IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.2565 of 2024

Date of Decision: 26.03.2024

The State of H.P. & another .....Petitioners

Versus

Prakash Chand ... Respondent

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1]

For the Petitioner(s): Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C.Verma, Additional Advocate Generals with Mr. Ravi Chauhan, Deputy Advocate General.

For the Respondents: Nemo.

Sandeep Sharma, Judge(oral):

Being aggrieved and dissatisfied with award dated 23.07.2022 ***(Annexure P-1***), whereby learned Labour Court-cum- Industrial Tribunal, Kangra at Dharamshala, Himachal Pradesh while answering the reference made to it in affirmative, directed petitioner-Department to reinstate the respondent-workman with continuity and seniority, petitioner-Department has approached this Court in the instant proceedings, praying therein to set-aside the aforesaid award.

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

2. Precisely, the facts of the case, as emerge from the record are that the respondent-workman was engaged by the petitioner-Department in March, 2001 on daily wage basis at Forest Division Suket, Sundernagar, District Mandi, H.P., and in this capacity, he worked uninterruptedly till March, 2003 when he was allegedly disengaged orally without serving notice as required under Section 25-F of the Industrial Disputes Act ***(hereinafter referred to as the Act).***

3. Being aggrieved and dissatisfied with oral termination, respondent-workman approached erstwhile H.P. Administrative Tribunal by way of Original Application No.290 of 2003. Learned Tribunal, taking note of the averments contained in the original application, passed interim order dated 12.9.2003 thereby directing petitioner-Department to re-engage the respondent-workman, but fact remains that aforesaid order was never complied with. Though, allegedly respondent-workman repeatedly requested the petitioner-Department in the years 2004, 2005, 2006, 2007, 2008 and 2009 to permit him to join, but since no heed was paid to his request, he was compelled to serve a demand notice. Appropriate Government taking note of dispute *interse* petitioner-Department and respondent-workman, made

following reference while exercising power under Section 10(1) of the Act:-

> **"Whether alleged termination of services of Sh. Prakash Chand S/o Shri Gandhi Ram, R/o Village and post office Dhawal, Tehsil Sundernagar, District Mandi, H.P. during March, 2003 by the Divisional Forest Officer, Forest Division, Sundernagar, District Mandi, H.P., who had worked on daily wages and has raised his industrial dispute after more than 6 years vide demand notice dated nil received on 20.9.2009 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 6 years in raising the Industrial dispute, what amount of back wages, seniority , past service benefits and compensation the above ex-worker is entitled to from the above employment/ management?"**

4. In the aforesaid proceedings, respondent-workman while stating that he worked uninterruptedly w.e.f. March 2001 on daily wage basis till March, 2003, claimed that since he had completed 240 days in the preceding 12 calendar months and his name stood mentioned at Serial No.374 of the seniority list, his services could not be dispensed with without resorting to the provisions contained under Industrial Dispute Act. He also claimed that workmen junior to him, as detailed in the claim petition, though were retained, but for no fault of him, his

services were disengaged and as such, his termination being in violation of the provisions contained under Sections 25-B, 25-F, 25-G and 25-H of the Act, deserve to be quashed and set-aside.

5. Pursuant to the notices issued in the aforesaid claim petition, petitioner-Department by way of filing reply has attempted to resist and contest the claim of the respondent-workman on the ground of delay and laches. While fairly admitting that respondent-workman was engaged in Kangoo Forest Range w.e.f. June 2001, petitioner-Department claimed that respondent-workman worked intermittently upto March, 2003 as per the availability of works/funds and thereafter of his own abandoned the job. Petitioner-Department also claimed that since respondent-workman had not completed 240 days in the preceding calendar year, there was no requirement, if any, for issuing notice in terms of provision contained under the Industrial Dispute Act. While fairly admitting factum with regard to filing of Original Application by the respondent-workman in the erstwhile H.P. Administrative Tribunal, which ultimately came to be decided on 4.7.2004, petitioner-Department claimed that pursuant to interim order dated 12.09.2003 passed by tribunal below,

respondent-workman never made himself available for joining and as such, there was no occasion, if any, to re-engage him. Petitioner-Department also sought dismissal of the claim raised by the respondent-workman on the plea that it was filed after an inordinate delay and he had never worked 240 days in the preceding 12 calendar months.

6. On the basis of aforesaid pleadings, tribunal below framed following issues:-

> **"1. Whether termination of services of the petitioner by respondents during March, 2003 is/was legal and justified as alleged? OPP.**
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> **2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? OPP.**
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> **3. Whether the claim petition is not maintainable in the present form as alleged? OPR.**
>
> **4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? OPR.**
>
> **5. Relief:-**

7. Subsequently, vide award dated 23.07.2022, impugned in the instant proceedings, tribunal below held respondent-workman entitled for reinstatement with seniority and continuity in service

8. I have heard learned counsel for the parties and gone through the record carefully.

9. Having heard learned Additional Advocate General and perused material available on record vis-à-vis reasoning assigned in the impugned award, this Court finds no illegality or infirmity in the same and as such, no interference is called for.

