

Ravinder Singh Vs. State of H.P. and ors.

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Court : Himachal Pradesh

Decided On : Sep-26-2005

Reported in : 2006(3)ShimLC186

Judge : K.C. Sood, J.

Appellant : Ravinder Singh

Respondent : State of H.P. and ors.

Advocate for Pet/Ap. : Mr. Dogra

Disposition : Petition allowed

Judgement :

K.C. Sood, J.

1. Under Challenge, in these two petitions, are the Awards made by the Presiding Judge, H.P. Labour Court, Shimla, dated 4th December, 1999 in Reference No. 120 of 1997 and application No. 7 of 1997.

THE BACKGROUND:

2. The petitioner was employed as Beldar on daily rated basis by the District Horticultural Officer, Bilaspur (HP) on 3rd September, 1980. He filed a petition in this Court (CWP No. 139 of 1988), [Ravinder Singh v. The State of Himachal

Pradesh and Anr.], claiming that though he was employed as Beldar but actual work taken from him was that of a clerk and not manual. It was his case that he discharged the duties and responsibilities as a Clerk till 5th August, 1987. He claimed wages, payable to a daily rated clerk, in view of the duties and responsibilities performed by him, for the period from 3rd September, 1980 to 5th August, 1987 based on the doctrine of 'Equal Pay for Equal Work'.

A Division Bench of this Court by its Judgment 11th July, 1988 (Annexure P-I) observed:

In view of the position which emerges as aforesaid, it is not capable of being disputed that although the petitioner was engaged as daily-rated Beldar, he actually discharged the functions and performed the duties of clerical nature during the relevant periods. No other conclusion is possible, on the facts and circumstances of the case, although a contrary version is set out in the affidavit-in-reply.

3. On 25th December, 1992 a representation was made by the Horticulture Workers Union (Regd.), raising demand for the regularization of the services of all those workmen, who had completed 10 years of service with 240 days of continuous service in a year and for the payment of wages to the workers on the doctrine of 'Equal pay for Equal Work'.

4. In the year 1994 a Reference No. 37 of 1994 (Annexure P-4), was made to the H.P. Labour Court, Shimla, at the asking of the Udhayn Vibhag Mazdoor Union through its President and the General Secretary whereby certain demands, raised by the Union, were referred to the Labour Court. The grievance was that in spite repeated demands, of the members of the Union, the workmen having rendered service for several years have not been regularized under the Policy of Regularization of daily waged workers.

5. The Reference, included the name of the present petitioner Ravinder Singh, saying that he has been employed with the Horticulture Department for more than ten years and was assigned duties and responsibilities of a Clerk and had worked continuously for more than ten years for 240 days in each year but has not been

regularized.

6. In that Reference, the respondent Director of Horticulture took a stand that all the workmen named in the petition were only casual workers irrespective of their standing of tenure in service, though admitted that all these workmen including the petitioner Ravinder Singh had put in continued service for more than ten years, and therefore, were not entitled to be regularized. It was also pleaded that these workmen cannot be extended the benefit of doctrine of 'Equal pay for Equal work'.

7. The Presiding Judge, Labour Court, Shimla, by its Award dated 27th November, 1995, taking note of the judgment of the Division Bench of this Court, held that even after the judgment of this Court the petitioner continued to work as Clerk though wages were denied to him after 5th August, 1987. The Labour Court held:

Ravinder Singh (RW-4) was engaged on 3.9.1980 as Clerk, who has been paid the wages as Clerk right up to 5.8.1987 under the compulsion of judgment Ex.PD passed by the Hon'ble High Court, though thereafter, the respondent again withheld wages, status and character as Clerk to him in contravention of the said judgment.

8. The Presiding Judge of the Labour Court directed regularization of all the petitioners including the present petitioner Ravinder Singh, as Clerk / Supervisor, from the date he had completed ten years of service. It was also held that the petitioner was inducted / employed as daily waged Clerk w.e.f. 3rd September, 1980. The Labour Court directed that the petitioner Ravinder Singh, herein, shall be paid wages, allowances, financial benefits and other perks of a Clerk w.e.f. 6th August, 1987 onwards.

