

(2019) 08 SHI CK 0017
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 305 Of 2018

Ramesh Kumar

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision : 08-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2019) 08 SHI CK 0017

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : R.S. Chandel, Sumit Himalvi, Dinesh Thakur

Final Decision : Disposed Off

Judgement

Ajay Mohan Goel, J

1. As per report of the Registry, steps have not been taken for the service of respondent No. 3. Learned Counsel for the petitioner submits that as the said respondent is neither a necessary nor a proper party, on his request, name of said respondent be deleted from the array of respondents. Ordered accordingly. Name of respondent No. 3 is ordered to be deleted from the array of respondents, subject to all just exceptions.

2. By way of this petition filed under Article 227 of the Constitution of India, petitioner has challenged order dated 30.07.2018, passed by learned Labour Court-cum-Industrial Tribunal, Shimla, in Reference petition No. 46/2016, titled as Ramesh Kumar versus State of H.P., vide which, permission granted to the petitioner by the learned Labour Court vide order dated 11.07.2018 to lead additional evidence stands closed on the ground that the petitioner had failed to avail the opportunity granted in terms of order 11.07.2018, as he had not taken any steps for summoning of the witnesses for the said date. Vide said order, learned Labour Court has also dismissed an application, which was filed by the petitioner on the said date itself with the prayer for grant of permission to place

on record notification dated 9th June, 2018, issued by the Secretary, Irrigation and Public Health to the Government of Himachal Pradesh.

3. Learned Counsel for the petitioner has submitted that the reason as to why no witness could be summoned for 30.07.2018 in terms of order dated 11.07.2018 was that a close relative of the petitioner expired in the month of July, 2018 after passing of order dated 11.07.2018 and as the petitioner was busy alongwith his family members in performing religious last rites post the death of his relative, steps could not be taken. He has further submitted that though this submission was made before the learned Labour Court, yet, learned Labour Court closed the additional evidence of the petitioner vide impugned order. With regard to the rejection of the application filed by the petitioner for placing on record notification dated 9th June, 2018, issued by the Secretary, Irrigation and Public Health to the Government of Himachal Pradesh, learned Counsel has submitted that said document was necessary for adjudication of the lis as it conferred upon the petitioner the right of regularization in case reference was answered in his favour.

4. Learned Additional Advocate General while defending the order passed by the learned Labour Court has argued that there is no infirmity with the order dated 30.07.2018, because when learned Labour Court vide order dated 11.07.2018 had made it amply clear that only one opportunity shall be granted to the petitioner to lead additional evidence, no infirmity can be attributed to order dated 30.07.2018, on which date, right of the petitioner to lead additional evidence was closed. He further argued that it is a matter of record that the opportunity so granted to the petitioner vide order dated 11.07.2018 to lead additional evidence was not availed by him. He further submitted that similarly there was no infirmity with the order impugned whereby it rejected the application filed by the petitioner because per se regularization is not the domain of the learned Labour Court and further even otherwise, the application which was filed by the petitioner was not maintainable as the same was not supported by the affidavit of the petitioner.

5. I have heard learned Counsel for the parties and gone through the impugned order as well as other orders and documents appended with the petition.

6. It is a matter of record that when an application filed by the petitioner to lead additional evidence was allowed by the learned Labour Court on 11.07.2018, it was clearly stipulated in the said order by the learned Labour Court that only one opportunity will be granted to the petitioner to lead additional evidence. Despite this, neither the petitioner took any steps for summoning of the witnesses nor any witness was produced by him on 30.07.2018, therefore, there is no infirmity in the said order of closing the right of the petitioner to lead additional evidence.

7. Similarly, the reasons assigned by learned Labour Court for rejecting the application vide which prayer was made by the petitioner to place on record notification dated 9th June, 2018, also cannot be faulted with because this Court

also fails to understand as to of what assistance the placing of the said notification would have had been to the petitioner as it is not in dispute that he had served the department for less than two years whereas he intended to place on record the notification which was dealing with induction of Water Guards, Pump Operators and Fitters etc. inter alia on the strength of service rendered by them on contract basis/regularization/daily wages itself.

8. Besides this, there is force in the contention of learned Additional Advocate General that said application, otherwise also, could not have been considered by the learned Labour Court for adjudication because the same was not supported by any affidavit of the petitioner. By no stretch of imagination, the application could be termed to be a formal application. Petitioner intended to place on record notification dated 9th June, 2018, supra and on the strength of the same, he wanted learned Labour Court to confer certain benefits upon him. That being the case, learned Labour Court could have accepted the application only when the same was supported by the affidavit of the petitioner and an application which was not supported by the affidavit of the petitioner should have been outrightly rejected.

9. At this stage, learned Counsel for the petitioner submits that though it is a matter of record that vide order dated 11.07.2018, only one opportunity was granted to the petitioner to lead additional evidence, which could not be availed by him for the reasons he has already submitted, he prays that this Court may grant one more opportunity to the petitioner to lead additional evidence in terms of order dated 11.07.2018 as the same will not only further the cause of justice but will also assist the learned Labour Court in the adjudication of the reference petition in an effective manner.

10. In my considered view, said prayer so made by learned Counsel for the petitioner can be accepted in the facts of this case. It is a matter of record that only one opportunity to lead additional evidence was granted to the petitioner by the learned Labour Court vide order dated 11.07.2018 and it appears that on account of his acts of omission, he failed to avail the same. This Court however cannot lost sight of the fact that petitioner is a rustic villager, who has raised an industrial dispute feeling aggrieved by his alleged illegal termination by the respondents as daily waged Water Guard.

11. Accordingly, this petition is disposed of by partially modifying order passed by learned Labour Court dated 30.07.2018 with the observation that said Court shall grant one more opportunity to the petitioner to lead additional evidence in terms of order dated 11.07.2018 and if despite grant of said opportunity, petitioner fails to produce any additional evidence, then no further opportunity in this regard shall be granted and order dated 30.07.2018 shall become operative in all force. Parties through their respective learned Counsel are directed to appear before the learned Labour Court on 27.08.2019, on which date, one opportunity shall be granted to the petitioner to lead additional evidence in terms of order dated 11.07.2018 and Court assistance shall also be provided to him for

summoning the witness(s).

With these observations, the petition stands disposed of. Miscellaneous application(s), if any, also stand disposed of.