
(2017) 05 SHI CK 0056
In the High Court Of Himachal Pradesh
Case No : 42 of 2017

State of H.P. & another	Vs	APPELLANT
Parkash Chand		RESPONDENT

Date of Decision : 09-05-2017

Acts Referred:

Citation : (2017) 05 SHI CK 0056

Hon'ble Judges : Sanjay Karol, Ajay Mohan Goel

Bench : Division Bench

Advocate : Shrawan Dogra, Romesh Verma, J.K. Verma, Naresh Kaul

Judgement

CMP(M) No.210 of 2017

1. This application has been moved for condoning the delay of 72 days crept-in, in filing the appeal, on the grounds taken in the memo of application.
2. We have gone through the application. For the reasons mentioned in the application, the same is allowed and the delay in filing the appeal is condoned. The Registry is directed to diarize the appeal. The application stands disposed of accordingly. LPA No.42 of 2017
3. Taken on board. Issue notice to the respondent. Mr.Naresh Kaul, Advocate, waives notice for the said respondent.
4. It is not in dispute that the controversy in issue stands settled by a Coordinate Bench of this Court in case of similarly situated workmen, wherein the following directions came to be issued:

"LPA No.72 of 2016:

3. Taken on board. Issue notice to the respondent. Mr. Naresh Kaul, Advocate, waives notice for the said respondent.
4. This appeal is directed against the judgment and order, dated 24th June, 2015, passed by a learned Single Judge of this Court in CWP No.4541 of 2014,

titled State of Himachal Pradesh and another vs. Raj Kumar, whereby the writ petition filed by the writ petitioners (appellants herein) came to be dismissed, (for short, the impugned judgment).

5. We have gone through the impugned judgment, which is legally correct for the following reasons.

6. Services of the respondent Raj Kumar were terminated, dispute was raised under the Industrial Disputes Act, 1947, (hereinafter referred to as the Act), the matter was referred by the competent Authority to the Labour Court-cum-Industrial Tribunal, (for short, the Labour Court).

7. The Tribunal entered into the reference and issues were framed. Parties led their evidence and the Tribunal after examining the pleadings and the evidence led by the parties, held vide award dated 7.9.2013 that the workman was entitled to the relief and made the award.

8. The award passed by the Labour Court is based on the facts and the evidence led by the parties. It is well settled principle of law that the Writ Court cannot sit as an Appellate Court and set aside the award made by the Labour Court, which is based on evidence and facts.

9. The Apex Court in case titled as Bhuvnesh Kumar Dwivedi versus M/s. Hindalco Industries Ltd., reported in 2014 AIR SCW 3157, held that the findings of fact recorded by Tribunal as a result of the appreciation of evidence cannot be questioned in writ proceedings and the Writ Court cannot act as an Appellate Court. It is profitable to reproduce para 18 of the judgment herein:

"18. A careful reading of the judgments reveals that the High Court can interfere with an Order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court granting contrary relief under Articles 226 and 227 of the Constitution amounts to exceeding its jurisdiction conferred upon it. Therefore, we accordingly answer the point No. 1 in favour of the appellant."

10. This Court has also laid down the same principle in a batch of writ petitions, CWP No. 4622 of 2013, titled as M/s Himachal Futuristic Communications Ltd. versus State of HP and another, being the lead case, decided on 04.08.2014. It is worthwhile to reproduce para 13 of the judgment herein:

"13. Applying the test to the instant case, the question of fact determined by the Tribunal cannot be made subject matter of the writ petition and more so, when the writ petitioner(s) have failed to prove the defence raised, in answer to the references before the Tribunal. "

11. This Court in a series of cases, being CWP No. 4622 of 2013 (supra); LPA No. 485 of 2012, titled as Arpana Kumari versus State of H.P. and others, decided on 11th August, 2014; LPA No. 23 of 2006, titled as Ajmer Singh versus State of H.P. and others, decided on 21st August, 2014; LPA No. 125 of 2014, titled as M/s. Delux Enterprises versus H.P. State Electricity Board Ltd. & others, decided on 21st October, 2014; and LPA No.143 of 2015, titled Gurcharan Singh (deceased) through his LRs vs. State of H.P. and others, decided on 15th December, 2015, while relying upon the latest decision of the Apex Court in Bhuvnesh Kumar Dwivedi versus M/s Hindalco Industries Ltd., reported in 2014 AIR SCW 3157, has held that question of fact cannot be interfered with by the Writ Court. However, such findings can be questioned if it is shown that the Tribunal/Court has erroneously refused to admit admissible and material evidence or has erroneously admitted inadmissible evidence which has influenced the impugned findings.

12. It is not the case of the writ petitioner that inadmissible evidence was recorded and that was made the foundation of the award or the award was passed without any evidence. The learned Single Judge has rightly made the discussion and conclusions.

13. Having glance of the above discussion, we hold that the impugned judgment is speaking one, requires no interference. Consequently, the appeal is dismissed, alongwith pending CMPs, if any."

5. As such, as prayed for, we dismiss the present appeal making the directions issued in LPA No.72 of 2016 (supra) mutatis mutandi applicable to the present case. Pending applications, if any, also stand disposed of.