

(2011) 11 SHI CK 0086
In the High Court Of Himachal Pradesh
Case No : CWP No. 4378 of 2009

The Director, Telecom Project

APPELLANT

Vs

Smt. Neelam Chadha and Another

RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

Citation : (2011) 11 SHI CK 0086

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Judgement

Sanjay Karol, J.—In terms of the impugned award dated 21.7.2009 passed by Presiding Officer, Central government Industrial Tribunal -cum- Labour Court-I, Chandigarh (Annexure P-4), termination of private-respondent Neelam Chadha has been held to be illegal and void. There is a direction to the petitioner to reinstate the employee i.e. private-respondent Neelam Chadha into the service with entire back wages.

2. The findings arrived at by the Tribunal are assailed on the ground that the employee had not completed 240 days and as such, she was not entitled to be reinstated. It is not in dispute that on the request made by an employee, the following dispute was referred for adjudication to the Tribunal:

Whether the action of Director, Telecom Project, Shimla in terminating the services of Smt. Neelam Chadha W/o Sh. R. K. Chadha is legal and justified? If not, to what relief the workman is entitled?

3. With regard to the fact that the employee had completed 240 days ending in the month of February, 1996, the Tribunal, by relying upon documents Ex.P-3, Ex.P-4, Ex.P-5 and Ex.P-6 and also the statement of witness of petitioner i.e. Madan Singh, Sub Divisional Engineer (MW-1) arrived at the conclusion that employee had in fact worked for more than 240 days ending in the month of March, 1996.

4. Undisputedly, employee had worked with the petitioner till 31st January, 1996. Record also reveals that even for the month of March, 1996 employee had worked with the petitioner.

5. The dispute is only with regard to February, 1996. Now the Tribunal, after minutely examining the record and appreciating the same has come to the conclusion that even though petitioner had availed services of the respondent employee, but in fact paid wages in the name of Smt. Neena Chadha who was found not to have ever worked with the petitioner. It was also found that the case of this employee was not an isolated one. In fact payments were also made in the name of Smt. Meenakshi who had also not worked in the month of February, 1996. As such, findings can not be said to be perverse or erroneous or not borne out from the record. It can not be said that employee had not completed 240 days with the petitioner ending in the month of March, 1996. No interference to this extent is called for.

6. In so far as back wages are concerned, I am of the view that petitioner shall not be entitled for the same. She has not shown that she was not gainfully employed during the period when the matter was pending adjudication with the authorities. The Apex Court in Talwara Coop. Credit and Service Society Ltd. Vs. Sushil Kumar, has held that burden to prove that workman was not gainfully employed after termination is not on the management but on the employee, which in the instant case has not been discharged by the employee. As such, the present appeal is allowed to the aforesaid extent.

7. The impugned award is modified to the extent that petitioner shall not be entitled to back wages.

8. In view of aforesaid observations, petition stands disposed of as also pending application, if any.