
(2016) 04 SHI CK 0127

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1161 of 2013

State of Himachal Pradesh

APPELLANT

Vs

Kailash Chand

RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) ILRHP 1322

Hon'ble Judges : P.S. Rana, J.

Bench : Single Bench

Advocate : Mr. M.L. Chauhan, Mr. R.S. Thakur, Additional Advocates General and Mr. Rajinder Kumar Sharma, Deputy Advocate General, for the Petitioners; Mr. Sandeep K. Sharma Advocate, for the Non-Petitioner

Final Decision : Disposed Off

Judgement

P.S. Rana, J.—Present petition is filed under Article 226 and 227 of Constitution of India against the award passed by learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala in reference case No. 499 of 2009 decided on 1.8.2012 title Kailash Chand v. Executive Engineer IPH Division Dalhousie.

Brief facts of the case

2. It is pleaded that Kailash Chand was working on daily waged basis with Executive Engineer IPH Division Dalhousie w.e.f. Janaury 1996 and he had worked for 254 days in 1996, for 239? days in 1997, for 135 days in 1998 and 196 days in 2000. It is pleaded that thereafter he abandoned his job at his own volition. It is further pleaded that Kailash Chand raised industrial dispute and reference was sent to learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala to adjudicate the said dispute. It is pleaded that learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala H.P. passed the award on 1.8.2012 and directed the petitioner i.e. State of H.P. to re-engage

the respondent forthwith. It is further pleaded that learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala also directed that Shri Kailash Chand would be entitled for seniority and continuity in service from the date of illegal terminal w.e.f. 26.11.2000 except back wages.

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

4. Court heard learned Additional Advocate General appearing on behalf of the petitioners and learned Advocate appearing on behalf of the non-petitioner and also perused the entire record carefully.

5. Following points arise for determination in present bail application:-

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

2. Final Order.

Findings on Point No.1 with reasons

6. Submission of learned Additional Advocate General appearing on behalf of petitioners that impugned award passed by learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala be quashed on the point of limitation because Shri Kailash Chand lastly worked in the year 2000 for 196 days and thereafter he approached the Government for reference and reference No. 499 of 2009 was sent after about eight years is rejected being devoid of any force for the reasons hereinafter mentioned. Reference of dispute to Court of Tribunal was sent by appropriate Government under Section 10 of Industrial Dispute Act 1947. As per Section 10 of Industrial Dispute Act 1947 there is no limitation prescribed and word "At any time" mentioned under Section 10 of Industrial Disputes Act 1947. It was held in case reported in (1999)6 SCC 82 title Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and another that Section 10 is not subjected to limitation under Article 137 of Limitation Act 1963.

7. Submission of learned Additional Advocate General appearing on behalf of petitioner that reinstatement of respondent along with continuity be quashed is also rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that in the year 1996 respondent has worked for 254 days and in the year 1997 respondent had worked for 239? days and in 1998 respondent had worked for 135 days and in 2000 respondent had worked for 196 days as per Annexure R-1 placed on record issued by Assistant Engineer Irrigation-cum-PH Sub Division Banikhet and Executive Engineer Irrigation-cum-PH Division Dalbousie which is quoted in to:-

Jan.

Feb

Days

M/roll

Days

M/roll

Days

10

1

12

2

13

2

-

-

-

-

32

2

44

2

56

9

68

3

81

2

93

2

10

31

254

09

5

34

9

46

8

-

-

-

-

9

9

4

8

7

4

0

1

6

2

9

55

days

1321

20

1452

28

25

29
153
22
333
24
457
29
580
26/1-2
702
16
822
25
943
20

239/1-2 days
1179
29
1297
22
1417
27

72
30
190
27

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135 days

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175

28

264

30

354

31

443

31

481

30

556

31

630

15

196 days

Sd/-

Sd/-

Assisgant Engineer

Executive Engineer

Irrig.cum-PH-Sub Division

Irrig.cum-PH-Sub Division

Banikhet

Dalhousie

8. It is proved on record that in the year 1996 respondent had worked for 254 days. It was held in case reported in 1994 (Supp) 2 SCC 316 title Mool Raj Upadhyaya v. State of H.P. that if employee had worked for 240 days in a calender year then he would legally entitle for regularisation as per availability of vacancy. Also see Latest HLJ 2015 HP 93 title Mohammad Ali v. State of H.P. In present case it is proved on record that as per certificate issued by Assistant Engineer Irrigation-cum-PH Sub Division Banikhet and Executive Engineer Irrigation-cum-PH Division Dalbousie that in the year 1996 respondent Kailash Chand had worked for 254 days it is held that Kailash Chand is legally entitled for continuation of service after expiry of 240 days.

9. Submission of learned Additional Advocate General appearing on behalf of petitioners that respondent is not entitled for seniority in service because after 2000 respondent voluntarily did not attend his duty and voluntarily left the job is also rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that respondent had worked in the department in the year 1996 for 254 days, in the year 1997 for 239? days, in 1998 for 135 days and in 2000 for 196 days. It is also proved on record that in the month of December 2000 or after 2000 no notice was given to respondent by Assistant Engineer Irrigation-cum-PH Sub Division Banikhet or Executive Engineer Irrigation-cum-PH Division Dalbousie relating to non-attendance of his duty. It is also proved on record that no show cause notice as per service Rules was given to respondent at any point of time in the month of December 2000 or thereafter. It is also proved on record that no departmental proceedings initiated against the respondent under service Rules for non-attendance. It is well settled law that in public departments relating to public utility service of employee should be terminated strictly in accordance with law. Shri Sunil Dutt Chaudhary Executive Engineer IPH Dalhousie appeared as RW1 and in cross examination Executive Engineer IPH Dalhousie has admitted that no notice was served upon the respondent regarding his wilful absence from his duty w.e.f. 26.11.2000. RW1 has also admitted that no notice was given to respondent and no retrenchment compensation was paid to him. RW1 has also admitted that in seniority list name of respondent is figured at Sr. No. 41 and RW1 has admitted that Surinder, Gandho Ram, Amar Singh, Karam Chand and Gula Ram are juniors to the respondent. It is proved on record that respondent has also approached the Administrative Tribunal and interim order dated 23.3.2000 was passed by Administrative Tribunal in OA No. 590 of 1999. It is also proved on record that as per direction of Administrative Tribunal respondent has submitted the joining report on 29.3.2000. In view of the fact that respondent has also approached the Administrative Tribunal and obtained the interim order dated 23.3.2000 and in view of the fact that respondent has also submitted the joining report on 29.3.2000 Court is of the opinion that it is not expedient in the ends of justice to interfere in award passed by learned

Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala. In view of above stated facts point No. 1 is answered in negative.

Point No. 2 (Final order)

10. In view of my findings on point No.1 petition is dismissed. Award passed by learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala is affirmed. No order as to costs. Petition is disposed of. Pending miscellaneous application(s) if any also stands disposed of.