

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

CW P NO. 47 of 2007.

Date of Decision: 26.2.2007

S.J.V.N.Limited

...Petitioner

Versus.

Appellate Authority-cum-Labour
Commissioner & ors.

... Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting?

For the Appellant(s): Mr. Ramakant Sharma, Advocate.

**For the Respondent(s): Mr. M.S.Chandel, Advocate General with
 Mr. Ram Murti Bisht, Dy. Advocate General.**

Deepak Gupta, J (Oral).

This writ petition is directed against the order of the Appellate Authority -cum- Labour Commissioner, H.P. dated 18.9.2006 whereby he has rejected the appeal filed by Satluj Jal Vidyut Nigam Limited, hereinafter referred to as the employer-company.

The brief facts necessary for decision of the case are that the employer- company is engaged in running Hydro Electric Power Projects and has various employees. It is an admitted fact that Satluj Jal Vidyut Nigam Ltd. Workers Union was the only registered and recognized union at the relevant time. On 7.10.2003, the union,

sent a letter to the Labour Commissioner with a copy to the employer-company that 5 members of the union be declared as protected workmen under Section 33(4) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

On 10.11.2003, a reminder was given to the employer-company though in the reminder one of the names had been changed. The employer-company instead of recognizing the workers as protected workmen or taking any decision in the matter kept on dilly dallying in the matter. It wrote to the union that one per cent of the total number of workmen employed therein subject to a minimum of five could be declared as protected workmen and also directed the union that it should nominate only three officers of the union, i.e. two from the Project site and one from the Corporate centre for being declared protected workmen.

It would be pertinent to mention that there is nothing on record to show that there was any other union existed at that time. It is also apparent that no dispute with regard to the office bearers of the union had been raised till then.

As per the provisions of Section 33(4) of the Act, there have to be a minimum of five protected workmen. There is no requirement that these workmen should be from any particular office. It is for the union to recommend the names of the workers who are to be declared as protected workmen. It is apparent that the employer-company is trying to thwart the interest of the workmen and was not accepting the names submitted by the union.

It appears for the first time in September, 2004 that one Bawa Amarjit Singh raised some disputes with regard to the control of the union and sent fresh set of names of the workers on 28.9.2004.

The Conciliation Officer accepted the names given by the respondent-Union and directed that they be declared as protected workmen. The employer-company, however, was not satisfied with this order and filed an appeal before the Appellate Authority who rejected the same and held that the said protected workmen would be entitled to the benefit of being declared as protected workmen only for the year 2004.

We have heard learned counsel for the parties and find no error in the order of the Appellate Authority. It would be pertinent to mention that both the unions had submitted before the Conciliation Officer that there was no dispute between them and had given a common list of names. The management under the rules framed under the Act is bound to take the decision within 15 days from the receipt of the names. Even if it was not accepting the names proposed by the Union, it could have given some reasons for rejecting their names so that the union could have raised the dispute before the Conciliation Officer. It is apparent that the management was trying to ensure that no workman is given the status of protected workmen. This cannot be permitted to be done. We also find that the Appellate Authority has rightly confined the benefit only for the calendar year 2004. We, therefore, find no merit in the writ petition which is accordingly dismissed.

Before parting with the case, we are constrained to observe that on a perusal of the record, we find that no workmen have been declared as protected workmen even for the calendar years 2005-2006 and thereafter. In case, no workmen have been declared to be protected workmen for the year 2007, we direct that the union should submit the names within 15 days from today and the management should take a decision on the said names within 15 days thereafter. If there is any dispute either between the management and the union or between different factions of the union, the said dispute must be resolved by the Conciliation Officer within one month thereafter.

(Deepak Gupta), J.

February 26, 2007.

(Surinder Singh), J.

s.