

(2013) 06 SHI CK 0074
In the High Court Of Himachal Pradesh
Case No : CWP No. 6591 of 2012

State of Himachal Pradesh and Another	APPELLANT
Vs	
Hardyal Singh	RESPONDENT

Date of Decision : 17-06-2013

Acts Referred:

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

Citation : (2013) LabIC 4100 : (2013) 5 LLN 594 : (2013) 4 LLN 256 : (2013) LLR 1206

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Pramod Thakur, Ms. Meenakshi Sharma, A.A.G. s and Mr. Neeraj K. Sharma, Deputy A.G, for the Appellant; B.S. Chauhan, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Since common questions of law and facts are involved in all the writ petitions, these were taken up together for hearing and are being disposed of by this common judgment. However, in order to maintain clarity, the facts of C.W.P. No. 6591 of 2012 have been taken into consideration.

CWP No. 6591 of 2012

State has challenged the awards made by the learned Industrial Tribunal-Cum-Labour Court, Shimla, H.P., in Reference No. 80 of 2010, dated 25.02.2010, in Reference No. 63 of 2009, dated 25.02.2012, in Reference No. 65 of 2009, dated 25.02.2012, in Reference No. 67 of 2009, dated 25.02.2012, in Reference No. 64 of 2009, dated 25.02.2012 and in Reference No. 62 of 2009, dated 25.02.2012.

2. Key facts necessary for adjudication of these petitions are that in Reference No. 80 of 2010, the workman was engaged in the month of April, 1996 and was retrenched on 29.06.2000. He has worked for 220 days, 172 days, 77 days, 193 days and 110 days in the years 1996, 1997, 1998, 1999 and 2000. In Reference

No. 63 of 2009, the workman was engaged in June, 1996. He was retrenched on 29.06.2000. He has worked for 118 days, 230 days, 133 days, 176 days, 115 days in the years 1996, 1997, 1998, 1999 and 2000. In Reference No. 65 of 2009, the workman was engaged in May, 1996. He was retrenched on 29.06.2000. He has worked for 169 days, 237.5 days, 118 days, 191 days and 119 days in the years 1996, 1997, 1998, 1999 and 2000. In Reference No. 67 of 2009, the workman was engaged in November, 1996. He was retrenched on 29.06.2000. He has worked for 60 days, 202 days, 46 days, 138 days and 127 days in the years 1996, 1997, 1998, 1999 and 2000. In Reference No. 64 of 2009, the workman was engaged in September, 1996. He was retrenched on 29.06.2000. He has worked for 83 days, 214 days, 67 days, 169 days and 124 days in the years 1996, 1997, 1998, 1999 and 2000. In Reference No. 62 of 2009, the workman was engaged in September, 1996. He was retrenched on 29.06.2000. He has worked for 87 days, 158 days, 144 days, 203 days and 122 days in the years 1996, 1997, 1998, 1999 and 2000.

3. The workmen have raised industrial dispute in the year 2008. The State Government after receipt of failure reports has made Reference No. 80 of 2010 in CWP No. 6591 of 2012, Reference No. 63 of 2009 in CWP No. 6601 of 2012, Reference No. 65 of 2009 in CWP No. 6602 of 2012, Reference No. 67 of 2009 in CWP No. 6603 of 2012, Reference No. 64 of 2009 in CWP No. 6604 of 2012 and Reference No. 62 of 2009 in CWP No. 6605 of 2012 to the Industrial Tribunal-Cum-Labour Court, Shimla, H.P. The workmen have filed claim petitions, to which the replies were filed by the State Government. Learned Industrial Tribunal-Cum-Labour Court, Shimla, H.P. has ordered the reinstatement of the workmen with seniority and continuity with effect from the date of their retrenchment, but without back wages.

4. Mr. Pramod Thakur, learned Additional Advocate General has vehemently argued that there was inordinate delay in raising the industrial dispute by the workmen. He then contended that since the workmen have not completed 240 days preceding their retrenchment, they were not entitled to get the benefit u/s 25-G of the Industrial Disputes Act, 1947 (hereinafter to be referred as "the Act" for the sake of convenience).

5. Mr. B.S. Chauhan, learned counsel for the respondents has supported the awards passed by the learned Industrial Tribunal-Cum-Labour Court, Shimla, H.P.

