

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 8500 of 2013
Decided on: 24.02.2025

The Principal Secretary (Public Works) to the Government of H.P. Shimla-2 & others		... Petitioners
Versus		
Shri Ramesh Chand		... Respondent

Coram

Hon’ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹Yes

For the petitioners	:	Mr. Sumit Sharma, Deputy Advocate General.
For the respondent	:	Mr. Sanjeev Bhushan, Senior Advocate, with Mr. Sparsh Bhushan, Advocate.

Ajay Mohan Goel, Judge (Oral)

By way of this Writ Petition, the petitioners have challenged the Award, dated 01.09.2012, passed by the Court of learned Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla, H.P. in Reference No.54 of 2009, titled as Ramesh Chand Versus State of H.P. & others, in terms whereof, the Reference made by the Appropriate Government, under Section 10 of the Industrial Disputes Act, 1947 was answered by learned Labour Court as under:-

“For the reasons recorded hereinabove, the claim of the petitioner is allowed and the reference is answered in negative as the termination of the services of the

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

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petitioner is improper and unjustified. Consequently, the petitioner is entitled to reinstatement in service with immediate effect on the same terms and conditions with seniority and continuity along with back wages @ 25%. 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 present petition are that on an industrial dispute raised by respondent/workman, the following Reference was made by the Appropriate Government to learned Labour Court:-

“Whether the termination of services of Shri Ramesh Chand S/o Shri Dilme Ram by the Executive Engineer, HPPWD Division, Chopal, District Shimla, H.P. w.e.f. 26.1.1999 on the allegation of misconduct and tempering of office record is proper and justified?. If not, what relief of service benefits including seniority and compensation the above workman is entitled to?”

3. The claim put up by the workman/claimant (hereinafter referred to as the ‘claimant’) before learned Labour Court was that he was engaged as a daily wage Beldar by the employer in the month of September, 1991, though he was discharging the duties of a Supervisor. Rather than conferring work charge status upon him upon completion of eight years of service as such, followed by regularization, on 26.02.1999, the claimant was served with one

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month's notice of retrenchment from service. The basis for termination of services of the claimant was his alleged misconduct, which allegation as per the claimant was false and frivolous. As per the claimant, no inquiry, as envisaged in law, was conducted, nor the principles of natural justice were complied with by the respondent. He was condemned un-heard. It was further his case that the alleged misconduct was relating to the charge of tampering with the official record, on which allegation a criminal case was also registered against the claimant, i.e. Criminal Case No.6-I of 2001, titled as State Versus Ramesh Chand, in which, he was acquitted by the Court of learned Judicial Magistrate, 1st Class, Chopal, District Shimla, H.P. on 30.07.2002, which acquittal attained finality. It was further the contention of the claimant that he was forced to concede to the allegations levelled against him by the concerned Sub-Divisional Officer.

4. The stand of the employer before learned Labour Court was that the claimant was neither entitled for conferment of work charge status nor regularization. He, in fact, was performing the duties of Beldar. His services were terminated after serving one month's notice of retrenchment on 26.02.1999, which was necessitated by the fact that the claimant who was deployed in the division office of the the Executive Engineer, HPPWD, Chopal, to

assist the dealing hand to sort out the record during screening, was found tampering with the record rather than assisting the dealing hand. Therefore, as the claimant was found guilty of tampering with the official record with a malafide intent, the Department had no option, but to terminate his services in public interest, which was accordingly done after complying with the provisions of Section 25-F of the Industrial Disputes Act.

5. Learned Labour Court on the basis of the pleadings of the parties, framed the following issues:

“1. Whether the termination of the services of the petitioner on the allegation of misconduct and tampering of office record is unjustified? OPP...

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? OPP...

3. Relief.”

6. On the basis of the evidence led by the parties in support of their respective contentions, the issues were answered as under:-

“Issue No.1: Yes.

Issue No.2: Entitled to reinstatement in service with seniority and continuity alongwith back wages @ 25%.

Relief: Reference answered in negative as the termination of the petitioner is

improper and unjustified per operative part of Award.”

7. While holding that the termination of service of the claimant was bad in law, learned Labour Court on the basis of the record, held that only a preliminary inquiry was conducted by the Inquiry Committee in terms of report Ext.PC/3 and services of the claimant were dispensed with on the basis of said preliminary inquiry without serving any Charge Sheet upon him and holding a proper departmental inquiry against him. Learned Labour Court held that in the absence of any regular inquiry, the services of the claimant could not have been terminated and this indeed caused serious prejudice to the claimant, as he was not afforded due opportunity to defend himself.

8. Learned Labour Court relied upon the judgment of Hon'ble Supreme Court of India in *Nar Singh Pal Versus Union of India and Others*, (2000) 3 Supreme Court Cases 588, in which, Hon'ble Supreme Court was pleased to hold that termination after preliminary inquiry is punitive, if the same is not based on a regular inquiry and the same is invalid.

9. Learned Labour Court also held that the factum of the claimant having admitted during the course of preliminary inquiry that he had tampered with the record was of no consequence,

because it was a matter of record that neither any regular inquiry was conducted in the matter nor the claimant was given due opportunity to put forth his stand. On the basis of this reasoning, learned Labour Court while answering the Reference in favour of the claimant, set aside the order of termination and also held the claimant entitled to back wages @ 25%.

10. Feeling aggrieved, the State has filed this petition.

11. Learned Deputy Advocate General argued that the Award passed by learned Labour Court is not sustainable in law, for the reason that learned Court below erred in not appreciating that in the light of a preliminary inquiry having been held and further in light of the guilt having been admitted by the claimant, there was no occasion for learned Labour Court to have had answered the Reference in favour of the claimant. Accordingly, he prayed that the petition be allowed and the Award be set aside. No other point was urged.

