appellant; M.L. Chauhan, Asst. A.G. For Respondent No. 1 and Deepak Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Lokeshwar singh panta, J.—In this writ petition the petitioner Punjab State Electricity Board is aggrieved against the award of the Presiding Officer, Labour Court, Himachal Pradesh at Shimla in case No. 157 of 1987 dated August 9, 1991 (Annexure P-12) and letter dated March 3, 1992 (Annexure P-13) issued by Labour Commissioner, Himachal Pradesh requesting the Petitioner to implement the award and in default thereof recovery certificate would be issued in respect of the claim of the workman u/s 33(C) of the Industrial Disputes Act, 1947.

2. The facts on which there is not much dispute are the following : -

"Punjab State Electricity Board ("The Board" hereinafter) is a statutory body constituted under the Electricity Supply Act, 1948. It has its power house in the name of Shanan Power House PSEB, Jogindernagar, District Mandi, Himachal Pradesh. Shri Suraj Singh Pathania respondent No. 3 (workman herein) was engaged as work charged Chowkidar in the year 1969 by the Sub- Divisional Officer Grid Sub-Station, Division PSEB, Batala Punjab at Jogindernagar. The workman raised an industrial dispute in the year 1969 under the Industrial Disputes Act, 1947 (hereinafter the Act) before respondent No. 2 (Labour

Court).The Labour Court on November 15, 1975 made an award in favour of the workman and against "The Board". The workman filed execution Petition No. 1 of 1976 u/s 29 of the Act for enforcing the award. The Labour Court on May 17, 1979 gave directions to "The Board" to Issue appointment letter in favour of the workman appointing him work charge Chowkidar at Joginderangar or within the periphery of two kilometers from Jogindernagar. The Labour Court also directed that offer of appointment be issued on or before the next date of hearing fixed for June 7, 1979. "The Board" complied with the directions of the Labour Court and Issued letter of appointment dated June 2, 1979 in favour of the workman. Copy of such appointment letter is Annexure P-1. The Labour Court on June 7, 1979 dropped the proceedings by observing that the workman had since been engaged. The workman thereafter filed Writ Petition No. 179 of 1979 in this Court praying to issue a direction to the Labour Court to determine his back wages to which he was entitled to receive from "The Board". The said writ petition was allowed by this Court on September 28, 1979."

3. The workman again raised industrial dispute against his termination. The Resident Engineer, Shanan Power House, Jogindernagar on June 5, 1982 called back the workman on the post of Chowkidar. In the meantime, the State of Himachal Pradesh through Secretary (Labour) preferred industrial dispute through Annexure P-2 to the Labour Court, on July 19, 1982 regarding validity of the termination of service of the workman and the relief if any, he was entitled to. The Labour Court on January 22, 1982 made an award in favour of the workman by allowing him service benefits and back wages.

4. According to "The Board" as a result of completion of work at 66 KV S/S Thein Dam Jogindernagar, the headquarter of the workman was shifted in public interest from Jogindernagar to Sarna, Pathankot, District, Gurdaspur. Punjab. The Executive Engineer Grid S/S PSEB Amritsar vide office order dated September 23, 1982 ordered the posting and transfer of the workman from Jogindernagar to Sarna. But the workman did not comply to the office order, therefore, XEN Grid Division PSEB Amritsar on October 5, 1982 directed workman to comply with the office order immediately. The workman was thereafter charge-sheeted on January 6, 1983. A memo of charge-sheet with statement of charges (Annexure P-5) was served upon the workman. The workman submitted his reply on April 23, 1983 (Annexure P-6). The departmental inquiry was initiated against the workman and ultimately, he was dismissed from service by the Disciplinary Authority on February 8, 1985 with immediate effect. Copy of the dismissal order is Annexure P-7 to the writ petition. Aggrieved by the dismissal of service, the workman raised an industrial dispute and the Government by a notification dated June 9, 1987 referred the following dispute for adjudication to the Labour Court:

"Whether the termination of service, of Shri Suraj Singh Pathania, Ex-workman by the Resident Engineer Shanan Power House Punjab State Electricity Board, Jogindernagar, District Mandi is justified and in order. If not, to what relief, the

above workman is entitled to ?"

The Labour Court formulated the points of decision in the following terms :-

"(1) Whether this Court has no jurisdiction to entertain and answer this reference made by the State Government of Himachal Pradesh? (OPR)

(2) Whether this reference is barred by the principles of res judicata? (OPR)

(3) Whether XEN Amritsar, Grid is necessary party to the reference and in these proceedings. If so, its effect? (OPR)

(4) Whether the termination of the services of the petitioner by the respondent management, is justified and in order, if not, to what effect? (OPR)

(5) Whether the services of the petitioner were terminated on February 8, 1985 or July 31, 1982? (OPR)

(6) Relief.