10. Precisely, the grouse of the petitioners as has been highlighted in the petition and further canvassed by Mr. B.C.Verma, learned Additional Advocate General is that tribunal below erred in entertaining the claim petition after inordinate delay. He submitted that though allegedly services of the respondent-workman were terminated orally in the year, 2003, whereas demand came to be raised in the year, 2009 and as such, same being barred by delay and laches ought to have been dismissed. While fairly admitting factum with regard to passing of interim order dated 12.09.2003 passed by erstwhile H.P. Administrative Tribunal in O.A. No.290 of 2003, learned Additional Advocate General submitted that since the respondent-workman never made himself available for re-engagement, there was no occasion, if any, for petitioner-Department to reengage him. While making this Court peruse pleadings as well as other material available on record, learned Additional Advocate General attempted to argue that at no

point of time, respondent-workman was disengaged, rather he of his own abandoned the job. He further submitted that mandays chart placed on record of the respondent-workman itself suggests that he had not completed 240 days in calendar year, if it is so, there was otherwise no occasion, if any, for the petitioner-Department to serve notice in terms of provisions contained under the Industrial Dispute Act before disengaging the respondent-workmen. However, since learned Additional Advocate General was unable to dispute that persons junior to him were retained, plea of delay and laches sought to be raised by the petitioner-Department may not be available on account of the fact that immediately after his being disengaged in March, 2003, respondent-workman filed O.A. No.290 of 2003 before the erstwhile H.P. Administrative tribunal and tribunal below taking cognizance of the averments contained in the application, passed interim order dated 12.9.2003, thereby directing the petitioner-Department to re-engage respondent-workman, but in vain.

11. Though, it has been claimed on behalf of the petitioner-Department that respondent-workman never made himself available after order dated 12.09.2003, but such plea cannot be accepted on the face of the fact that once

respondent-workman himself being aggrieved on account of his disengagement in March, 2003, approached competent court of law, it is hard to believe that despite there being interim order in his favour, petitioner failed to present himself before the authorities, enabling them to re-engage him, rather pleadings as well as other material available on record clearly reveals that in the years 2004, 2005, 2006, 2007, 2008 and 2009, respondent-workman repeatedly requested the petitioner-Department to re-engage him, but his prayer was not paid any heed and as such, in the year, 2009, he was compelled to raise dispute under Industrial Disputes Act. Appropriate Government exercising power under Section 10(1) of the Act, made reference, as detailed hereinabove. No doubt, in terms of the reference, Labour Court-Cum-Industrial Tribunal was called upon to return his findings with regard to delay and laches, if any, on the part of the respondent-workman in raising demand, but this Court is not persuaded to agree with learned Additional Advocate General that tribunal below ignored the aforesaid aspect of the matter and straightway without there being any cogent and convincing evidence, proceeded to hold that there was no delay and laches on the part of the respondent-workman. Learned tribunal below while

deciding the question of delay and laches has rightly held that respondent-workman remained vigilant throughout because immediately after his being disengaged in March, 2003, he approached erstwhile H.P. Administrative Tribunal by way of O.A. No.290 of 2003, wherein an interim order came to be passed against the petitioners, thereby directing them to reengage the respondent-workman, but in vain.

12. Authorized representative of the respondent-workman has successfully proved on record that delay and laches, if any, was on account of the conduct of the petitioner-Department and as such, respondent-workman cannot be made to suffer for the same. If the entire background of the case at hand, as detailed hereinabove, are examined in its entirety, this Court finds that respondent-workman approached erstwhile H.P. Administrative Tribunal within six months of his termination, wherein interim order came to be passed, thereby directing the petitioner-Department to reengage the respondent-workman, subject to availability of fund/work and subject to his seniority. Once such order was passed, it was duty of the petitioner-Department to call upon the respondent-workman to come and join his duties,

especially when it stands proved that funds and works were available with the Department.

13. Interestingly, Original Application was disposed of with the directions, as taken note hereinabove, but petitioner-Department neither laid challenge to aforesaid order in the competent court of law nor called upon the respondent-workman to join the work. Since work, if any, was to be made available by the petitioner-Department, there was no occasion, if any, for the respondent-workman to resume the duty without there being any information given to him by the petitioner-Department. He could have only resumed the duty once such offer, if any, was made to him by the petitioner-Department. Though, it repeatedly came to be argued on behalf of the petitioner-Department that respondent-workman was repeatedly requested to join, but such plea is not substantiated by any documentary evidence, if any, adduced on record.

