
(2003) 09 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 839 of 1998

State of H.P. and Others

APPELLANT

Vs

Presiding Judge and Others

RESPONDENT

Date of Decision : 16-09-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2004) 2 LLJ 702 : (2003) 3 ShimLC 291

Hon'ble Judges : Kuldeep Chand Sood, J

Bench : Single Bench

Advocate : M.S. Chandel, A.G. and C.B. Singh, Dy. A.G, for the Appellant;
Ashwani Kumar Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Kuldeep Chand Sood, J.—Delinked from the bunch matter.

2. Respondents Dhani Ram and Inder Singh were employed as Baildar and Mason Grade-11 by the petitioners in the years 1985 and 1987 respectively. Their services were terminated without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947, (for short "the Act"). Respondents raised a dispute in the year 1996 on which a Reference u/s 10 of the Act was made to the Labour Court.

3. The Labour Court by its award dated September 3, 1998 answered the Reference holding that the termination of the respondents was illegal. The termination was set aside and the respondents-workmen were held entitled to reinstatement with continuity of service and seniority from the date of Reference to the Court. The Court took a view that respondents were not entitled to any back wages.

4. Dissatisfied, the employer-petitioners are in this petition under Articles 226 and 227 of the Constitution of India.

5. The defence raised, before the learned Labour Court, by the petitioners was that the workmen voluntarily left the work in July, 1988 and therefore there was no question of any violation of the provisions of Section 25-F of the Act. This plea of the petitioners was rejected on fact situation.
6. The only contention raised by the learned counsel for the petitioners during the course of hearing is that the Reference made to the Labour Court after eight years was incompetent having become stale. The argument is that after a lapse of eight years it cannot be said that any dispute existed at the time of Reference within the meaning of Section 10(1) of the Industrial Disputes Act.
7. I need not go into this question as this question was not raised before the Labour Court. It was not the case of the employer that the Reference being stale is not liable to be answered.
8. In *Sapan Kumar Pandit Vs. U.P. State Electricity Borad and Others*, the Apex Court took a view that the plea of an employer that the Reference suffers from inordinate delay and therefore, Industrial Dispute does not exist or it has become very stale can be appropriately considered by the concerned Labour Court-cum-Industrial Tribunal by moulding the relief.
9. In the absence of any such plea before the Labour Court this ground of challenge cannot be permitted to be raised for the first time in this petition under Articles 226 and 227 of the Constitution of India.
10. There is no merit in this petition. Dismissed.