6. I have heard the learned counsel for the parties and gone through the pleadings and records carefully.

7. The workmen were engaged in 1996. They have been retrenched in 2000. It is not in dispute that the workmen have not completed 240 days preceding their retrenchment. However, it has come in the statement of Sh. Dila Ram that three workmen, namely Sh. Chet Ram, Vijay and Ms. Seema were retained, though junior to the respondents-workmen, while retrenching the respondents-workmen. It is settled law by now that to get the benefit u/s 25-G & H, it is not

necessary that the workman should complete 240 days. The findings recorded by the learned Industrial Tribunal-Cum-Labour Court, Shimla, H.P. cannot be faulted with.

8. Mr. Pramod Thakur, learned Additional Advocate General has also argued that the workmen have abandoned their job in the year 2000. This plea has rightly been rejected by the learned Industrial Tribunal-Cum-Labour Court, Shimla, H.P. The plea of abandonment is required to be proved like any fact. The petitioner-State has not placed any tangible evidence on record that at any given time, the notices were issued to the workmen after the alleged abandonment.

9. Mr. Pramod Thakur, learned Additional Advocate General has also argued that there was delay in raising the industrial dispute. The workmen have been retrenched in the year 2000. They have raised the industrial dispute in the year 2008. The notice was issued to the employer. It is only thereafter the reference was made to the Industrial Tribunal-Cum-Labour Court. The employer has not at any stage challenged the making of reference to the Industrial Tribunal-Cum-Labour Court.

10. A Division Bench of this Court in Sukh Ram Vs. The Executive Engineer, LPA No. 42 of 2013 has held that once a reference is made by the competent authority, it is not open to the Tribunal or the Court to non-suit the employee on the ground that the reference was made in respect of belated and stale claim. The Division Bench has held as under:

4. The argument of the appellant, before us, is that, the judgment of Laiq Ram has no application to the fact situation of the present case. For, the decision in Laiq Ram's case was on limited question about the power of the State Government to decide the question as to whether the claim, made by the workman, is stale or not. The majority view of the Full Bench will have to be understood in the context of the said question. In the present case, however, the appropriate Government had already made reference. Once such reference is made by the competent authority, it is not open to the Tribunal or the Court to non-suit the employee on the ground that the reference was made in respect of belated and stale claim. The Apex Court in the case of Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, has dealt with this aspect. In paragraph-10 thereof, the Court noted that relief under the Act cannot be denied to the workman merely on the ground of delay. Further, no reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal, Labour Court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman.

5. As aforesaid, this question has not been dealt with by the Full Bench in Laiq Ram's case. The minority view of the Full Bench decision does touch upon this issue in Paragraph-31 of the judgment. Suffice it to observe that once reference is made, the question of non-suiting the employee on the ground of delay or

laches does not arise as observed by the Apex Court in the case of Ajaib Singh (supra).

11. The Apex Court in Harjinder Singh Vs. Punjab State Warehousing Corporation, has held that the workman need not prove continuous service for availing benefit u/s 25-G of the Industrial Disputes Act, 1947. Their Lordships have further held that while exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the goals set out in the Preamble and in Part IV of the Constitution are required to be taken into consideration. Their Lordships have held as under:

16. It is true that in the writ petition filed by it, the Corporation did plead that the dispute raised by the appellant was not an industrial dispute because he had not worked continuously for a period of 240 days, the learned Single Judge rightly refused to entertain the same because no such argument was advanced before him and also because that plea is falsified by the averments contained in Para 2 of the reply filed on behalf of the Corporation to the statement of claim wherein it was admitted that the appellant was engaged as work-charge motor mate for construction work on 5.3.1986 and he worked in that capacity and also as work munshi from 3.10.1986 and as mentioned above, even after expiry of the period of three months specified in the order dated 5.2.1987, the appellant continued to work till 5.7.1988 when the first notice of retrenchment was issued by the Managing Director of the Corporation. Therefore, it was not open for the Corporation to contend that the appellant had not completed 240 days" service. Moreover, it is settled law that for attracting the applicability of Section 25-G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of "last come first go" without any tangible reason.

Accordingly, in view of the observations and analysis made hereinabove, there is no merit in these petitions and the same are dismissed, so also the pending application(s), if any. No costs.