9. Dis-satisfied, the Director of Horticulture, Government of Himachal Pradesh filed a writ petition, [CWP No. 1918 of 1996], challenging the award made by the Labour Court, Shimla. A Division Bench of this Court by its judgment dated 11th September, 1997 set aside the award made by the Labour Court, Shimla, observing that the award was made without any finding as to whether the concerned workers, including the petitioner Ravinder Singh fulfilled the necessary requirements for getting regularization under the Policy of the Government dated

11th July, 1995. The matter was remitted back to the Labour Court for fresh consideration in accordance with law. It was directed:

The Labour Court shall consider the materials placed before it by both the parties and come to the factual conclusion in the first instance as to whether the conditions set out in the communication dated 11.7.1995 are satisfied and then only decide whether a particular worker is entitled to get the benefit of regularization. The case of each of the workers must be considered individually. There is no question of giving any direction for the future on the footing that the worker concerned would complete 10 years of service. If the worker chooses to quit the service before the completion of 10 years of service, he may not be entitled to get the regularization. The Labour Court shall avoid such a direction for future regularization and it should consider the cases of workers, which are before the Court on the basis of evidence placed before the Court. The direction given by the Labour Court in paragraph 23 (c) that all the members of the petitioner Union shall be regularized on completion of 10 years of their service is wholly unsustainable. As pointed out earlier, the cases of each of the workers must be considered on the basis of the evidence produced in relation to that worker.

10. On remittance of the matter to the Labour Court, the Presiding Judge by its award, under Challenge, (Annexure P-6) dated 4th December, 1999 held that the petitioners including the present petitioner Ravinder Singh were not entitled to the post, as claimed in the demand raised by Udhayan Vibhag dated 25th December, 1992 nor they were found entitled to the pay scale for the post they claimed.

11. It may be noticed, when the matter was pending before this Court in CWP No. 1918 of 1996, services of the petitioner Ravinder Singh were terminated on 9th July, 1997, on the grounds that the petitioner was given an appointment on regular basis as 'Chowkidar' by the Director Horticulture by his communication dated 5th July, 1997 but he did not join. He was removed from the service as daily paid worker w.e.f. 9th July, 1997.

12. Aggrieved the petitioner Ravinder Singh filed an application before the Labour Court, under Section 33 of the Industrial Disputes Act, (hereinafter to be called as 'the Act'), saying that the Government of Himachal Pradesh had referred the

Industrial dispute raised by the Udhyan Vibhag Mazdoor Union (Regd.), of which the complainant is active member, in the year 1994. The said Reference was decided by the Court on 27th November, 1995 and the Director of Horticulture had taken the matter to the High Court in a Civil Writ Petition. The High Court remitted the case back to the Labour Court for decision afresh, taking into consideration the observations made by this Court, as noticed earlier. But during the pendency of the dispute, the respondent department appointed the petitioner to the post of 'Chowkidar' on regular basis, vide letter dated 5th July, 1997 though the complainant had been declared as 'Clerk' by this Court and the Labour Court. This letter was issued with a mala fide intention to defeat the claim of the complainant for the post of clerk, even though this question was pending before the Court (Annexure PC). He also made a request to let him continue, as a casual worker, till his case is decided.

13. This complaint of the petitioner, under Section 33 of the 'Act' was dismissed on 4th December, 1999. Reference No. 120 of 1997 (Annexure P-6) subject of CWP No. 354 of 2000 was also dismissed on the same date.

14. The impugned order in Application No. 7 of 1997 reads:

4.12.1999: Present: None

In view of order passed in Case No. 120/97, this case filed becomes redounded. The case file after its completion be consigned to record room.

15. Heard Mr. Dogra, learned Counsel for the petitioner and Mr. Chandel, learned Advocate General assisted by Mr. Chaudhary, learned Additional Advocate General for the respondents.

CWP No. 354 of 2000

16. So far this petition is concerned, the Labour Court was required to decide the question raised in Reference No. 120 of 1997, in the light of the observations made by the Division Bench of this Court in CWP No. 1918 of 1996 (Annexure P-5) decided on 11th September, 1997.

17. As noticed earlier, the matter was remitted to the Labour Court with a direction to consider the case of each of the petitioners individually, on the material placed before it by the parties, for their regularization under the Regularization Scheme of 1995 and to come to a conclusion, on the basis of the evidence before the Labour Court, whether conditions stipulated in the Scheme are fulfilled for regularization of the individual claimant or not?

18. So far the petitioner is concerned, the Division Bench of this Court by its judgment dated 11th July, 1988 passed in CWP No. 139 of 1988, categorically held that the petitioner discharged the functions and performed the duties of clerical nature during the relevant period. In that petition the respondent Director of Horticulture and others were directed to pay to the petitioner the differential wages between the wages of daily rated Beldar and daily-rated Clerk for the relevant period.

