
(2015) 09 SHI CK 0051
In the High Court Of Himachal Pradesh
Case No : CWP No. 4543 of 2014

State of Himachal Pradesh and Others	APPELLANT
Vs	
Chaman Singh	RESPONDENT

Date of Decision : 10-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Evidence Act, 1872 — Section 35, 59
Industrial Disputes Act, 1947 — Section 10, 25G, 25H

Citation : (2015) LabIC 4625

Hon'ble Judges : Piar Singh Rana, J

Bench : Single Bench

Advocate : M.L. Chauhan, Addl. Advocate General and J.S. Rana, Assistant Advocate General, for the Appellant; Naresh Kaul, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Piar Singh Rana, J—Present civil writ petition is filed under Article 226 of Constitution of India against the award passed by Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala District Kangra HP in reference No. 384 of 2009 titled Chaman Singh v. Executive Engineer I&PH Division Dalhousie District Chamba HP.

BRIEF FACTS OF THE CASE:

2. Respondent was working on daily wage basis in the office of Executive Engineer I&PH Division Dalhousie District Chamba HP w.e.f. August 1996 to 9.11.2000. Due to shortage of funds and work in the division services of respondent along with 363 workmen were disengaged. Compensation of retrenchment was paid to respondent Chaman Singh to the tune of Rs. 3,060/- (Three thousand sixty). Respondent challenged retrenchment order before Labour Court by filing claim petition. Reference was sent to Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala District Kangra HP. Thereafter Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala District

Kangra HP passed the award on dated 3.7.2013 with direction to re-engage the respondent forthwith. Presiding Judge-cum-Industrial Tribunal Dharamshala further held that respondent would be entitled to continuity and seniority in service from the date of his illegal termination w.e.f. 9.11.2000 except back wages. Presiding Judge-cum-Industrial Tribunal Dharamshala further directed Executive Engineer IPH Division Dalhousie District Chamba HP to consider the case of Chaman Singh for regularization of his service as per policies framed by government of Himachal Pradesh from time to time. Presiding Judge-cum-Industrial Tribunal Dharamshala further held that if the services of any person junior to respondent Chaman Singh had already been regularized then respondent would be entitled to regularization from the date/month of the regularization of the services of his juniors.

3. Feeling aggrieved against the award passed by Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala District Kangra HP State of HP filed present civil writ petition.

4. Court heard learned Additional Advocate General appearing on behalf of petitioners and learned Advocate appearing on behalf of respondent and also perused entire record carefully

5. Following points arise for determination in present civil writ petition:

"1. Whether civil writ petition is liable to be accepted as mentioned in memorandum of grounds of civil writ petition?.

2. Final Order."

Reasons for Findings

Point No. 1.

6. Submission of learned Additional Advocate General appearing on behalf of petitioners that respondent Chaman Singh did not work for 240 days continuously and on this ground writ petition filed by petitioners be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. Court has perused working chart of respondent Chaman Singh Annexure R1 placed on record. Working chart Annexure R-1 is issued by Executive Engineer I&PH Division Dalhousie and attested by Assistant Engineer I&PH Sub Division Sihunta. As per working chart Annexure R1 placed on record respondent Chaman Singh had worked continuously for 330 days in 1997, 352 days in 1998, 360 days in 1999 and 310 days in 2000. Document Annexure R1 has been issued by Executive Engineer I&PH Sub Division Dalhousie while discharging his official duty and is a relevant fact under Section 35 of the Indian Evidence Act 1872. There is no rebuttal document on record in order to rebut the entries of Annexure R1 placed on record. Plea of the petitioners that respondent had not worked for more than 240 days continuously is not proved on record and is defeated on the concept of ipse dixit (Assertion made without proof).

7. Submission of learned Additional Advocate General appearing on behalf of petitioners that petitioners did not violate Section 25H of Industrial Disputes Act 1947 as held by Labour Court and on this ground petition be allowed is also rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that service of respondent was retrenched as per Section 25G of Industrial Disputes Act 1947. As per section 25H of Industrial Disputes Act 1947 there is a provision of re-employment of retrenched workmen. As per section 25H of Industrial Disputes Act 1947 where any workman was retrenched and the employer at subsequent stage proposes to employ any person then employer would give an opportunity to retrenched workman who is citizen of India for re-employment. If retrenched workman offer himself for re-employment then he would have preference over other persons. In the present case it is proved on record that after retrenchment of respondent Chaman Singh employment was given by petitioners to Smt. Sodha Devi, Smt. Lata Devi, Smt. Biasa Devi and Sh. Hem Raj who were juniors to respondent Chaman Singh. Even Sh L.S. Thakur Executive Engineer IPH Division Dalhousie District Chamba HP had appeared in witness box in person and had stated in positive manner that services of Smt. Biasa Devi and Sh Hem Raj were re-engaged. It is proved on record that Smt. Biasa Devi and Sh Hem Raj were juniors to respondent Chaman Singh. It is well settled law that facts can be proved by way of oral evidence as per section 59 of Indian Evidence Act 1872. There is no evidence on record that offer was given to respondent for re-employment as requires under Section 25H of Industrial Disputes Act 1947. Hence it is held that it is proved on record that petitioners have violated provision of Section 25H of Industrial Disputes Act 1947.

