
(2011) 06 SHI CK 0016
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 3887 of 2011

State of Himachal Pradesh and Others	APPELLANT
Vs	
Chet Ram	RESPONDENT

Date of Decision : 03-06-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 25B, 25F, 25G, 25H

Citation : (2011) 2 ShimLC 389

Hon'ble Judges : Kurian Joseph, C.J;V.K. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.K. Sharma, J.—The petitioners, who shall hereinafter be called as the "employer", have filed the present Civil Writ Petition to lay challenge against the award dated 23.11.2010, passed by the learned Presiding Judge, Industrial Tribunal-cum-Labour Court, Dharamshala, H.P., in Reference No. 114/2007, Shri Chet Ram v. Executive Engineer, I&PH Division, Mandi, District Mandi, H.P., u/s 10(1) of the Industrial Disputes Act, 1947 (in short "the ID Act"), whereby the respondent herein, who shall hereinafter be referred to as the "workman" has been "ordered to be reengaged (as Beldar) forthwith alongwith seniority and continuity in service from the date of his illegal termination, though except back wages".

2. The award was made consequent upon the following reference from the appropriate Government:

Whether the termination of services of Shri Chet Ram S/o Shri Narain workman by the Executive Engineer, I&PH Division, Mandi, H.P. w.e.f 01.09.2004 without complying the 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. It is not in dispute that the workman had joined as Beldar on the

establishment of the employer, in the year 1993 and had continued as such up to the year 2004, when according to him his services were illegally terminated by the employer, whose case is that the workman had himself abandoned the job/ was disengaged w.e.f. 01.09.2004 alongwith other similarly situate persons due to non-availability of work. It is also not in dispute that during this period he had not put in the requisite "continuous service for not less than one year" by putting in two hundred and forty (240) mandays within the meaning of Section 25F read with Section 25B of the ID Act. To this extent the retrenchment of the workman cannot be said to be in derogation to the provisions of Section 25F of the ID Act.

4. However, admittedly, though the workman, who had joined the employment of the employer in the year 1993, was disengaged, yet persons junior to him, namely, Het Ram son of Shri Dile Ram, who had joined in July, 2003, and Nihal Singh son of Shri Mangat Ram, engaged in January 1996, were retained and their services have since been regularized. Thus, manifestly the action on the part of the employer to retrench the workman and retain his juniors, as aforesaid, is in violation of the principle of "last come first go" as embodied in Section 25G of the ID Act and can not be sustained in law and the learned Industrial Tribunal-cum-Labour Court has rightly held so.

5. The difference between Section 25F read with Section 25B and Section 25G and 25H is that a workman has to be in continuous service for claiming the benefit u/s 25F read with Section 25B, whereas for the protection of Section 25G and 25H one need only be a workman covered by the Industrial Disputes Act. In fact, last come first go is the crux of the consideration u/s 25G and 25H of the ID Act, as held by the Apex Court in Harjinder Singh Vs. Punjab State Warehousing Corporation,

6. We may also make a passing observation that the said principle of last come first go has also exceptions. In case employer is in a position to establish on evidence that the retrenchment without respecting the principle of last come first go was required in good faith and on justifiable grounds, the Court/Tribunal shall not interfere with the action, thus taken by the employer. This principle also has been settled by the Apex Court in various decisions, Workmen of Sudder Workshop of Jorehaut Tea Co. Ltd. Vs. Management of Jorehaut Tea Co. Ltd., Om Oil and Oilseeds Exchange Ltd., Delhi Vs. Their Workmen, and Swadesamitran Limited, Madras Vs. Their Workmen, etc.

7. However, in the instant case, there is no such case for the employer. Rather it has come out in evidence to the contrary that while the juniors are being retained, the senior has been kept out.

8. The defence raised on behalf of the employer was inherently contradictory and self-defeating. On the one hand a preliminary objection was raised that the workman had abandoned the job on his own and on the other it was averred in the reply that he was disengaged w.e.f. 01.09.2004 alongwith other similarly situate persons due to non-availability of work. Both these situations cannot co-

exist. That unerringly shows the falsity of the defence raised on behalf of the employer. As already held hereinabove, while disengaging the workman the employer had given a go by to the principle of "last come first go" and as such it cannot be said by any stretch of imagination that the workman was disengaged alongwith other similarly situate persons due to nonavailability of work, as persons juniors to him were retained, who have since been regularized.

9. In view of the above, the award of the Industrial Tribunal-cum-Labour Court is on the face of it just, reasonable and in accordance with law.

10. In view of the above, the petition is dismissed, leaving the parties to bear their own costs.