19. Under the Regularization Scheme of 1995, communicated to all the Financial Commissioners-cum-Secretaries, Commissioners-cum-Secretaries to the Government of Himachal Pradesh, as also to the Divisional Commissioner, Deputy Commissioners, all Heads of Departments, the Chairmen/Managing Directors/Secretaries of Various Corporations/Boards in Himachal Pradesh, The Registrars, H.P. University, Shimla/H.P. Krishi Vishwa Vidyalaya, Palampur and Dr. Y.S. Parmar University of Horticulture and Forestry, Solan (HP) , all daily waged workers became eligible for regularization, subject to fulfilling the following conditions:

NORMS/PRINCIPLES REGARDING REGULARIZATION OF DAILY WAGED WORKERS:

(i) Daily waged workers: whether skilled or unskilled who have completed 10 years or more of continuous service with a minimum of 240 days in a calendar year as on March 31, 1995, shall be regularized w.e.f. 1.4.95 only up to the number of posts available in the respective organization and the terms and conditions for such regularization shall be governed as per ANNEXURE 'A'.

(ii) In case of a Daily Waged Worker who has worked for less than 10 years on a higher pay scale, he will be considered for regularization by combining the service in the lower scale and higher scale but he shall be regularized on a lower post because for regularization on a higher post, 10 years complete service is essential.

(iii) There shall be no resultant vacancy by way of such regularization in lieu thereof.

(iv) In case of Daily Waged Workers who have been engaged without being sponsored by the Employment Exchange, may be given relaxation while regularizing their services.

(v) The Daily Waged Workers being considered for such regularization should possess minimum educational qualification as prescribed in the Recruitment and Promotion Rules.

(vi) No fresh recruitment of Daily Waged/Muster Roll Workers shall be made in any Department/Board/Corporation/University, etc. and if need be, this will not be done without obtaining the approval of the Government through the Finance Department.

(vii) Maximum age limit for the engagement of Daily waged Workers shall henceforth be, 45 years and the certificate to this effect shall be obtained by the concerned organization at the time of giving employment.

(viii) The Finance Department shall notify the rates of Wages separately which shall be payable w.e.f. 1-4-1995 by all Departments in a consolidated form endorsing the same to all the Boards/Corporations/Universities etc. for their information and necessary action. However, the rates of Daily Waged Workers shall henceforth be uniform throughout the Pradesh. The hike of 25% in wages being given presently in respect of Tribal/Backward/Hard Areas shall not be allowed in future.

20. So far the claim of the petitioner for regularization to the post of Clerk is concerned, only evidence before the Labour Court was statement of the petitioner,

who appearing as PW-4 stated that he has been working as Clerk on daily wages from 3rd September, 1980 in the office of District Horticulture Officer, Bilaspur. Uninterruptedly, it is his evidence before the Labour Court, that though he was paid wages of Clerk from 3.9.1980 to 5.9.1987. However, after 1987 despite the fact that he had been doing the same work, he was not paid the wages payable to a Clerk. There is no cross-examination of this witness on this aspect of the case. The cross-examination is confined to a only suggestion that he has not been working as Clerk. The Department did not lead any evidence. The Department even did not produce Muster Roll of the petitioner to show that he was working as manual labour on daily wages in the office of District Horticulture Officer, Bilaspur. In the absence of any evidence to the contrary, the inescapable conclusion, as held by the Labour Court in its award dated 27th November, 1995 was that the petitioner had continued to work as Clerk in the office of District Horticulture Officer, at Bilaspur.

21. The next question which arises for consideration is whether the petitioner fulfilled the conditions for regularization of daily waged workers in terms of the communication of the Government dated 11th July, 1995. There is no dispute that the petitioner was employed as daily waged worker as Clerk w.e.f. 3rd September, 1980. He completed 10 years of continuous service with a minimum of 240 days in a calendar year. It is not the case of the respondents that the petitioner had not completed 10 years of continuous service with a minimum of 240 days in a calendar year. It is also not the case of the respondents that the petitioner did not possess minimum education qualification for the post of clerk. The respondents in their reply-affidavit merely state that the petitioner was engaged as daily paid labourer for carrying out Horticulture operations, such as spraying of plants, cleaning of stores, loading and unloading of Horticulture inputs and watering of flower pots etc. and, therefore, question of discharging the duties of Clerk/Supervisor does not arise.

The Division Bench of this Court, as noticed earlier, in CWP No. 139 of 1988 titled as Ravinder Singh v. The State of Himachal Pradesh and Anr. held:

The respondents are directed to pay to the petitioner the differential wages, that is to say, the sum equivalent to the difference between the wages of daily-rated Beldar and daily rated Clerk, for the period from September 3, 1980 to August 5, 1987 on or before August 1, 1988.