Before the Labour Court oral and documentary evidence was adduced by the parties. The stand taken on behalf of "The Board" was that the workman was not appointed by the Resident Engineer, Shanan Power House, Jogindernagar but his Appointing Authority was XEN Grid Division PSEB Amritsar and the Appointing Authority was also his Disbursing Authority. It was denied that "The Board" was a party to settlement arrived at between the parties dated November 15, 1975. It was also stated that Resident Engineer, Shanan Power House, Jogindernagar never terminated the services of the workman, but he was dismissed from service by the Disciplinary Authority i.e. XEN Grid Division, PSEB, Amritsar who started the departmental proceedings against the workman for non-compliance of the transfer order from Shanan Power House, Jogindernagar to 220 KV Sub-Station Sarna, Pathankot. While the stand taken by the workman was that "The Board" had arrived at a lawful settlement on November 15, 1975 in the Labour Court with the undertaking that he would be appointed at Jogindernagar District Mandi and on the basis of that settlement he had to forego his back wages and continuity of service with effect from 1969 to 1975. The Resident Engineer Shanan Power House again terminated his services with effect from February 1, 1981 to June 4, 1982 with mala fide intention and he raised industrial dispute which was referred to the Labour Court for adjudication by the State Government. The Resident Engineer again reinstated his services with full back wages and this settlement was arrived at in the Labour Court and he joined duty on June 5, 1992 as per the letter of Resident Engineer, No. R.E. Shanan 3449/EA-511/C dated June 3, 1982, On July 31, 1982 Assistant Resident Engineer Shanan Power House Division Jogindernagar issued Memo No. 1353 dated July 31, 1982 to Shri Gouri Dass, Special Foreman directing him that Resident Engineer Shanan had refused to issue Attendance Register in his favour and an alternative arrangement be made in his place. This action of the authority amounts to termination of his services without assigning any reason. He was not disbursed payment for the month of July 1982 despite his requests. When "the

Board" failed to make payment of earned wages to him, he filed application before the authority under the Payment of Wages Act for the disbursement of salary for the month of July 1992. Ultimately, after about 2 years the authority directed "the Board" to make payment of Rs. 600 as salary and Rs 100 as cost of proceedings in his favour. The Management had only paid Rs. 550 to him. In the meantime, the Executive Engineer Grid, Amritsar on September 23, 1982 transferred him to Sarna 220 KV Sub-Station, Sarna, Pathankot without revoking the earlier illegal termination order passed by Resident Engineer, Shanan. His attendance was not recorded for the months of August and September 1982 because Resident Engineer Shanan Power House refused to issue the attendance sheet in his favour, nor he was paid wages for those months and therefore the transfer order, charge sheet and show cause notice were illegal, justified, inoperative and not binding upon him. He stated that the order of dismissal passed on February 8, 1985 by Executive Engineer, Grid Amritsar dismissing him from service is without power, illegal and unjustified. In his claim he stated that the Management had not complied with the terms and conditions of the award dated November 15, 1975 which was binding on both the parties and this would show mala fide intention of the Management. He contended that the dismissal order dated February 8, 1985 passed by XEN Grid Division PSEB Amritsar was passed on the advice of S. Iqbal Singh counsel engaged by "the Board" without applying his mind that the Inquiry officer had not given opportunity to him to argue his case fixed for November 2, 1984 and November 5, 1984 before him at Amritsar, as he could not attend the proceedings on the aforesaid days due to the reason that on October 31, 1984 the former Prime Minister late Smt. Indira Gandhi was assassinated and as a result of, which curfew was clamped from Jogindernagar to Verka-Amritsar, during those days.

5. Before the Labour Court, the workman examined four witnesses including himself, and on the side of "the Board" two witnesses were examined. On the side of the workman copy of the Award (Ext. PW 4/b) dated December 26, 1979 passed by the Labour Court, file of documents containing pages 1 to 139 (Exit. PW 4/C), file of documents containing pages 1 to 45 (Ext PW 4/d), the arrival report dated June 5, 1982 (Ext. P-5), letter (Ext. P-6) issued by the Assistant Resident Engineer to Gouri Dass (PW 1) letters (Ext. P-7 to P-9) issued by Shri H.S Minnas (PW 2) representative of the workmen to the Inquiry Officer informing the letter to intimate the next date of hearing so that he could pursue the case of the workman, were produced.

