

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

CWP No.1044 of 2005

Date of decision 31.8.2007

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The State of H.P. and another

Petitioners

Vs.

Hem Raj and others

Respondents

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Coram:

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

Whether approved for reporting?<sup>1</sup> No.

For the Petitioners: Mr.M.S.Chandel, Advocate General, with  
Ms.Meenakshi Sharma, Dy.A.G.

For the respondents: Mr.G.R.Palsra, Advocate, for respondents  
No.1 and 2.

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**Rajiv Sharma, J.**

A challenge has been laid by the petitioner-State to the Award passed by the Labour Court-cum-Industrial Tribunal, Dharamshala, dated 23.3.2005 passed in Reference No.162/99(RBT No.395/04). The State has made the following reference to the Labour Court, Dharamshala:

“Whether the termination of services of S'Shri Hem Raj and Kishori Lal, ex-daily wages workers, (water guard) by the executive Engineer, Irrigation and Public Health Division, Mandi, w.e.f. 1.1.1989 without any notice charge sheet, enquiry and without compliance of Section 25-F of the Industrial Disputes Act, is legal and justified, if not, to what relief of consequential service benefits and amount of compensation, the above aggrieved workmen are entitled?”

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<sup>1</sup> Whether reporter of local papers are allowed to see the judgment ? No.

In sequel to the reference made by the State Government, the respondents No.1 and 2, hereinafter referred to as the workmen, filed their statements of claims mentioning therein that they were engaged in the month of June, 1985 and had continuously discharged their duties upto 11.12.1988. They had contended before the Labour Court that they were retrenched in the month of December, 1988 without following the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. The principal stand by the employer before the Labour Court was that it was not the case of retrenchment but the workmen had themselves abandoned their jobs. The Labour Court on the basis of the evidence led by the parties had answered the reference in affirmative by granting reinstatement to the workmen with 50% back wages with effect from 1998.

Mr.M.S.Chandel, learned Advocate General had strongly contended that there was inordinate delay in raising the dispute by the workmen. He also contended that the workmen had themselves abandoned their jobs and were not entitled to any of the reliefs granted by the Labour Court. Mr.G.R.Palsra, learned counsel appearing for respondents No.1 and 2 had supported the award dated 23.3.2005.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

The workmen were engaged in the year 1985 and as per the man days chart placed on record they had completed 365 days in a block of 12 calendar months at the time of their retrenchment in the month of December, 1988. Since the workmen had completed 240 days preceding their retrenchment they were entitled to seek protection of Section 25-F of the Industrial Disputes Act, 1947. Respondent No.1 had appeared as PW-2 and respondent No.2 as PW-1 before the Labour Court. They had testified that they had remained in continuous service with the employer with effect from June, 1985 to December, 1988. They had further stated

that they were assured at the time of their retrenchment that as and when the work will be available they would be called back. They came to know in the month of August, 1988 that Harish Kumar, Nanak Chand and Bhan Singh were retained while retrenching them in the year 1988. Sh.Swantanter Singh Sodhi, JE, I&PH had appeared as RW-1 on behalf of the employer. He had admitted that the department had engaged many new persons and old persons on the job. He also admitted that after disengagement of the workmen no notice was served upon them nor any steps were taken to re-engage them. Sh.Jiwan Singh, Work Inspector had appeared as RW-2 and had admitted that persons junior to respondent Nos.1 and 2 were in job at the time of their retrenchment and new persons had been engaged after the year 1988.

On the basis of the evidence led by the parties and man days chart it is evident that the workmen had completed 240 days in a block of 12 calendar months at the time of their retrenchment and persons junior to them, namely, Harish Kumar, Nanak Chand and Bhan Singh were retained and many fresh appointments were made without issuing notice to the workmen to join their duties. Accordingly the employer had violated provisions of Section 25-(F),(G) and (H) of the Industrial Disputes Act, 1947. The findings recorded by the Labour Court to this effect are upheld. The workmen though engaged in the year 1985 were retrenched in the year 1988 they came to know for the first time in the month of August, 1988 that persons junior to them were retained while retrenching them and thereafter they had raised the demand and on the basis of the failure report the reference has been made by the State Government in the year 1999. The aspect of delay in raising the dispute has been taken into consideration by the Labour Court while moulding the relief of granting only 50% back wages to them though their retrenchment was void *ab initio*.

Similarly, the plea raised by the learned Advocate General that the workmen had abandoned their jobs voluntarily is untenable in view of the statement made by PW-3 to the effect that the workmen were retrenched in his presence and were assured that as and when the work is available the same will be offered to them. The employer had not led any evidence to prove the plea of abandonment raised before the Labour Court. There is neither any jurisdictional error nor procedural irregularity in the award dated 23.3.2005. Accordingly the writ petition is dismissed and the Award dated 23.3.2005 is upheld.

August 31, 2007 (g)

**( Rajiv Sharma ), J.**