

Ramesh Chand Vs. H.P. State Electricity Board and ors.

Ramesh Chand Vs. H.P. State Electricity Board and ors.

SooperKanoon Citation : sooperkanoon.com/889779

Court : Himachal Pradesh

Decided On : Dec-15-1994

Reported in : (1997)IIILLJ207HP

Judge : Gulab C. Gupta, C.J. and; Kamlesh Sharma, J.

Acts : [Industrial Disputes Act, 1947](#) - Section 25F

Appeal No. : C.W.P. No. 585/1987

Appellant : Ramesh Chand

Respondent : H.P. State Electricity Board and ors.

Advocate for Def. : R.S. Jamalta, Adv. For respondent No. 1 and; Arun Kumar Goel, Adv. For Respondent No. 3

Advocate for Pet/Ap. : Vishal Panwar and; Rajive Sharma, Advs.

Judgement :

Gulab C. Gupta, C.J.

1. Petitioner was a daily rated employee working with the respondent-Electricity Board at Andhra Construction Sub-Division. It appears that the work in the aforesaid Construction sub-Division was likely to be completed and workers rendered surplus. The respondent-Electricity Board, therefore, decided to send them to various projects including the Nathpa Jhakri Hydro-Electric Project

(hereinafter referred to as 'the Nathpa Jhakri Project'). Nathpa Jhakri Project was taken over by Respondent No. 3, Nathpa Jhakri Power Corporation on August 1, 1991. The decision to send surplus employees of Andhra Construction Sub-Division to various projects was, however, taken in 1987. Pursuant to the aforesaid decision, the petitioner was given an option to either be employed as a T-Mate in Nathpa Jhakri Project or face retrenchment in accordance with law. The petitioner did not accept employment as T-Mate and instead approached this Court complaining arbitrary and discriminatory treatment on the part of respondent-Electricity Board in the matter by filing the present writ petition under Article 226 of the Constitution. During the pendency of this writ petition, the Nathpa Jhakri Project was handed over to the respondent-Nathpa Jhakri Power Corporation. The employees, who were earlier sent to this project by the respondent-Electricity Board, were also taken over by this corporation on the basis of a Memorandum of Understanding between them and the Electricity Board. The petitioner had not accepted to work as T-Mate and, therefore, could not have been absorbed as T-Mate. In spite of it, the respondent-Electricity Board treated him as a T-Mate and sent him to the Nathpa Jhakri Project. That is how even Respondent No. 3 Corporation offered to take him only as a T-Mate and not an original employee. This Court, by interim orders issued from time to time, first directed him to be employed as T-Mate but later on June 30, 1993 directed that he should be taken as Clerk-cum-Typist- This order was also made applicable on Respondent No. 3-Nathpa Jhakri Power Corporation on September 6, 1993. There is an application by respondent-Electricity Board for modification of this order but it is not considered necessary to decide the said application because the writ petition is itself being decided by this order.

2. The grievance of the petitioner, in the main, is that he was performing the work of Clerk-cum-Typist and had not opted to become T-Mate and hence requiring him to work as T-Mate is illegal. From the reply of the respondent-Electricity Board, it is clear that the petitioner, from September 26, 1985 was working as Store Munshi and prior to that he was working as Store Attendant, Supervisor, Electrician etc. Details of his employment and the period thereof are mentioned in Para-2 of the reply. This paragraph would, therefore, clearly establish that the petitioner was never employed as a T-Mate. Under the circumstances, unless he had given an

option to be absorbed as such, he could not be forced to work in the lower post or category. There is on record an order of the respondent-Electricity Board dated November 13, 1987 informing the petitioner that he should opt for the post of T-mate and if he does not do so, his services will be terminated after November 25, 1987. It is common ground that no order, after November 25, 1987 terminating the employment of the petitioner, has been passed. It is also apparent that in case he had to be retrenched for want of work he would be required to be paid retrenchment compensation under Section 25-F of the [Industrial Disputes Act, 1947](#), as he had admittedly worked continuously from March 26, 1984. It is also obvious that the respondents could not have, in the absence of an option given by the petitioner, forced him to work as T-Mate. A contract of employment, requires his consent and since this legal position was understood by the respondent-Electricity Board, they had given him the said option. The refusal of the petitioner to opt for the lower post should have prompted the respondent - Electricity Board to act according to law and bring his services to an end, in case the same was otherwise, justified. Since the respondent- Electricity Board did not do so, it is obvious that they did not consider that the retrenchment was justified on facts. In this view of the matter the petitioner has a clear right to continue as Store Munshi, the post in which he was employed at the relevant time.

3. The question requiring consideration is that as to who should now be directed to bear the burden of this Court's orders. The submission of the learned Counsel for Respondent No. 3 is that the Corporation is a separate legal entity and is not concerned with the consequences of this Court's order in relation to the petitioner. The submission appears to be that the responsibility, if any, is that of the respondent-Electricity Board and not of Respondent No. 3-Corporation. This Court is, however, unable to accept the same. This respondent is admittedly the successor-in-interest of the respondent-Electricity Board and cannot for the reason avoid its liability in relation to existing employees. It is well settled that mere transfer of ownership of the business does not affect the employees. That the transfer of business or management in the instant case, was much after the dispute between the petitioner and the respondent-Electricity Board and hence rights of the petitioner cannot be pre-judged in any manner.

4. The learned Counsel for Respondent No. 3, however, submitted that because of Memorandum of Understanding between the Union of India and the State Government, the responsibility in relation to daily rated employees is that of the respondent-Electricity Board and not of the respondent Corporation. We cannot accept such an arrangement as reasonable or just and proper arrangement. To us, it appears to be discriminatory on the face of it inasmuch as it secures full benefit of employment to employees, other than daily rated workers, but denies the same to the daily rated workers. Once a project is transferred in the running condition, the purpose of the transfer cannot be to cause any prejudice to any class of employees but is only to secure efficient administrative pattern thereof. Under the circumstances, the distinction based on period of payment has no rational and reasonable nexus with the object sought to be achieved and hence the submission cannot be accepted. Then there is a circular of the respondent-Electricity Board dated January 6, 1992 on record (Annexure-R 3/A) which mentions that all the Board personnels, who have been seconded to Nathpa Jhakti Power Corporation were so seconded on 'As is where is basis'. This would, therefore, justify the conclusion that it was not open to the respondents to change the status of the petitioner in any manner.

5. In this view of the matter, we hold that the action of the respondents requiring the petitioner to work as T-Mate was neither legal nor otherwise justified. He is, therefore, entitled to the post of Store Munshi on daily wage basis in the same manner as he was doing in the year 1987. Since he has been forced to remain unemployed in an illegal manner, he is entitled to all the benefits from November 26, 1987 upto date. It will be worked out and paid to him within a period of four months after deducting the amount already paid for work pursuant to interim orders passed by the Court. As a necessary consequence, the petitioner would be entitled to the post of Store Munshi on daily rated basis and not the post of Clerk-cum-Typist as claimed by him. Since the petitioner is working with Respondent No. 3-Corporation pursuant to the interim orders, he will be permitted to continue though as a Store Munshi until his services are terminated in accordance with law. No costs.