6. On the side of "the Board" transfer order (Ext R-2), copy of telegram (Ext. R-3) informing the workman about his transfer, copy of letter (Ext. R-4) asking the workman to join his new place of posting and copy of reminder (Ext R-5) which was sent by registered post to the workman and was received unserved, copy of charge- sheet sent by registered post (Ext. R-9) and was received undelivered, copies of letters (Exts. R-10, R-11 and R-13) by which various amounts were sent to the workman on the direction of the Labour Court and copy of docket voucher form (Ext. R-12) besides some other documents were

referred to.

7. On the basis of the pleadings and evidence both oral and documentary, the Labour Court overruled the objections raised on behalf of "the Board", found the impugned order of termination of the workman unjustified, illegal and set aside the same and the workman was held entitled to all consequential benefits of seniority and deemed to be in service under the Resident Engineer Shanan Power House Jogindernagar as Chowkidar and to get full back wages for the entire period. Accordingly, the award was passed by the Labour Court. The present writ petition challenges that award.

8. We have considered the rival submissions of the learned Counsel for the parties. Before going into the legal aspect argued before us by Mr. Kuldip Singh, learned Counsel for "the Board", let us set out the findings rendered by the Labour Court and the reasons given therefore by it.

9. The Labour Court first considered the question of the previous proceedings and the settlement arrived at between the parties in the award passed on November 1, 1975. In paragraph 13 of the award it is stated that the workman has been victimised in his struggle to point out the rights of the workers or he happened to be a leader of the Union. It is a fact that the Management in the very beginning was hostile to him, i.e. right from 1969 and the workman had to knock at the doors of the Labour Court and Hon'ble High Court and again for the implementation of the compromise arrived at before the Labour Commissioner for reinstatement at Jogindernagar. The settlement for reinstatement was arrived at on the initiation of contempt proceedings with the help of Labour Court and it was agreed by the Management that the workman would be adjusted within the periphery of two kilometers of Jogindernagar considering his circumstances. The workers are in disadvantageous position and they are unable to go to a far flung area on account of low pay as they have to maintain two establishments i.e. one at native home and another at new place of posting. It is also noticed that it does not lie in the mouth of the Management once they had agreed to adjust the worker at Jogindernagar even against a different work i.e. Thein Dam etc., that he should have been made a rolling stone to be shifted to Sarna of Amritsar Division. In paragraph 14, it is further held that the Management plea that he was shifted on administrative grounds as he was drawing pay from Thein Dam is not available to the management on equitable basis and also assurance in the settlement having the imprint of the Court that he would be adjusted in nearby area. The Labour Court was told that there were so many vacancies and it is not believable that there is no post of Chowkidar at different places within the periphery of Jogindernagar as Shanan Project is under the control of Punjab State Electricity Board, and the transfer of workman to Sarna of Amritsar Division is in violation of the settlement. Reference is made to Fifth Schedule [Section 2 (ra)] Unfair Labour Practices.

10. The defence of "the Board" that the workman was given fair opportunity by the Inquiry Officer has been dealt with by the Labour Court in paragraphs 14 and

15 of the award by observing that the worker made request for conducting the inquiry at Jogindernagar which was not acceded to. The inquiry was conducted at Taran Taran and the Worker and his authorised representative had been requesting the Inquiry Officer to postpone the dates of inquiry fixed on November 2, 1984 and November 5, 1984 because it was not possible for the worker or his authorised representative to visit Taran Taran on account of disturbances followed by the assassination of late Mrs. Indira Gandhi. To proceed with the inquiry despite such request on behalf of the worker has been held against the principles of natural justice and such action is fairly covered under unfair labour practice. "The Fifth Schedule" 5 (f) titled "in utter disregard to the principle of natural justice in the conduct of domestic enquiry or with an undue haste regarding conducting of domestic enquiry".

11. According to the finding of the Labour Court the initial order of shifting the work to Sarna and later on not conducting the inquiry under the principles of natural justice shows extreme malice to the workman and amounts to arbitrary action on the part of the management. The workman was working with the Management since more than 10 years and he should have been regularised and in the light of catena of judicial precedents regarding regularisation of workman who has served more than 5 years and such type of worker should be treated with human attitude rather than inhumanly by the Management/Employer. The termination order of the workman and his initial transfer to Sarna have been held illegal.

