

(2012) 07 SHI CK 0116
In the High Court Of Himachal Pradesh
Case No : CWP No. 197 of 2012-J

Sh. Amar Singh

APPELLANT

Vs

The HPSEB Limited and The Executive Engineer, HPPWD Ltd.

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Citation : (2012) 07 SHI CK 0116

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : A.K. Gupta, for the Appellant; Anjula Khajuria, for the Respondent

Judgement

Justice Sanjay Karol, J.—Petitioner has filed the instant petition, praying for the following relief:-

That the respondents may be ordered to grant work charge status to the petitioner by counting his service from the date of his initial engagement on daily wage basis with all the incidental thereof such as pay fixation etc. and other notional benefits and actual benefits from the date of his re-engagement by the Board.

There is a chequered history which has led the petitioner to file the instant petition. Petitioner was engaged as Beldar/T-Mate with the respondents on 26.9.1986. Respondents allegedly illegally terminated his services some time in the year 1990. Hence, he invoked the provisions of the Industrial Disputes Act, 1947 and reference No. 161/2003 arising from such proceedings was decided by the Presiding Judge, H.P. Labour Court, Shimla in terms of award dated 3.6.2006. Petitioner was held not entitled to the relief prayed for on various grounds.

2. Aggrieved thereof, petitioner assailed the said award before this Court by way of CWP No. 470 of 2009 which stood decided in terms of judgment dated 11th August, 2010. The petition was titled as Amar Singh versus HPSEB and others. The relevant extract of the judgment is as following:-

3. It is not in dispute that the workman, in question, had completed 240 days of work preceding his retrenchment. The workman had initially approached the Tribunal for redressal of his grievance but since the matter was an industrial dispute, the workman was directed to approach the authorities under the Industrial Disputes Act. Thereafter, the petitioner lodged a claim with the State Government and a reference was made by the State Government to the Labour Court.

6. It has been contended by Mr. Vinod Thakur, learned counsel for respondents No. 1 and 2, that back wages may not be awarded. I am unable to accept this argument. Admittedly, the judgment in Sattar Mohammad's case has been implemented and no appeal has been filed by the Electricity Board. The Board cannot take different stand in different cases, where identical questions are involved. After retrenchment, Satar Mohammad also approached the Tribunal and thereafter the Labour Court like the petitioner. Therefore, the petitioner is entitled to the same relief to which Sattar Mohammad was entitled.

7. Admittedly, the case of the petitioner is identical to the case of the petitioner in Sattar Mohammad's case. Therefore, following the aforesaid decision, the award dated 3rd June, 2006 is set aside. The retrenchment of the petitioner is declared void abinitio and the petitioner is deemed to be in employment. However, as directed by the learned Single Judge in Sattar Mohammad's case, the petitioner shall only be entitled to 50 per cent of back wages.

3. The matter, however, did not rest there. The respondent/HPSEB preferred an appeal against the said judgment, which was registered as LPA No. 354 of 2010. The same was disposed of with the following observations:-

In the instant appeals challenge is primarily to the directions issued by the learned Single Judge of this Court holding the petitioners entitled to 50% back wages on the basis of another judgment passed by a Coordinate Bench of this Court in CWP No. 1041 of 2008, titled as Sattar Mohammad versus The H.P. State Electricity Board and others, dated 9.1.2009. However, vide judgment dated 29.8.2011 this Court in LPA No. 11 of 2011 has clearly held that the decision in Sattar Mohammad's case is purely applicable to the peculiar facts of that case.

2. As such the said decision cannot be said to be a binding precedent and applicable to the instant facts.

3. It is not in dispute that petitioners are likely to be re-engaged by the appellants within a fortnight, as such, appeals are partly allowed and direction, to the extent that the petitioners shall be entitled to 50% back wages is set aside.

4. Appeals are disposed of with the aforesaid directions.

4. In view of the judicial pronouncement rendered by this Court in CWP No. 470 of 2009 and LPA No. 354 of 2010, this petition needs to be allowed, as undisputedly, the judgment rendered by the Division Bench of this Court has

attained finality. As such, respondents are directed to accord work charge status to the petitioner counting his service from the date of his initial engagement on daily wage basis. Learned counsel for the petitioner submits that in so far as the prayer for pay fixation is concerned, the same is not pressed. Consequently, the aforesaid directions shall be applicable only for the purpose of fixation of seniority.

With the aforesaid observations, present petition stands disposed of, so also, the pending application(s), if any.