
(2016) 02 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : CWP No. 10059 of 2012

Surender Kumar son of Girdhari Lal APPELLANT
Vs
State of HP and others. RESPONDENT

Date of Decision : 26-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2016) 1 CLR 973 : (2016) 149 FLR 577 : (2016) 2 HimLR 1245 :
(2016) ILRHP 525 : (2016) LabLR 713

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

Bench : Single Bench

Advocate : V.D.Khidtta, Advocate, for the Appellant; Rupinder S.Thakur, Addl. Advocate General with J.S.Rana, Asstt. Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Rana, J. - Present civil writ petition is filed under Article 226/227 of the Constitution of India with prayer that award dated 12.6.2012 passed by learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala HP be quashed and set aside. Further prayer sought that petitioner be recommended as driver on daily wage basis with all seniority and back wages benefit.

BRIEF FACTS OF THE CASE:

2. It is pleaded that in the month of January 2003 petitioner was engaged as driver on daily wage basis in the office of non-petitioner No.2 namely Block Development Officer Karsog District Mandi HP. It is further pleaded that in the month of January 2006 services of petitioner were terminated in violation of mandatory provisions of Industrial Disputes Act 1947. It is further pleaded that thereafter on August 2006 petitioner submitted demand notice for reconciliation of matter but conciliation failed. It is further pleaded that thereafter reference was sent by learned Labour Commissioner Shimla to learned Labour Court Dharamshala. It is further pleaded that learned Presiding Judge Labour Court-

cum-Industrial Tribunal Dharamshala did not grant any relief. Prayer for acceptance of civil writ petition sought.

3. Per contra response filed on behalf of non-petitioners pleaded therein that petitioner was engaged as driver on casual basis w.e.f. 19.11.2003 to 22.5.2004. It is further pleaded that petitioner was engaged on daily wage till joining of new driver. It is further pleaded that petitioner was not willing to serve on daily wage and thereafter Sh Hem Singh was engaged. It is further pleaded that services of petitioner were terminated in the year 2006 because there was no work available for driver. It is further pleaded that there was no approval of finance department for continuous of service of petitioner. It is further pleaded that petitioner was appointed for limited duration only on temporary basis and his employment came to an end with expiry of the period. It is further pleaded that appointment of petitioner was stop gap arrangement. It is further pleaded that petitioner is not entitled to any relief. Petitioner also filed rejoinder and re-asserted the allegations mentioned in writ petition.

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

5. Following points arise for determination in the present writ petition:

(1) Whether civil writ petition is liable to be accepted as mentioned in memorandum of grounds of writ petition and whether Sh Hem Singh is necessary party in writ petition ?

(2) Relief.

Findings upon point No.1 with reasons.

6. Submission of learned Advocate appearing on behalf of petitioner that Sh Hem Singh was appointed as driver on regular basis in the year 2008 and petitioner was appointed on daily wage basis in the year 2003 and continued to work till 2006 and on this ground writ petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. In the present writ petition petitioner did not implead Sh Hem Singh as non-petitioner who is necessary party. It is well settled law that in judicial proceedings no one should be condemned unheard. It is held that no adverse order against Sh Hem Singh can be passed without impleading him as co-non-petitioner. It is held that writ petition is bad for non-joinder of necessary party i.e. Sh Hem Singh.

7. Submission of learned Advocate appearing on behalf of petitioner that petitioner was engaged on daily wage and non-petitioners have violated the principle of last come first go is also rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that vide letter dated 4.3.2005 issued by Deputy Commissioner Mandi petitioner was appointed as driver on daily wages for 89 days only or till joining new driver on contract basis. It is proved on record that petitioner did not complete 240 days in a calendar

year. It is proved on record that petitioner has served as follow:

Sr.No.

Calender Year

Total number of days in a calendar year

1.

2003

19 days

2.

2004

69 days

3.

2005

208 days

4.

2006

3 days

Above stated working days remain un-rebutted on record. There is no positive, cogent and reliable evidence on record that petitioner has worked for more than the days mentioned supra. It was held in case reported in 1994 Supp (2) SCC 316 titled Mool Raj Upadhyaya v. State of HP and others that employee who has completed 240 days in a calendar year should be appointed as work charge employee. There is no evidence on record that petitioner has completed 240 days continuously in a calendar year. On the contrary it is proved on record that petitioner was appointed as stop gap arrangement on daily wage. Also see Latest HLJ 2015 HP 93 titled Mohd. Ali v. State of HP and others. It is held that in public post automatic appointment is not warranted. Appointment on public post is always conducted through selection process and through recommendation of selection committee in accordance with law. There is no evidence on record that petitioner was appointed by way of proper advertisement selection process and there is no evidence on record in order to prove that petitioner was appointed by selection committee constituted in accordance with law. Regularisation of service by way of back door entry is not permissible under law upon public post. On the contrary it is proved on record that petitioner was appointed as stop gap arrangement only on daily wage. RW1 Satinder Thakur Block Development Officer Karsog appeared before learned Labour Court in person and deposed that no work is available in the office for the petitioner as regular driver Sh Hem

Singh is working in the office. It is proved on record that there is only one post of driver in the office of non petitioner No.2 i.e. Block Development Officer Karsog District Mandi HP. RW1 Satinder Thakur has stated in positive manner when he appeared in witness box before learned Labour Court that Sh Hem Singh was appointed as driver in the year 2008 in the office of Block Development Officer Karsog District Mandi HP. RW1 Satinder Thakur Block Development Officer has stated in positive manner that petitioner did not work for more than 240 days in a calendar year. RW1 has further stated in positive manner that no fictional breaks was given to petitioner. Testimony of RW1 Satinder Thakur Block Development Officer Karsog is trust worthy, reliable and inspires confidence of Court. There is no reason to disbelieve the testimony of RW1 Satinder Thakur. There is no evidence on record in order to prove that RW1 Satinder Thakur has hostile animus against petitioner at any point of time.

8. Letter Ext RW1/B, RW1/C, RW1/D, RW1/E, RW1/F and RW1/G proved in positive manner that appointment of petitioner was only on daily wage as stop gap arrangement. Letter Ext RW1/B to RW1/G remains unrebutted on record.

9. Submission of learned Advocate appearing on behalf of petitioner that order passed by learned Labour Court is perverse against facts and contrary to law is also rejected being devoid of any force for the reasons hereinafter mentioned. Court has carefully perused the award passed by learned Labour Court. Learned Labour Court has properly discussed oral as well as documentary evidence placed on record. It is held that finding of learned Labour Court is based upon oral as well as documentary evidence on record and are in consonance with law. It is held that there is no illegality in the award passed by learned Labour Court Dharamshala HP. In view of the fact that petitioner was appointed on daily wage as stop gap arrangement and in view of fact that petitioner did not complete 240 days in a calendar year court is of the opinion that it is not expedient in the ends of justice to interfere in the award passed by learned Labour Court. Hence point No.1 is answered accordingly.

Point No.2 (Relief).

10. In view of finding upon point No.1 civil writ petition filed under Article 226/227 of the Constitution of India is dismissed. No order as to costs. Writ petition is disposed of. All miscellaneous application(s) are also disposed of.