12. Shri Kuldip Singh, learned Counsel for the petitioner submits that the workman was appointed by XEN Grid Division, Amritsar and his services are governed by standing order of "the Board" as applicable to such establishment and that the order of transfer dated September 23, 1982 of the workman from Shanan Power House Jogindernagar (Annexure P-3) to Headquarters at 220 KV S/S Sarna (Pathankot) was also passed by the Appointing Authority. Similarly, the Memo of charge-sheet alongwith statement of charges for non-compliance of the order of transfer was passed by the Appointing Authority. The workman has never remained under the service of Resident Engineer, Shanan Power House Jogindernagar. According to the learned Counsel his services were utilized by "the Board" at Jogindernagar under the supervision of Resident Engineer and as such the workman still continues to be in the employment of the Appointing Authority namely XEN Grid Division, PSEB Amritsar. The award holding the workman to be the employee of Resident Engineer Shanan Power House, Jogindernagar is not sustainable on this ground. In support of his contention he cited the following decisions :--

The Manager, Pyarchand Kesarimal Porwal Bidi Factory v. Onkor Laxman Thenge and Ors. (1970-I-LLJ-492) (SC).

In that case their Lordships of the Supreme Court in para, 8 held thus :

"A contract of service being incapable of transfer unilaterally a transfer of service

from one employer to another can only be effected by a tripartite agreement between the employer, the employee and the third party, the effect of which would be to terminate the original contract of service and to make a new contract between the employee and the third party. So long as the contract of service is not terminated, a new contract of service is not made and the employee continues to be in the employment of the employer. When an employer orders him to do a certain work for another person, the employee still continues to be in the employment. The employee has the right to claim his wages from the employer and not from the third party. Such third party-hirer may pay his wages but that is because of his agreement with the employer. The hirer may also exercise control and direction in the doing of the thing for which he is hired or even the manner in which it is to be done. But the hirer third party cannot dismiss him. The right of dismissal vests in the employer."

13. Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others,

We have perused this decision and on the basis of the facts of that case their Lordships of the Supreme Court held that the work done by the Workmen was an integral part of the industry concerned; that the raw material was supplied by the Management; that the factory premises belonged to the Management ; that the equipment used also belonged to the Management and that the finished product was taken by the Management for its own trade. On the basis of such facts and circumstances the workmen were broadly under the control of the Management. Facts of these judgments are quite different from the facts of the present case. In the instant case the service book maintained by the Resident Engineer Shanan Power House and relied upon by the Labour Court would go to show that the workman was taken back in service by Resident Engineer Shanan Power House, Jogindernagar, on the basis of the telegraphic order dated June 3, 1982 received by him from Superintending Engineer, Punjab State Electricity Board, Pathankot. The Labour Court also placed reliance on Ext PW 4/b award dated December 1979 in which award dated November 15, 1975 (Ext P-2) was relied upon stating therein that in terms of the settlement made by the workman and Shri Surinder Verma, Labour Inspector PSEB the parties had agreed that the workman would be given employment as a Chowkidar at Jogindernagar within a fortnight and the workman would not claim continuity in service and back wages. Besides, these documents, the oral evidence adduced by the workman before the Labour Court would go to show that he was re-engaged by the Resident Engineer, Shanan Power House, Jogindernagar. Further Sub-Divisional Officer (Civil) Jogindernagar in his order dated April 25, 1985 (Ext P-4) passed on the application of the workman filed u/s 15(2) Payment of Wages Act, also held that on the basis of the perusal of the relevant record on file and having examined oral and documentary evidence, the workman was found to be an employee of PSEB under the control and supervision of Resident Engineer, Shanan Power House, Jogindernagar and the authority was directed to pay him wages for the month of July 1982.

14. Looking to the oral and documentary evidence adduced on record and relied upon by the Labour Court, we are of the view that the Resident Engineer, Shanan Power House, Jogindernagar was his employer and the submission of the learned Counsel that the workman was the employee of XEN Grid Division Amritsar is therefore, not sustainable.

15. Next contention of the learned Counsel for "the Board" is that the award of the Labour Court is vitiated on the ground that the Labour Court has travelled beyond reference. In support of his contention, he has cited the following decisions

Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, The Jaipur Udyog Ltd. Vs. The Cement Work Karmachari Sangh, Sahu Nagar, Workmen of Cochin Port Trust v. Board of Trustees of the Cochin Port Trust and Anr. 1978 1 LLJ 161 and Firestone Tyre and Rubber Company of India (P) Ltd. v. Workmen Employed, Represented by Firestone Tyre and Rubber Company of India (P) Ltd. Vs. Workmen Employed, represented by Firestone Tyre Employees" Union, "

16. We have considered all these decisions. In The Delhi Cloth and General Mills Co. Ltd. (supra) the terms of reference before the Industrial Tribunal was about legality and justification of strike and lockout in particular Mill on particular date, and their Lordships of the Supreme Court held that Tribunal must confine its decision only to question whether strike and lockout was legal and justified or not and it could not enlarge scope of its jurisdiction and decide that there was no strike or lockout at all. In Jaipur Udyog Ltd. case (supra), their Lordships held that the finding of the Tribunal that the Company could not fix a lower age limit of superannuation for workmen at the quarries went beyond the scope of reference which matter was not referred by the State Government to the Tribunal. In Workmen of Cochin Port Trust and Firestone Tyre and Rubber Company of India (P) Ltd. (supra), it has been held by the Apex Court that the Industrial Tribunal or Labour Court cannot exceed its jurisdiction and go beyond reference. Undoubtedly, there cannot be any dispute regarding legal propositions of law settled by the Apex Court. In the present case we find no jurisdictional error or crossing its limits of reference by the Labour Court.

