IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 517 of 2005.

Decided on: 30.4.2007.

State of Himachal Pradesh & Others.
… … … Petitioners.

Versus

Bhatag Ram and another.
… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?

For the Petitioner (s): **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocates General.**

For the Respondents: **Mr. Ashwani Pathak, Advocate.**

Rajiv Sharma, Judge (Oral):

By way of this petition the award dated 20.11.2004 has been assailed by the State. The Labour Court has held the retrenchment of the workmen violative of principles laid down under Sections 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act") and both the workmen have been held entitled for their reinstatement with all consequential benefits.

I have perused the record and heard the parties.

The learned Advocate General has strenuously urged that the award

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Whether reporters of local papers may be allowed to see the judgment?

Dated 20.11.2004 is not in accordance with law. Mr. Chandel further submits that since the workmen have not completed 240 days, they could not claim the benefits of Sections 25-G and 25-H of the Act. The plea raised by Mr. Chandel is not tenable in view of the law laid down by Hon'ble Supreme Court in **Central Bank of India Versus S. Satyam and Others (1996) 5 SCC 419,** wherein Hon'ble Supreme Court has held the applicability of Sections 25-G and 25-H not confined only to workmen who were in continuous service for one year and above. Your Lordships of Supreme Court opined as under:-

> **"The plain language of Section 25-H speaks only of re-employment of "retrenched workmen". The ordinary meaning of the expression"retrenched workmen" must relate to the wide meaning of 'retrenchment' given in Section 2(oo). Section 25-F also uses the word 'retrenchment' but qualifies it by use of the further words "workman… who has been in continuous service for not less than one year". Thus, Section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman… who has been in continuous service for not less than one year". It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principles for**

retrenchment and applies ordinarily the principles of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25-F."

In view of the law laid down by Hon'ble Supreme Court, it was not necessary for the workmen to complete 240 days during 12 calendar months for taking the benefits of Sections 25-G and 25-H of the Act. Mr. Chandel has also faintly raised the plea that the workman has himself abandoned the job, thus, the provisions of Sections 25-G and 25-H were not attracted and have wrongly been applied by the Labour Court.

Hon'ble Supreme Court in "**G.T. Lad and others v. Chemicals and Fibres India Ltd., AIR 1979 SC 582"** has held that the finding of abandonment is a fact and the same has to be substantiated by leading evidence. Your Lordships of Hon'ble Supreme Court have held as under:-

"From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. v. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which

has to be determined in the light of the surrounding circumstances of each case."

I have also gone through the pleadings of the parties to see whether the plea of abandonment as raised by the learned Advocate General has been substantiated before the Labour Court or not. After going through the record, I am convinced that the plea of abandonment has not been established before the Labour Court. Accordingly, there is no merit in the writ petition and the same is dismissed with costs quantified at Rs.5,000/-.

(Rajiv Sharma)
Judge

April 30, 2007.
(sck)