

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.: 3806 of 2010

Reserved on: 12.04.2018

Date of Decision: 03.05.2018

H.P. State Co-operative Marketing and
Consumers Federation Ltd.

....Petitioner.

Vs.

Nain Sukh

.....Respondent.

Coram:

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting?1 Yes.

For the petitioner : Ms. Ranjana Parmar, Senior Advocate,
with Ms. Rashmi Parmar, Advocate.

For the respondent: Mr. B.N. Mehta, Advocate, for the
respondent.

Ajay Mohan Goel, Judge:

By way of this petition, the petitioner has laid challenge to award dated 11.05.2010, passed by the learned Industrial Tribunal-cum-Labour Court in Ref. No. 125 of 2003, vide which, learned Labour Court has answered the Reference in favour of the workman in following terms:

“As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e.

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

21.01.1995. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.”

2. Brief facts necessary for the adjudication of the petition are as under:

Appropriate Government made a Reference to the learned Labour Court, which reads as under:

“Whether the termination of services of Shri Nain Sukh, S/o Shri Sohanu Ram, daily wages peon by the Managing Director, HP State Cooperative Marketing and Consumer Federation Ltd., Shimla w.e.f. 21.1.1995 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what service benefits and relief aggrieved workman is entitled to?”

3. Case of the workman before the learned Court was that the Managing Director of the employer-Federation (hereinafter referred to as “the Federation”) absorbed his services as Peon-cum-Chowkidar against a Class-IV post and transferred him to the office of Area Manager Himfed Nahan vide communication dated 17.02.1992, where he joined on 25.07.1992. Thereafter, he was directed to join duties at Thanadhar vide communication dated 10.08.1992 to assist the Storekeeper, Himfed at Thanadhar. The authorities directed him to take over the charge of

Storekeeper at Thanadhar from one Shri Chattar Singh vide communication dated 07.12.1992 and he took the charge on 10.12.1992. Vide communication dated 13.07.1994, he was directed to hand over the charge to Shri Roshan Lal and further directed to join duties at Bottling Plant, Parwanoo by 27.07.1994, with the condition that in the event of his failure to do so, his services were liable to be dispensed with. On account of ill health of his father, he could not join at Parwanoo. His services were accordingly terminated vide communication dated 21.01.1995 without hearing him and without conducting any inquiry. Accordingly, he assailed the order of termination and claimed that he be re-instated in service alongwith back wages from the date of his illegal termination.

4. The claim was resisted by the Federation, which took the stand that the workman was initially engaged on daily wage basis as a Supervisor at World Bank Storage Project and when the Project came to an end, rather than terminating his services, by taking a sympathetic view, he was posted on daily wage basis in the office of Area Manager, Himfed, Nahan. The workman joined his duties at Thanadhar on 12.08.1992 and was transferred to Bottling Plant Parwanoo vide communication dated 02.06.1994. He refused to hand over his charge and join at Parwanoo. When charge was handed over to Shri Pradeep Chauhan, Storekeeper, it was found that workman had committed shortages to the tune of ₹98,550/- and this led to the initiation of recovery proceedings against him. According to the employer, as the

workman had willfully disobeyed the orders of the Management, whereby he was directed to join at Parwanoo, his services were rightly terminated.

5. Learned Labour Court while answering the Reference held that it appeared that the workman had abandoned his job and if that was so, and if he had disobeyed the directions of the employer, then the employer was required to have conducted a domestic inquiry and as no such inquiry was conducted, then obviously the provisions of the Industrial Disputes Act were violated and as the provisions of Section 25F of the Industrial Disputes Act were not complied with, the termination of the workman vide letter dated 21.01.1995 was illegal and unjustified. It was on the basis of said findings that the Reference was answered in favour of the workman in terms already mentioned above.

6. I have heard the learned counsel for the parties and have also gone through the records of the case.

7. It is not in dispute that herein it is not a case where services of the workman were terminated by the workman without any rhyme and reason, in violation of the provisions of the Industrial Disputes Act. It is a matter of record that the workman while serving at Thanadhar, was ordered to be transferred to Parwanoo and he was directed to join at Parwanoo, failing which, he was informed that his services were liable to be terminated. Workman did not abide by the orders so passed by the employer. In other words, he did not comply with the directions of the employer to join services at Parwanoo. It was in this background that when the workman did not abide by the orders so

passed by the employer, his services were terminated by the employer. In fact, a perusal of the claim petition itself demonstrates that the workman in paras 5 and 6 thereof has admitted the fact that he did not join the duties at Bottling Plant Parwanoo, as was directed by the employer. In his cross-examination, the workman has admitted it to be correct that he was transferred from Thanadhar to Bottling Plant Parwanoo and that he did not join at Parwanoo.

8. In my considered view, when the workman himself has admitted the factum of his not joining the place where he was ordered to be transferred by the employer, which ultimately led to the termination of his engagement by the employer, I find that the learned Tribunal erred in answering the Reference petition in favour of the workman by holding that the services of the workman could not have been terminated without holding a domestic inquiry. This Court fails to understand as to what kind of a domestic inquiry learned Labour Court wanted the employer to hold when the workman had refused to join the place of posting where he was transferred. Further, this is a case where on the failure of workman to join the place of his transfer, his services were dispensed with. This dispensation cannot be termed to be in violation of the provisions of the Industrial Disputes Act. The award passed by the learned Labour Court is thus a result of mis-reading and mis-appreciation of evidence on record and as there is no perversity in the same, the same is not sustainable in law.

9. In view of the findings returned hereinabove, this writ petition is allowed and the award dated 11.05.2010, passed by the learned Industrial Tribunal-cum-Labour Court in Ref. No. 125 of 2003 is quashed and set aside.

Petition stands disposed of. No order as to costs.

(Ajay Mohan Goel)
Judge

May 03, 2018
(bhupender)

High Court of H.P.