12. On the other hand, learned Senior Counsel appearing for the respondent while defending the Award, submitted that the findings returned in the Award were clearly borne out from the record of the case. He submitted that it was a matter of record that the service of the claimant was terminated in the garb of retrenchment without affording him any due opportunity of

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defending himself and as termination was *per se* bad, therefore, the findings returned by learned Labour Court called for no interference.

13. I have heard learned Deputy Advocate General as well as learned Senior Counsel appearing for the respondent and have also carefully gone through the Award as well as record of the case.

14. The facts as have been enumerated by me hereinabove are not in dispute. The backdrop, in which the services of the claimant were retrenched, have been mentioned by me in detail hereinabove. Before proceeding further, it is relevant to take note of the fact that the services of the claimant were retrenched after issuance of a Notice, i.e. Ext.PB1, dated 26.02.1999, which reads as under:-

“Where as per enquiry, you have been found guilty of tempering with the official record with mala fied Intention as per your own admission of the guilt, this office is left with no other option then to terminate your services in public interest.

In view of the above, under section 25-F of the Industrial Dispute Act, 1947, you are here by served with one month notice (Retrenchment notice) effective from the date of issue of this letter.

The retrenchment compensation calculated strictly in terms of section 25-F of Industrial Dispute Act, 1947 shall

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be paid to you and the same may be collected from the office of the undersigned before the expiry date of this notice.”

15. Thus, it is apparent from the perusal of this Notice that the genesis of the Notice was the preliminary inquiry held against the claimant, in which he was found guilty of tampering with the official record with mala fide intention, which guilt purportedly was admitted by the claimant as per the notice.

16. Section 25-F of the Industrial Disputes Act defines the conditions precedent to retrenchment of a workman. “Retrenchment” has been further defined in Section 2 (oo) of the Act and in terms thereof, retrenchment means the termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action.

17. Herein, *prima facie*, Notice issued under Section 25 of the Industrial Disputes Act demonstrates that the same was issued on the basis of a preliminary inquiry held against the claimant for tampering with the official record. Because in terms of the preliminary inquiry, the claimant was found guilty of the said act, his services were retrenched. That being so, apparently and obviously the retrenchment of the services of the claimant was by way of punishment inflicted on the basis of a preliminary inquiry.

18. Now, incidently it is also borne out from the record that even an FIR was registered against the claimant in this regard and in the criminal trial the claimant was acquitted of the alleged offence.

19. Be that as it may, fact of the matter remains that the termination of the services of the claimant by way of retrenchment was on the basis of an alleged misconduct and was by way of punishment after claimant was found guilty of tampering with the official record in the preliminary inquiry that was conducted against him.

20. Hon'ble Supreme Court of India, in *Nar Singh Pal Versus Union of India and Others*, (2000) 3 Supreme Court Cases 588, was pleased to hold as under:-

“8. The documents which have been placed before us pertain to the preliminary inquiry made against the appellant in which the statement of certain persons who had seen the incident was recorded. The services of the appellant were, thereafter, terminated by paying him the retrenchment compensation through a cheque along with the order dated 20-5-1992. The order having been passed on the basis of a preliminary inquiry and not on the basis of a regular departmental enquiry without issuing a charge-sheet or giving an opportunity of hearing to the appellant, cannot be sustained.

9. We may, at this stage, refer to the observations of Krishna Iyer. J. in Gujarat Steel Tubes Ltd. v. Mazdoor

Sabha', in which the learned Judge observed as under:
(SCC p. 617, para 53)

"53. Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the inquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple

termination, are given and non-injurious terminology is used."

10. Applying the above principles, the order in the instant case, cannot be treated to be a simple order of retrenchment. It was an order passed by way of punishment and, therefore, was an order of dismissal which, having been passed without holding a regular departmental enquiry, cannot be sustained."

21. Learned Labour Court has relied upon this judgment of Hon'ble Supreme Court while setting aside the retrenchment of the claimant. A perusal of the judgment of Hon'ble Supreme Court demonstrates that Hon'ble Supreme Court has been pleased to hold that where an order of termination is passed by way of punishment, then it cannot be treated as a simple order of retrenchment and an order of dismissal having been passed without holding a regular departmental inquiry is not sustainable in law.

22. In the present case also, in the garb of retrenchment, the petitioner-Department indeed terminated the services of the claimant as punishment on the basis of report of the preliminary inquiry, without holding a regular departmental inquiry, and therefore, the order of termination of services of the claimant obviously was not sustainable in law. This is exactly what has been held by learned Labour Court. The factum of holding of a

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preliminary inquiry and in the said inquiry, the claimant purportedly having conceded his guilt is of no consequence, for the reason that until and unless a proper inquiry was held against the claimant after issuance of a Charge-Sheet and until and unless due opportunity was afforded to the claimant to defend himself, termination of his services was indeed bad. Otherwise also, the order of retrenchment *per se* was bad, for the reason that no order of retrenchment under Section 25-F of the Industrial Disputes Act could have been passed by way of punishment in the light of statutory language of Section 2 (oo) of the Industrial Disputes Act.

23. Therefore, as this Court does not finds any perversity in the Award passed by learned Labour Court and further as it does not finds any merit in the present petition, the same is dismissed. Pending miscellaneous applications, if any, stand disposed of.

(Ajay Mohan Goel)
Judge

February 24, 2025
(Rishi)