17. It is also pertinent to note here that no specific plea of jurisdiction on this point was raised before the Labour Court by "the Board". Therefore, submission of the learned Counsel is not sustainable. Similarly, we are unable to accept the submission of Mr. Kuldip Singh that the reference was bad as the order of dismissal of the services of the petitioner was passed by the XEN Grid Division PSEB Amritsar and not by the Resident Engineer Shanan Power House, Jogindernagar.

18. The last contention of the learned Counsel for "the Board" is that the award of the Labour Court for full back wages and seniority is also unjustified in the facts and circumstances of the case. Reliance has been placed on Jai Bhagwan Vs. Management of The Ambala Central Co-operative Bank Ltd. and Another, and

Pyare Lal Sharma Vs. Managing Director and Others, We have gone through these decisions with advantage. In *Jai Bhagwan's* case (supra) their Lordships of the Supreme Court held that where dismissal of the workman is found to be illegal, workman is entitled to be reinstated in service with continuity of service from the date of termination of service. But in that case the workman raised the dispute regarding the dismissal after considerable delay without doing anything in the meanwhile to question the termination of his services, in the facts and circumstances of that case the award of half the back wages from the date of termination of service until the decision and full wages from the date of decision until reinstatement was found justified to meet the ends of justice. In *Pyare Lal Sharma's* case (supra), it is found that from 1976 onwards there has been continuous litigation and mistrust between the parties and the facts of that case would go to show that Shri Pyare Lal Sharma had equally contributed to this unfortunate situation and he was awarded 60 per cent back wages.

19. In the present case as noticed above, "the Board" has been victimising the workman since 1969 from the date of his engagement presumably on the ground that he is the leader of the workers' Union and the workman has been knocking the doors of the Labour Court, High Court and other authorities under the Labour law since then and nothing has been placed on record which would go to show that the workman has equally contributed to continuous litigation and mistrust between the parties. The services of the workman was terminated in October 1969 and on the basis of the compromise arrived at between the parties before the Labour Court on November 15, 1975 he was to be reinstated without back wages and without continuity of service with a stipulation that he would be adjusted as Chowkidar at Jogindernagar. This settlement was not honoured by "the Board". The workman had to knock the door of the Labour Court regarding non-implementation of the undertaking and ultimately the offer of appointment was given to him on June 7, 1979 and the Labour Court directed that the workman would be absorbed within two kilometers from Shanan Power House, Jogindernagar. He was appointed at Shanan Power House Jogindernagar as Chowkidar sometime in June 1979. It appears that the workman filed an application on June 7, 1979 in the Labour Court praying that he be allowed to amend the application regarding back wages, but the Labour Court dismissed his application. The workman approached the High Court through Writ Petition No. 179 of 1979 and a Division Bench of this Court on September 28, 1979 directed the Labour Court to consider the claim of the workman for wages from December 1, 1975 to June 7, 1979 on merits after hearing all the contentions of the parties according to law. Ultimately, Presiding Officer of the Labour Court allowed relief of back wages to the workman with effect from December 1, 1975 to June 7, 1979. Services of the workman were again terminated on February 1, 1981. Resident Engineer Shanan Power House again engaged him in service as Chowkidar as the Labour Department of the Himachal Pradesh Government intervened by directing "the Board" that in case the order of Labour Court was not implemented the prosecution under the Act would follow. He was again re-

engaged in service on June 5, 1982 by a letter Ext. PW 3/A. Ultimately, he was transferred to Sarna on September 23, 1982 and this transfer order being without jurisdiction was not complied with by the workman and consequently, departmental proceedings were initiated against him and ex parte impugned order of dismissal from service was passed by the XEN Grid Division Amritsar.

No other point has been urged by the learned Counsel for "the Board".

On the findings of the Labour Court supported by reasons, we hold in the light of the discussions made above that no case is made out for interference. Accordingly, the writ petition fails and the same is dismissed. However, in the peculiar circumstances of the case, the parties are left to bear their respective costs.