
(2014) 09 SHI CK 0079
In the High Court Of Himachal Pradesh
Case No : CWP No. 9053 of 2012

Sunil Kumar Negi

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Citation : (2014) 09 SHI CK 0079

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : A.K. Gupta, Advocate for the Appellant; Meenakshi Sharma, Additional Advocate General, Parul Negi, Dy. Advocate General and Anand Sharma, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—The petitioner has approached this court for grant of the following relief:-

That the order Annexure P-2 passed by respondent No. 2 may be quashed and respondent No. 2 may further be ordered to verify the facts and further he may be ordered that the petitioner may be appointed in the Company against the suitable vacancy with immediate effect.

2. According to the petitioner he belongs to an area which was affected by setting up of Hydro Project by Jaiprakash Power Ventures Limited (earlier known as Jaypee Karcham Hydro Corporation Ltd.). He applied for job under the policy of "Project Affected Area", as many of the similarly situated persons have been granted job by the company. The company did not offer him job despite his repeated requests, which constrained him to approach this court by way of CWP No. 6274 of 2011, which was disposed of on 9.8.2011 with a direction to the Deputy Commissioner to look into the representation already made by the petitioner.

3. The petitioner claims that he was called by the Deputy Commissioner, Kinnaur

and the representatives of the company were also asked to look into the matter and as per order dated 30.11.2011, the claim of the petitioner had been rejected on the ground that he was offered post of Supervisor and he absented. The petitioner has disputed the stand of the respondent-company and claims that they misled the Deputy Commissioner in passing the said order. It was also claimed that Deputy Commissioner did not hold an inquiry into the matter and believed the version of the company. The petitioner was never appointed as Supervisor and the respondents should be put to strict proof in this behalf. The petitioner further claims that he can be appointed as teacher in some school owned by the company in the area and that recently the Jay Jyoti School owned by the company has been upgraded to plus two level, where the petitioner can conveniently be appointed.

4. The respondent-company filed its reply wherein it was averred that petitioner had not applied for a job under the policy of "Project Affected Area", but in fact had applied for the post of supervisor vide application dated 6.8.2007. It is further alleged that as the petitioner belonged to the project affected area/village, he was immediately offered employment as a supervisor on daily wage basis with effect from 7.9.2007 as a special case. The petitioner reported for duty on 7.9.2007, but then absented himself till 18.9.2007. He again reported for duty on 19.9.2007 and worked for a very short duration and thereafter again absented himself and never came back. Respondents in support of this submission have annexed the copy of attendance register.

5. In so far as the claim of the petitioner with respect to his claim regarding appointment in the school is concerned, the respondents have stated that though the petitioner had applied for the post of teacher/clerk in the said school vide his application dated 3.3.2008, but he was not found fit for the job due to the following reasons:-

- (a) not eligible for the post of teacher because he did not hold B.Ed qualification
- (b) no vacancy of clerk was available.

6. It is further averred that petitioner had applied for the post of teacher in the year 2008 while he passed B.Ed examination only in the year 2009. It was further averred by the respondents that father and brother of the petitioner have already been employed in the company.

7. The Deputy Commissioner, who has been arrayed as respondent No. 2 in the petition, has filed a separate reply, wherein he has also categorically submitted that though the petitioner was appointed as supervisor on daily wage basis on 7.9.2007 as a special case, but he absented himself till 18.9.2007. He thereafter though did report for duty on 19.9.2007 for a very short duration, but thereafter he continuously absented himself and did not resume duty thereafter.

8. The petitioner has filed rejoinder to the reply of the respondents, wherein a common stand has been taken to the effect that he was never offered job of

supervisor and had thereafter never abandoned the same.

I have heard the learned counsel for the parties and have gone through the records of the case.

9. The petitioner though claims that he was never appointed as supervisor by the respondents, but the said fact is belied from the attendance register annexed with the reply of respondent No. 3, wherein it has been reflected that petitioner was in fact appointed as a supervisor with the respondent-company. At this stage, it may be noticed that in the attendance register it is not only that the name of the petitioner alone that has been reflected but there are number of employees whose names find mentioned therein.

10. The learned counsel for the petitioner would then contend that respondent No. 3 should be put to strict proof in proving that petitioner in fact had abandoned the job and should place on record copy of notice if any served upon him asking him to join back the duties.

11. I am afraid I cannot agree to such submission as the absence of the petitioner is for a very long period giving rise to an inference of voluntarily abandonment of service. The abandonment and relinquishment of service is always a question of intention and in this case it is established on record that petitioner had voluntarily abandoned the service.

12. In *Vijay S. Sathaye Vs. Indian Airlines Ltd. and Others*, , the Hon"ble Supreme Court has considered the entire aspects in the following terms:-

"12. It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.

13. In *Jeewanlal (1929) Ltd., Calcutta Vs. Its Workmen*, , this Court held as under:

"6.....there would be the class of cases where long unauthorised absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee."

(See also: *Shahoodul Haque Vs. The Registrar, Co-operative Societies, Bihar and Another*,).

14. For the purpose of termination, there has to be positive action on the part of the employer while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Such an act cannot be termed as "retrenchment" from service.

(See: State of Haryana Vs. Om Parkash and Another,).

15. In The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another, while dealing with a similar case, this Court observed:

"5.....Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf."

A similar view has been reiterated in G. T. Lad and Others Vs. Chemical and Fibres of India Ltd., .

16. In Syndicate Bank Vs. The General Secretary, Syndicate Bank Stff Association and Another, ; and Aligarh Muslim University and Others Vs. Mansoor Ali Khan, , this Court ruled that if a person is absent beyond the prescribed period for which leave of any kind can be granted, he should be treated to have resigned and ceases to be in service. In such a case, there is no need to hold an enquiry or to give any notice as it would amount to useless formalities. A similar view has been reiterated in V.C., Banaras Hindu University and Others Vs. Shrikant, ; Chief Engineer (Construction) Vs. Keshava Rao (D) by LRs., ; and Regional Manager, Bank of Baroda Vs. Anita Nandrajog, ."

13. Thus taking into consideration the aforesaid exposition of law coupled with the facts proved on record to the effect that petitioner after having joined as a supervisor with respondent No. 3 company on 7.9.2007 did not report for duty upto 18.9.2007 and thereafter reported for duty on 19.9.2007 for a very short duration and thereafter again absented himself and did not resume duty.

14. The cumulative effect of the aforesaid discussion is that there is no merit in this petition and the same is accordingly dismissed, leaving the parties to bear their own costs.