
(2010) 12 SHI CK 0487
In the High Court Of Himachal Pradesh
Case No : CWP No. 1172 of 2008

Shiv Dayal Dharamshala Trust	Vs	APPELLANT
Leela Dutt Sharma and Another		RESPONDENT

Date of Decision : 17-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25F

Citation : (2010) 12 SHI CK 0487

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Judgement

Surjit Singh, J.—Petitioner, a Charitable Trust, runs a homeopathic dispensary. It engaged the services of Respondent Leela Dutt Sharma as Chikitsak (Homeopathy) for running the dispensary. Respondent was engaged, on part-time basis. According to the Respondent, salary settled with him was Rs. 3,600/-, but he used to be paid Rs. 1,100/- only, and when he protested, Petitioner started paying him Rs. 2,500/-. Petitioner then closed the dispensary for a few days and ultimately dispensed with the services of the Respondent, as per allegations of the Respondent.

2. Matter was taken to the Labour Commissioner, who referred the dispute to the Labour Court. Labour Commissioner made the following reference to the Labour Court:

Whether the termination of services of Shri Leela Dutt Sharma, S/o Shri Geeta Ram workman by the President, Shri Shiv Dayal Dharamshala Trust (Regd.) Solan, H.P. w.e.f. 13.4.2004 without complying with provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?

3. Petitioner contested the claim of the Respondent, before the Labour Court. It denied that Respondent had been engaged as a workman. It was stated that the Petitioner had been running a charitable dispensary and the Petitioner used to be

paid Rs. 1,100/- as honorarium, in the beginning, and later on the amount was raised to Rs. 2,000/- plus Rs. 500/-, on account of travelling expenses, for attending patients at their residences (outside the dispensary premises) and that when the Respondent stopped visiting the patients, at their places, Petitioner stopped paying additional amount of Rs. 500/-, on account of travelling expenses. It was specifically stated by the Petitioner in the reply, before the Labour Court, that there was no relationship of employer and workman between the Petitioner and the Respondent.

4. Labour Court framed the following issues:

1. Whether the services of the Petitioner has been terminated without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? ...OPP

2. If issue No-1 is proved in affirmative, to what relief the Petitioner is entitled?....OPP

3. Whether the petition is not maintainable, as the Petitioner is not our employee?..OPR Relief.

5. Parties went to trial. At the end of the trial, Labour Court held that the Respondent was a workman and his monthly wages were to the tune of Rs. 3,600/-. It was also held that the services of the Petitioner had been dispensed with, without complying with the provision of Section 25-F of the Industrial Disputes Act. With these findings, award was passed for reinstatement of the Respondent, with full back wages and seniority.

6. Petitioner, aggrieved by the award of the Labour Court, has filed the present writ petition, under Articles 226 and 227 of the Constitution of India. It is alleged that Respondent was not a workman and, hence, Labour Court did not have the jurisdiction to pass the impugned award. Also, it is alleged that the wages of the Respondent, before termination of his services, were to the tune of Rs. 2,000/-, per month, and the finding by the Labour Court that his wages were Rs. 3,600/- per month is contrary to the evidence on record. Also, it is alleged that Respondent had been working with another Trust, on part-time basis, and drawing salary at the rate of Rs. 3,600/-, during the entire period of his ceasing to be employee of the Petitioner and even before that. Another averment made in the petition is that as a matter of fact Respondent was not authorized to practice in Homeopathic System of Medicine, per Annexure P-11, issued by State Council of Homeopathic System of Medicine, Himachal Pradesh.

7. Respondent has denied all the averments made in the petition, including the plea that he was employed with another Trust or that he was not authorized to practice. It has also been denied that the Respondent was not a workman, within the meaning of Section 2(j) of the Industrial Disputes Act.

8. I have heard learned Counsel for the parties and gone through the record.

9. Learned Counsel representing the Petitioner submits that a professional is not

a workman, within the meaning of Section 2(j) of Industrial Disputes Act, as held by the Hon''ble Supreme Court in Muir Mills Unit of N.T.C. (U.P) Ltd. Vs. Swayam Prakash Srivastava and Another, . Hon''ble Supreme Court, vide para-38, has held that a professional can never be termed as a workman under any law.

10. In the present case, when the Petitioner itself has taken the plea that the Respondent was not authorized to practice in Homeopathic System of Medicine, per Annexure P-11, a letter issued by State Council of Homeopathic System of Medicine, Himachal Pradesh, it does not lie in its mouth to say that the Respondent was a professional and as such not a workman.

11. Learned Labour Court was not right in concluding that the wages of Respondent were to the tune of Rs. 3,600/-, per month. Respondent, while in the witness-box before the Labour Court, admitted that he used to be paid Rs. 1,100/- per month initially and that when he protested, at the time when wages of other employees were increased, Petitioner started paying him at the rate of Rs. 2,500/- per month. Petitioner's case is that Respondent used to be paid Rs. 2,000/- as honorarium and Rs. 500/-, on account of traveling allowance, for visiting the patients outside the dispensary premises and that when he stopped visiting the patients, Petitioner stopped paying him travelling allowance. It was stated by the Respondent, in his testimony before the Labour Court, that he had undertaken to work for eight hours per day and also to visit patients, when his wages were raised to Rs. 2,500/-. It was not the case of the Respondent that he had been continuously visiting the patients at their places. If that is so, there cannot be any escape from the finding that monthly wages of the Respondent were to the tune of Rs. 2,000/-.

12. Learned Labour Court was also not justified in awarding full back wages to the Respondent. It was proved before the Labour Court by RW-3 Balram Sethi, an employee of Durga Bhawan (Janj Ghar), who proved letter dated 8th October, 2007, that the Respondent had been employed with Durga Bhawan (Janj Ghar), on monthly wages of Rs. 3,000/-, with effect from 1st September, 2000 and that his wages were increased to Rs. 3,500/- per month in June, 2006 and he had been working with said Durga Bhawan (Janj Ghar) ever since. Now, if the Respondent was gainfully employed with another employer for the period he remained out of the employment of the Petitioner, learned Labour Court ought not to have awarded anything on account of back wages to the Respondent.

13. As regards order of reinstatement of the Respondent, as per communication Annexure P-11 issued by the State Council of Homeopathic Medicine, Himachal Pradesh, Respondent is not authorized to practice in Homeopathic System of Medicine. Therefore, an order of reinstatement as Chikitsak (Homeopathy) would be illegal, because the order would authorize a person to practice in Homeopathy System of Medicine, who is otherwise not authorized to so practice. However, keeping in view the fact that the services of the Respondent had been terminated, without compliance with the provision of Section 25-F of the Industrial Disputes Act, he deserves to be compensated.

14. In the facts and the circumstances of the case, especially the fact that the Petitioner is not registered/ authorized to practice in Homeopathic System of Medicine, a sum of Rs. 25,000/- should be reasonable compensation. Accordingly, writ petition is disposed of and the order of the Labour Court is modified as follows:

Respondent shall be paid a sum of Rs. 25,000/- as compensation, for his termination, without compliance with the provision of Section 25-F of the Industrial Disputes Act. He is not entitled to any other relief.