8. Submission of learned Additional Advocate General appearing on behalf of petitioners that award passed by Labour Court is contrary to the judgment of Hon'ble Apex Court of India reported in Mool Raj Upadhyaya Vs. State of H.P. and Others, (1994) 68 FLR 1257 : (1994) 3 JT 453 : (1994) 2 SCALE 630 : (1994) 2 SCC 316 Supp : (1994) 1 UJ 570 and on this ground civil writ petition be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. Facts of the present case and facts of the case reported in Mool Raj Upadhyaya Vs. State of H.P. and Others, (1994) 68 FLR 1257 : (1994) 3 JT 453 : (1994) 2 SCALE 630 : (1994) 2 SCC 316 Supp : (1994) 1 UJ 570 and others are different. In the present case matter in dispute is relating to re-employment of retrenched employee as provided under Section 25H of Industrial Disputes Act 1947 but in Mool Raj Upadhyaya case supra the matter was relating to employee employed on daily wages and matter was not relating to retrenched employee.

9. Submission of learned Additional Advocate General appearing on behalf of petitioners that respondent is not legally entitled for the benefit of seniority and continuity in service is also rejected being devoid of any force for the reasons hereinafter mentioned. It is held that petitioners have not complied the provision of Section 25H of Industrial Disputes Act 1947 and petitioners have re-employed junior persons without giving offer of re-employment to respondent who was retrenched workman. It is held that respondent Chaman Singh is legally entitled

for seniority in service above his juniors.

10. Submission of learned Additional Advocate General appearing on behalf of petitioners that Smt. Biasa Devi and others were re-employed as per direction of Court and on this ground petition be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. It is held that all public institutions are under legal obligation to adopt the concept of equality before law as mentioned under Article 14 of Constitution of India. Public authority cannot be allowed to give benefit to selective persons violating Article 14 of Constitution of India. Equality before law is fundamental rights of citizen of India.

11. Submission of learned Additional Advocate General appearing on behalf of petitioners that reference petition was time barred as respondent was retrenched w.e.f. 9.11.2000 and thereafter respondent raised industrial disputes in the month of April 2007 after a gap of five years and on this ground civil writ petition be allowed is also rejected being devoid of any force for the reasons hereinafter mentioned. It was held in case reported in Jasmer Singh Vs. State of Haryana(2015) 2 AD 215 : (2015) 144 FLR 837 : (2015) 1 SCALE 360 : (2015) 4 SCC 458 : (2015) 2 SCJ 391 : (2015) 2 SCT 91 : (2015) 1 SLJ 389 that provisions of Article 137 of Limitation Act 1963 would not be applicable to Industrial Disputes Act 1947 and it was held that relief would not be denied to workman merely on ground of delay. It was held that reference to Labour Court could not be questioned on the ground of delay. It was held in case reported in Raghubir Singh Vs. General Manager, Haryana Roadways, (2014) AIRSCW 5515 : (2014) 10 SCALE 135 that there is no limitation for reference to Labour Court under Section 10 of Industrial Disputes Act 1947. It was held in case reported in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, AIR 1987 SC 1353 : (1987) 13 ECC 27 : (1988) 19 ECR 565 : (1987) 28 ELT 185 : (1987) 167 ITR 471 : (1987) 1 JT 537 : (1987) 1 LLJ 500 : (1987) 1 SCALE 413 : (1987) 2 SCC 107 : (1987) 2 SCR 387 : (1987) 66 STC 228 : (1987) 2 UJ 29 titled Collector Land Acquisition Anantnag and another v. Mst. Katji and others that (1) Ordinarily a litigant does not stand to benefit by lodging matter late. (2) Refusing to condone delay can result meritorious matter thrown out at the very threshold and cause of justice defeated. It was held that if delay is condoned then highest that would happen would that case would be decided on merits after hearing the parties. (3) It was held that every day's delay must be explained does not mean that a pedantic approach should be made. It was further held that doctrine must be applied in a rational common sense. (4) It was held that when substantial justice and technical considerations are pitted against each other then cause of substantial justice deserves to be preferred. (5) It was held that there is no presumption that delay is occasioned deliberately or on account of culpable negligence or on account of mala fides. It was held that litigant does not stand to benefit by resorting to delay and in fact he runs a serious risk. (6) It was held that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Point No. 1 is decided against

petitioners.

Final Order

Point No. 2.

12. In view of above stated facts and case law cited supra civil writ petition filed under Article 226 of the Constitution of India is dismissed. Award announced by Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala District Kangra HP on 3.7.2013 is affirmed. Civil writ petition is disposed of. No order as to costs. Pending application(s) if any also stands disposed of.