
(2016) 12 SHI CK 0025
In the High Court Of Himachal Pradesh
Case No : CWP No. 4481 of 2013

State of Himachal Pradesh

APPELLANT

Vs

Shri Partap Singh

RESPONDENT

Date of Decision : 06-12-2016

Acts Referred:

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

Citation : (2017) 1 HimLR 286 : (2017) LIC 268

Hon'ble Judges : Mr. Chander Bhusan Barowalia, J.

Bench : Single Bench

Advocate : Mr. Vinod Thakur, Advocate, for the Respondents; Mr. Virender K. Verma, Addl. AG, with Mr. Rajat Chauhan, Law Officer, for the Petitioners

Final Decision : Dismissed

Judgement

Mr. Chander Bhusan Barowalia, J. - The petitioners, being aggrieved by the award of the Labour Court-cum-Industrial Tribunal, Dharamshala, H.P., passed in Reference No. 15 of 2010, decided on 13.09.2013, maintained this writ petition to set aside and quash the same.

2. Succinctly the key facts necessary for adjudication of the present petition are that the State Government referred the following reference to the learned Labour Court-cum-Industrial Tribunal, Dharamshala, H.P.:

"Whether termination of services of Shri Partap Singh s/o Shri Lajju Ram, by The Executive Engineer, IPH division Padhar, Distt. Mandi, H.P. w.e.f. 12.12.2000, without complying the provisions of the Industrial Disputes Act, 1947 whereas junior to him are retained by the employer, is legal and justified" If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

3. As per the petitioners, respondent Partap Singh (workman) had been working on daily wage basis with the Executive Engineer, I&PH Division, Padhar w.e.f.

21.06.1987 to 11.12.2000, and he did not complete 240 days in the years 1989 to 1992 and 1997. The workman also did not complete 240 days in the calendar year preceding twelve calendar months of his retrenchment. It is pleaded that after 11.12.2000, the workman himself abandoned the work. As the workman, did not complete 240 days during the calendar year preceding his retrenchment, there is break in service disentitling him the protection under Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). As per the petitioners, the workman remained dormant for nine years and ultimately maintained the reference petition, which was hit by delay and laches, but the fact qua delay and laches was overlooked by the learned Tribunal below. The workman abandoned the job himself, thus he has no right to take benefit of the fact that his juniors have been retained. The workman has challenged the retrenchment before the learned Labour Court by way of filing the claim petition and the learned Labour Court set aside the retrenchment order of the respondent-workman and directed that he be re-engaged forthwith granting continuity and seniority in service w.e.f. 12.12.2000, except back wages and the order is thus against law and required to be set-aside.

4. As per the petitioners, the reference petition was hit by delay and laches, but the said fact was ignored by the learned Tribunal below. The petitioners have prayed for quashing and setting aside the impugned award and averred that the award has been passed by the learned Tribunal below without appreciating the facts and law to their true perspective. It is averred that award of the learned Tribunal below holding that the petitioners have not complied with the provisions of Section 25(G) and 25(H) of the Act is contrary to the evidence and the same also being contrary to law may be set-aside.

5. The workman did not file any reply to the petition. However, the stand of workman, as taken in the reference petition, was that he was engaged as daily waged beldar by the petitioners on muster roll basis w.e.f. 21.06.1987. On 12.12.2000 his services were illegally terminated without adhering to the mandatory provisions of the Act. As per the workman, he was given artificial breaks during employment and the same is required to be counted towards his continuous service. His services were terminated verbally and the persons junior to him were retained. Thus, the petitioners did not adhere to the principle of "last come first go". The action of the petitioners was highly illegal and unjustified, thus violative of Sections 25-F, 25-G and 25-H of the Act.

6. Learned Additional Advocate General has argued that the award of the learned Tribunal below is without appreciating the facts, which have come on record and is liable to be set-aside. On the other hand, the learned counsel appearing for the respondent has argued that the award passed by the Labour Court, Dharamshala, is as per law and no interference is required and the jurisdiction of this Court is wrongly invoked and writ petition deserves dismissal.

7. In order to appreciate the arguments, this Court has gone through the record of the case carefully.

8. The workman, who tendered his affidavit, Ex. PW-1/A, has submitted that he joined the service in the year 1987 and was removed in the month of November, 2000. He has admitted that he raised the industrial dispute in the year 2010 and prior to that he had approached the H.P. State Administrative Tribunal. The workman has denied that he left the job on his own.

9. RW-1, Shri Arun Sharma, Executive Engineer, I&PH Division, Padhar, in his cross-examination has admitted that after the disengagement of the services of the petitioner, new labour has been employed and the workman was not afforded any opportunity of re-employment. The workman was not served with any notice to resume his duties.

10. Indisputably, the workman was engaged as a daily waged beldar on 21.06.1987 and he, with frictional breaks, worked upto 11.12.2000. As per the petitioners, the workman himself abandoned the job. It is settled that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. The workman did fails to report for duty does not in any way raise a presumption that the workman himself left the job. Admittedly, while analysing the statement of RW-1, it is manifest that no notice was served upon the petitioner asking him to resume duties. Even if, it is presumed that the workman had abandoned the job himself and the same is a gross misconduct, in that case some disciplinary inquiry should have been initiated against the workman, but there is no evidence which reveals that the employer ever conducted any disciplinary inquiry. Therefore, the plea of wilful absence, unestablished.

11. It has also come on record that fresh hands were engaged by the employer without affording opportunity to the workman. The seniority list, Ex. RW-1/B, if read in conjunction with statement of RW-1, clearly demonstrates that persons junior to the workman are serving with the petitioners, which is in defiance to the principle of "last go first come". Therefore, provisions of Sections 25-G and 25-H of the Act have been contravened and it is not obligatory for the workman to have completed 240 days in a block of 12 calendar months preceding termination to derive the benefit under these sections of the Act. As per the petitioners, Section 25-F of the Act, is not applicable as the workman did not complete 240 days in cumulative period of 12 calendar months preceding his termination.

12. The learned Additional Advocate General for the petitioners has canvassed before this Court with vigour that the reference is stale. However, the said submission is unacceptable given the fact that the said fact was not agitated by the employer/petitioner before the appropriate Government at the time Government proceeded to make a reference of the dispute to the Labour Court-cum-Industrial Tribunal, Dharamshala, H.P. It has been held in *Raghuvir v. G.M. Haryana Roadways Hissar*, (2014) 10 SCC 301 that there is no limitation for reference to Labour Court under Section 10 of the Act. It was held that words "At any time" mentioned in Section 10 of the Act clearly define that law of limitation

would not be applicable qua proceedings of reference under Section 10 of the Act. Operative part of Section 10 of the Act is quoted in extenso:

"Section 10 of Industrial Disputes Act, 1947:- Reference of dispute to Boards, Courts or Tribunals-(1) where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing, (a) Refer the dispute to a Board for promoting a settlement thereof, (b) Refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry."

Further it has come on record that the workman, in the meantime, had also approached the H.P. State Administrative Tribunal, thus, it cannot be said the workman has delayed the proceedings.

13. In view of the above stated facts it is held that award of learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala in reference No. 15 of 2010, decided on 13.09.2012, is in accordance with proved facts and is in accordance with law. It is further held that there is no illegality in award passed by learned Presiding Judge Labour Court-cum-Industrial Tribunal, Dharamshala. Therefore, the writ petition is without any basis, requires dismissal and is accordingly dismissed. No order as to costs. All pending application(s), if any, also stand(s) disposed of.