

(2013) 04 SHI CK 0080
In the High Court Of Himachal Pradesh
Case No : CWP No. 4424 of 2012

Raj Kumar and Another

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 10-04-2013

Acts Referred:

Citation : (2013) LabIC 4505

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Ritta Goswami, for the Appellant; Pramod Thakur, Ms. Meenakshi Sharma, Addl. Advocate, G. Neeraj K. Sharma, D.A.G., for the Respondent

Judgement

Rajiv Sharma, J.—Petitioner No. 1 was engaged on daily wage basis on 21.09.1998. Petitioner No. 2 was engaged on daily wage basis on 21.12.1998. They were retrenched on 17.02.2000. They approached the learned erstwhile Himachal Pradesh Administrative Tribunal by filing an Original Application bearing O.A. No. 1450 of 2000 on 13.04.2000. The same was rejected for want of jurisdiction on 15.12.2004. The petitioners raised demand notices on 12.03.2009, to which the replies were filed by the employer on 30.09.2009. Thereafter, the Labour Officer-Cum-Conciliation Officer, Mandi, District Mandi, H.P. conducted various conciliation meetings between the parties to settle the dispute amicably. However, the dispute could not be settled by way of conciliation. Thereafter, the Labour Officer-Cum-Conciliation Officer, Mandi sent the failure report u/s 12(4) of the Industrial Disputes Act, 1947 to Respondent No. 5. The Respondent No. 5 declined to make References to the Labour Court-Cum-Industrial Tribunal vide letters, dated 18.01.2012 and 06.03.2012 (Annexures P-3 and P-4), on the ground of delay and laches. According to the report of the Labour Commissioner, the demand notices raised by the petitioners were, prima facie, vexatious and frivolous. What emerges from the facts enumerated hereinabove, is that the petitioners were engaged on daily wage basis on 21.09.1998 and 21.12.1998. Petitioner No. 1 has completed 68 and 69

days in 1998 and 1999 and Petitioner No. 2 has completed 11 and 167 days in 1998 and 1999. However, the fact of the matter is that the workmen, namely, Sh. Desh Raj, Sh. Ram Dayal and Sh. Parkash Chand, who were engaged in October, 1999, have been retained by the employer. The petitioners were engaged before Shri. Desh Raj, Sh. Ram Dayal and Sh. Parkash Chand. In view of this, their retrenchment was in violation of Sections 25-G and 25-H of the Industrial Disputes Act, 1947. The petitioners have made specific averments that Shri Desh Raj, Sh. Ram Dayal and Sh. Parkash Chand were retained while they were retrenched.

2. Now, as far as Shri Hem Raj, Sh. Radha Krishan and Inder Singh are concerned, they were engaged on 01.05.1998 and 15.04.1998. Thus, it is evident that they were engaged before the petitioners and all of them have completed 240 days in a block of twelve calendar months and their services have rightly been regularized.

3. Earlier, the petitioner has approached the learned erstwhile Himachal Pradesh Administrative Tribunal by filing O.A. No. 1450 of 2000. The same was rejected only on the ground of jurisdiction on 15.12.2004.

4. Now, the period w.e.f. 13.04.2000, the date on which the petitioners have filed the Original Application till its decision on 15.12.2004, is required to be excluded. Since the persons junior to the petitioners, namely, Shri Desh Raj, Sh. Ram Dayal and Sh. Parkash Chand have been retained, the petitioners have a continuous cause of action. It cannot be termed that the claim put-forth by the petitioners by filing demand notices on 12.03.2009, was stale and there was inordinate delay. The conciliation proceedings were conducted by the learned Labour Officer-Cum-Conciliation Officer, Mandi, District Mandi, H.P. and it is only on the basis of his failure report, the Respondent No. 5 has declined to make Reference. The workman has to raise industrial dispute within a reasonable period. What is reasonable period would depend on the facts and circumstances of each case.

5. It is also apparent from the reply filed by Respondent No. 5 that he has taken into consideration the days, the petitioners have worked with the Forest Department during 1998-99. The Respondent No. 5 could not touch the merits of the case, more particularly, when the petitioners have taken a specific plea that the persons junior to them were retained. The completion of 240 days in a block of twelve calendar months is relevant for Section 25(F) and not for Sections 25-G and 25-H of the Industrial Disputes, Act, 1947.