As already noticed, the petitioner continued to discharge the duties and functions of a Clerk and, therefore, was entitled for regularization as such on the date when the Scheme came into force on 11th July, 1995, even though he had completed 10 years of continuous service with a minimum of 240 days in a calendar year in 1990. The petitioner fulfilled all the other conditions laid down in the communication dated 11th July, 1995 (Annexure P-7).

The Labour Court totally misdirected himself in dismissing the claim of the petitioner by holding that the petitioner and others being daily wagers cannot be treated at par with the regular employees. The Labour Court was directed by the Division Bench of this Court, as noticed above, to consider the case of each of the workman for regularization in the light of the conditions for such regularization under the Policy of the Government. The Labour Court embarked upon an uncalled for inquiry about the status of daily waged workers vis-a-vis regular workers.

22. The inescapable conclusion is that the petitioner was entitled to be regularized as Clerk under the Scheme of the Government w.e.f. 11th July, 1995.

23. In result, the petition is allowed. The respondents are directed to pass appropriate orders in the light of the observations made hereinabove within three months from today.

CWP No. 531 of 2000.

24. The services of the petitioner were dispensed with, as noticed above, during the pendency of the writ petition of the petitioner in this Court, on the ground that he was appointed as regular Chowkidar but failed to join his duties. Termination of the petitioner was totally unjustified and violative of provisions of Section 33 of the Act. Section 33 of the Act specifically lays down that during the pendency of any

industrial dispute before a Conciliation Officer or Board or Arbitrator or Labour Court or Tribunal etc. the service conditions of a worker cannot be altered by an Employer to the prejudice of the workman particularly connected with the dispute under adjudication. This also includes dismissal or discharge from service, save and except with the express permission in writing of the concerned authority before which the proceedings are pending.

25. Section 33 of the Act may be reproduced for convenience:

Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.-(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before (an arbitrator or) a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall-

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding, in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute (or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman)-

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in Sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute-

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman,

Save with the express permission in writing of the authority before which the proceeding is pending.

Explanation.-For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being [a member of the executive or other office bearer] of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognized as protected workmen for the purposes of Sub-section (3) shall be one per cent, of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognized as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, [an arbitrator, a] Labour Court, Tribunal or National Tribunal under the proviso to Sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, [within a period of three months from the date of receipt of such application], such order in relation thereto as it deems fit':

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit:

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.

26. A careful reading of Section 33 of the Act, noticed above, shows that no employer can dispense with the services of an employee or workman in regard to any matter connected with the dispute before any appropriate Forum or alter his service conditions to the prejudice of the workmen, save and except with the express permission in writing of the authority. The Legislative intention for this provision is to protect the interest of an employee from any victimization during the pendency of the dispute before the authority.

27. In the present case only reason to dispense with the service of the petitioner was that he was appointed as 'Chowkidar' on regular basis on 5th July, 1997 but he did not join his duties and, therefore, his services were dispensed with on 9th July, 1997 notwithstanding the fact that dispute regarding the nature of his employment was pending adjudication before the Court.

28. As already noticed, the petitioner did make a representation that as the matter was pending in this Court, therefore, he may be permitted to continue as daily waged worker till the dispute is decided.

29. Mr. Dogra, learned Counsel for the petitioner submits that Section 33 of the Act protect the workman concerned from any arbitrary action on the part of the

employer leading to harassment and victimization for the reason that he had raised an Industrial dispute. In the present case only reason for dispensing with the services of the petitioner was that he had raised an industrial dispute which was pending decision before this Court.

30. I am in agreement with the submission of Mr. Dogra. The writ petition against an award of the Labour Court necessarily is continuation of the adjudicating process, as noticed earlier. The Object of Section 33 of the Act is to prevent victimization or prevention of unfair labour practice during the pendency of the proceedings so as to keep the tranquility and relationship between the parties cordial (see *Express Newspapers Private Ltd. v. Industrial Tribunal, Madras* : AIR1961 Mad362). The appointment of the petitioner as Chowkidar on regular basis during the pendency of the dispute before this Court was only to frustrate the relief to which the petitioner may be found entitled to.

31. Undoubtedly the Labour Court erred in law in dismissing the application of the petitioner on the ground that the petition would not survive in view of the dismissal of Reference No. 120 of 1997.

32. In result, the petition is allowed and the impugned Order of the Labour Court is set aside. The case is remitted back to the Labour Court for decision afresh, after hearing the learned Counsel for the parties, in the light of the observations made hereinabove.

No costs.