State of H.P. and Another Vs. Kapil Dev

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Court : Himachal Pradesh

Decided On : Jun-29-2011

Judge : The Honourable Chief Justice Kurian Joseph &Amp; V.K. Sharma

Appeal No. : CWP No. 4323 of 2011

Appellant : State of H.P. and Another

Respondent : Kapil Dev

Judgement :

V.K. Sharma, J. *(Oral)*

The scope of Section 25F read with Section 25B and Section 25G of the Industrial Disputes Act, 1947 (in short 'the ID Act') is under consideration in the present petition, under Articles 226/227 of the Constitution of India, filed by the employer against the workman challenging the award dated 21.12.2010 of the learned Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla, H.P. (Camp at Mandi) in Reference No. 15 of 2003, in Shri Kapil Dev vs. The Executive Engineer and another.

2. The impugned award dated 21.12.2010 arose on the following reference by the appropriate government:

“Whether retrenchment of Shri Kapil Dev son of Shri Dhani Ram (workman) daily rated Beldar by SDO, IPH, Sub Division, Nirmand, District Kullu, in

March, 1999, without complying with the provisions of the Industrial Disputes Act, 1947, is proper and justified?

If not, to what relief, backwages, seniority, service benefits and compensation the workman is entitled?"

3. The case set up by the workman was that he was engaged by the employer as a daily rated Beldar in the year 1990. He worked as such till March, 1999, when his services were terminated orally without any notice. According to him, he had completed more than 240 days during twelve months preceding his termination. The further case of the workman was that though he was senior, while he was retrenched, retaining his juniors, namely, Naya Ram son of Shesh Ram, Uttam, Mohinder Pal son of Keshav Ram, Smt. Kala Devi, Kishnu Devi, Lal Dass and others, who are still continuing on the establishment of the employer. According to the workman, his termination was in violation of Sections 25F, 25G and 25H of the ID Act.

4. Per contra, while admitting that the workman was engaged in January, 1990, the stand on behalf of the employer was that he worked intermittently at his whims till February, 1999. He had worked for 177 days in 1990, 128 days in 1991, 45 days in 1993, 325 days in 1994, 34 days in 1995, 262 days in 1996, 217 days in 1997, 143 days in 1998 and 48 days in 1999. Thus he had not worked for 240 days in any calendar year, except the during 1994 and 1996. The services of the workman were disengaged alongwith others w.e.f. March, 1999, on the basis of *'last come first go'* due to paucity of work in the absence of sufficient funds. The persons named by the workman in his statement of claim were continuously working in the establishment of the employer having completed more than 240 days in each calendar year and as such they were senior to the petitioner.

5. In para 11 of the impugned award dated 21.12.2010, it has been observed as under:

"11. The respondents have placed on record the seniority list of beldars in respect of land PH Division Anni district Kullu. The original record had been summoned at the time of arguments which had been brought by Sh. Ashok

Bhupal, SDO, Iand PH Sub Division Nirmand. The perusal of the seniority list on record and the record shows that the respondents had engaged workmen till the year 1997. The Executive Engineer, Iand PH Division Anni Sh. Keshav Ram Kulvi who has appeared as RW 1 has also categorically admitted that the persons named in para no. 1 of the reply were engaged by the respondent after the year 1993 and many of them have since been regularized."

6. The workman was admittedly engaged in January, 1990. In view of the categoric admission that persons junior to the workman, who were subsequently engaged in the year 1993, were retained, such action on the face of it is in violation of the mandate embodied in Section 25G of the ID Act, which reads as under:

"25G. Procedure for retrenchment. - *Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman."*

7. The contention raised on behalf of the employer that the workman had been retrenched strictly in accordance with the principle of *'last come first* go' as he had not completed 240 days in any calendar year, except the during 1994 and 1996 and those retained were working continuously having completed more than 240 days in each calendar year and as such were senior to the petitioner, is on the face of it fallacious. The requirement of *'continuous service for not less than one year'* preceding the retrenchment within the meaning of Section 25F read with Section 25B of the ID Act by having put in 240 days in that year is the requirement for invoking the provisions of Section 25F of the ID Act. There is no such requirement under Section 25G, as has been held by this Court in of judgment dated 03.06.2011 in CWP No. 3887 of 2011, paras 5 and 6 whereof are extracted below:

5. The difference between Section 25F read with Section 25B and Section 25G and 25H is that a workman has to be in continuous service for claiming the benefit under Section 25F read with Section 25B, whereas for the protection of Section 25G and 25H one need only be a workman covered by the Industrial Disputes Act. In fact, last come first go is the crux of the consideration under Section 25G and 25H of the ID Act, as held by the Apex Court in ***Harjinder Singh vs. Punjab State Warehousing Corporation, (2010) 3 Supreme Court Cases 192.***

6. We may also make a passing observation that the said principle of last come first go has also exceptions. In case employer is in a position to establish on evidence that the retrenchment without respecting the principle of last come first go was required in good faith and on justifiable grounds, the Court/Tribunal shall not interfere with the action, thus taken by the employer. This principle also has been settled by the Apex Court in various decisions, ***Workmen of Sudder Workshop of Jorehaut Tea Co. Ltd. vs. The Management of Jorehaut Tea Co. Ltd. and vice versa, AIR 1980 Supreme Court 1454, M/s. Om Oil and Oil Seeds Exchange, Ltd. vs. Their Workmen, AIR 1966 Supreme Court 1657 and M/s. Swadesamitran Limited vs. Their Workmen, AIR 1960 Supreme Court 762 etc."***

8. The Labour Court has granted seniority and continuity in service. The entitlement for seniority and continuity in the service would arise only in case respondent-workman is otherwise entitled to count seniority in terms of his completion of 240 days in the year preceding the retrenchment or in terms of number of years he has taken for completing the required number of years with 240 days in each calendar year. Since the continuity is otherwise upheld, in the instant case, the workman shall be deemed to complete 10 years in 2008, since he has two years with 240 days in 1994 and 1996.

9. However, in the present case, there is no denying the fact and rather it is categorically admitted that the petitioner was engaged in January, 1990 and while he was retrenched persons junior to him, who were subsequently engaged in 1993 were retained in violation of Section 25G of the Act. In this view of the matter, the relief granted to the workman by the learned Industrial Tribunal-cum-Labour Court,

directing the employer to engage him forthwith alongwith seniority and continuity in service, though without any backwages, cannot be faulted on any count, whatsoever.

10. In view of the above, the petition is dismissed, so also pending application(s), if any.