14. Similarly, this Court finds that petitioner Department never succeeded in refuting the allegation put forth by the respondent-workman that at the time of his disengagement, sufficient work was available and persons junior to him were retained. If it is so, petitioner-Department is estopped from claiming that after disposal of original

application having been filed by the respondent-workman, no work and fund was available. It the work was not available, it is not understood that on what basis persons junior to him were permitted to work and ultimately their services were regularized. Since persons junior to the respondent-workman were allowed to work, learned tribunal rightly concluded that there is sufficient material on record to prove that funds and works were available, but yet services of the respondent-workman were not regularized. After disposal of original application filed by the respondent-workman, neither any call letter nor any notice was ever issued by the petitioner-Department. Since at no point of time petitioner-Department, specifically called upon the respondent-workman to resume service, there was no occasion for him to resume the service for a period of six years and thereafter he was compelled to raise dispute under Industrial Disputes Act.

15. Similarly, this Court finds that plea of abandonment raised by the petitioner-Department never came to be proved on record in accordance with law. Needless to say, onus, if any, to prove abandonment was upon the petitioner-Department, but same never came to be discharged. Since respondent-workman immediately after his being orally

terminated, approached erstwhile H.P. Administrative Tribunal by way of Original Application No.290 of 2003, it is hard to believe that he had abandoned the job. Had respondent-workman abandoned the job, where was the occasion for him to approach erstwhile H.P. Administrative Tribunal, wherein admittedly interim order came to be issued to the petitioner-Department to reengage him. Very factum of filing of O.A. after his being disengaged, clearly establishes that at no point of time, respondent-workman abandoned the job, rather his services were illegally terminated by the petitioner-Department without following due procedure of law as prescribed under Section 25-B, 25-F, 25-G and 25-H of the Act.

16. It is settled law that mere plea of abandonment, if any, taken by the employer may not be sufficient to prove that workman abandoned the job, rather it is incumbent upon the employer to place on record substantial evidence to prove that specific notice was issued to the workman before alleged abandonment advising/asking workman to join duty within stipulated period. In this regard, reliance is placed upon the judgment passed by Bombay High Court in case titled ***Ocean Creations Vs. Manohar Gangaram Kamble*** 2013 SCC Online

Bom 1537:2014)140 FLR 725. It is profitable to reproduce paras No.8,9 and 10 of the judgment herein:-

> **"8. The legal position is also settled that 'abandonment or relinquishment of service' is always a question of intention and normally such intention cannot be attributed to an employee without adequate evidence in that behalf. This is a question of fact which is to be determined in the light of surrounding circumstances of each case. It is well settled that even in case of abandonment of service, unless the service conditions make special provisions to the contrary, employer has to give notice to the workman calling upon him to resume duties and where he fails to resume duties, to hold an enquiry before terminating services on such ground.**
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> **9. In somewhat similar circumstances a Division Bench of this court comprising P.B.Sawant, J.(as he then was) and V.V.Vaze, J. in the case of Gaurishanker Vishwakarma v. Engle Spring Industries Pvt. Lted. Observed thus:**
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> **".....it is now well settled that even in the case of the abandonment of service, the employer has to give a notice to the workman calling upon him to resume his duty and also to hold an enquiry before terminating his service on that ground. In the present case the employer has done neither. It was for the employer to prove that the workman had abandoned the service..... It is therefore difficult to believe that the workman who had worked continuously for six to seven years, would abandon his service for no rhyme or reason. It has also to be remembered that it was the workman who had approached the Government Labour Officer with a specific grievance that he was not allowed to join his duty. It was also his grievance that although he had approached the company for work from time to time, and the company's partner Anand had kept on promising him that he would be taken in service, he was not given work and hence he was forced to approach the Government Labour Officer. In the circumstances, it is difficult to believe that he would refuse the offer of work when it was given to him before the Labour Officer...."**

10. Again a learned Single Judge of this court R.M.Lodha, J(as he then was) in the case of Mahamadsha Ganishah Patel v. Mastanbaug Consumers' Co-op. Wholesale & Retail Stores Ltd. Observed thus:-

"....The legal position is almost settled that even in the case of abandonment of service, the employer has to give notice to the employee calling upon him to resume his duty. If the employee does not turn up despite such notice, the employer should hold inquiry on that ground and then passs appropriate order of termination. At the time when employment is scarce, ordinarily abandonment of service by employee cannot be presumed. Moreover, abandonment of service is always a matter of intention and such intention in the absence of supportable evidence cannot be attributed to the employee. It goes without saying that whether the employee has abandoned the service or not is always a question of fact which has to be adjudicated on the basis of evidence and attending circumstances. In the present case employer has miserably failed to discharge the burden by leading evidence that employee abandoned service. The Labour Court has considered this aspect, and, in my view rightly reached the conclusion that the employer has failed to establish any abandonment of service and it was a clear case of termination. The termination being illegal, the Labour Court did not commit any error in holding the act of employer as unfair labour practice under Item-I, Schedule IV of the MRTU & PULP Act....."

17. Consequently, in view of the aforesaid discussion, this Court sees no force in the writ petition filed on behalf of petitioner, as such, the same is dismissed being devoid of any merit.

18. Accordingly, the present petition is disposed of alongwith pending application(s), if any.

(Sandeep Sharma),
Judge

March 26, 2024
(shankar)