6. In Liaq Ram and Others Vs. State of H.P. and Others the majority opinion is of Hon''ble Mr. Justice Deepak Gupta and Hon''ble Mr. Justice Surinder Singh. Hon''ble Mr. Justice Deepak Gupta has held as under:

The real test for making a reference is whether at the time of the reference dispute exists or not and when it is made it is presumed that the State Government is satisfied with the ingredients of the provision, hence the Labour

Court cannot go behind the reference. It is not open to the Government to go into the merit of the dispute concerned and once it is found that an industrial dispute exists then it is incumbent on the part of the Government to make reference. It cannot itself decide the merit of the dispute and it is for the appropriate Court or Forum to decide the same. The satisfaction of the appropriate authority in the matter of making reference u/s 10(1) of the Act is a subjective satisfaction. Normally, the Government cannot decline to make reference for laches committed by the workman. If adequate reasons are shown, the Government is bound to refer the dispute to the appropriate Court or Forum for adjudication. Even though, there is no limitation prescribed for reference of dispute to the Labour Court/Industrial Tribunal, even so, it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly, when disputes relate to discharge of workman. If sufficient materials are not put forth for the enormous delay, it would certainly be fatal." (Emphasis supplied). The latter part of the observations clearly show that the Apex Court has held that even though no limitation is prescribed for making a reference in terms of Section 10, even then it would be reasonable to expect that the disputes are referred as soon as possible. The Apex Court clearly held that if sufficient material is not put-forth for enormous delay it would certainly be fatal. After carefully going through the various judgments of the Apex Court, it is apparent that in some cases the Apex Court itself has held that since there is delay in seeking the reference the dispute had faded away or had got eclipsed due to lapse of time. Even in those cases where the Apex Court held that the reference was proper and the dispute still existed, it went on to hold that in cases where lapse of time had caused fading or eclipsing of the dispute and nobody had kept the dispute alive, it would be reasonable to conclude that the dispute ceases to exist. The Government is authorized to form the opinion whether a dispute exists or not. This clearly, shows that the Government is not powerless and in case there is great delay and there is no explanation for the delay then the Government can refuse to make a reference on the ground that the claim is stale and therefore the industrial dispute no longer exists. An industrial dispute can fade away and cease to exist because of long delay where the workman has taken no steps to keep the dispute alive. However, if the workman or the Union has kept the dispute alive even if no action has been initiated it will not mean that the dispute ceases to exist. Whether, a dispute exists or not, or has faded or got eclipsed is a question of fact which has to be decided in the facts and circumstances of each case. I would answer the question in the aforesaid terms.

7. The opinion of Hon"ble Mr. Justice Surinder Singh is as under:

6. Therefore, the appropriate Government has to be subjectively satisfied while forming an "opinion" such power has to be exercised reasonably and in a rational manner, whether a dispute exists or not. In case the answer is in positive, it has to refer the matter to Court/Tribunal irrespective of time lapse, though, it would depend on the factual background of each case and no straight-jacket formula

can be laid. Hence, I fully support the view taken by Brother Justice Deepak Gupta.

8. In the present case, the delay has occurred due to the pendency of Original Application before the learned erstwhile Himachal Pradesh Administrative Tribunal for almost four years and thereafter the procedure as per the Industrial Disputes Act, 1947 has taken long time. There was a continuous cause of action, since the persons junior to the petitioners have been retained and this fact, as per the averments contained in the petition, was brought to the notice of the employer. The opinion to refer the matter to the learned Labour Court-Cum-Industrial Tribunal is to be taken reasonably and objectively. No reasonable opportunity of being heard was afforded to the petitioners while declining to make the References. In the instant case, the claim has not become stale. The delay of four years cannot be termed as inordinate delay. The status/meager, resources of the workmen have to be taken into consideration while dealing with these matters. Accordingly, in view of the observations and analysis made hereinabove, the writ petition is allowed. Annexures P-3, dated 18.01.2012 and P-4, dated 06.03.2012, are quashed and set aside. The Respondent No. 5, i.e., Labour Commissioner, Himachal Pradesh is directed to refer the matter to the learned Labour Court-Cum-Industrial Tribunal for adjudication, within a period of four weeks from the date of receipt of a certified copy of this judgment. The pending application(s), if any, also stands disposed of. No costs.