

(2020) 03 DEL CK 0299

In the Delhi High Court

Case No : Review Petition No. 530 Of 2019, Civil Miscellaneous Application No. 54761 Of 2019, Civil Miscellaneous (Main) No. 1297 Of 2018

Airports Authority Of India

APPELLANT

Vs

Yashpal Singh Tanwar

RESPONDENT

Date of Decision : 13-03-2020

Acts Referred:

Industrial Disputes Act, 1947 — Section 11(9)
Code Of Civil Procedure, 1908 — Order 47

Citation : (2020) 03 DEL CK 0299

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Digvijay Rai, Aman Yadav, Archana Sharma

Final Decision : Dismissed

Judgement

C. Hari Shankar, J

CM APPL. 54761/2019 (exemption)

1. Exemption allowed, subject to all just exceptions.

2. The application is disposed of.

REVIEW PET. 530/2019

1. This petition seeks review of an order dated 10th October, 2019, passed by me in CM (M) 1297/2018, whereby the said petition was allowed, and order, dated 5th September, 2018, passed by the learned Industrial Tribunal, in Ex. P. 5522/2016 was quashed and set aside.

2. For the purposes of deciding this Review Petition, a brief reference to facts would suffice.

3. Consequent to termination of the respondent/workman, an industrial dispute was raised, which was referred to the learned Industrial Tribunal, on 27th

September, 1988. Vide award dated 26th September, 1997, the learned Industrial Tribunal declined the termination of the respondent/workman to be illegal and directed his reinstatement with full back wages and continuity of service. Consequent thereupon, on 14th May, 1998, the respondent was reinstated in service.

4. The respondent, thereafter, moved WP(C) 3/2014, seeking monetary benefits as well as promotion with effect from 4th November, 1985, consequent to the aforementioned award, dated 26th September, 1997, of the learned Industrial Tribunal.

5. Vide order dated 9th February, 2015, the aforementioned WP (C) 3/2014 was disposed of, by a learned Single Judge of this court. The prayer, of the respondent, for promotional benefits, was left open to be agitated in a separate proceeding. Insofar as the claim for monetary benefits was concerned, the learned Single Judge held that the said claim would have to be ventilated by way of execution proceedings, under Section 11(9) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "ID Act"), which made awards of industrial tribunals executable like decrees of civil courts.

6. Apparently spurred by the said observation, the respondent preferred Ex. P. 5522/2016, before the learned Industrial Tribunal. In the interregnum, the respondent also applied for correction of the aforementioned award dated 26th September, 1997. Vide order dated 19th November, 2015, the learned Industrial Tribunal corrected the award, to the extent of the pay scale specified therein, correcting the pay scale from Rs. 210 - 360 to Rs. 260 - 350/-, in para 10 of the award.

7. The petitioner, thereafter applied for correction of the aforementioned order dated 19th November, 2015, of the learned Industrial Tribunal. Vide order dated 22nd June, 2016, the learned Industrial Tribunal corrected the award only to the extent of clarifying that the change of pay scale, as directed vide order dated 19th November, 2015, would be effected in para 2, rather than para 10, of the award dated 26th September, 1997.

8. On 5th September, 2018, the learned ADJ, allowed Ex. P. 5522/2016, to the extent of directing payment of back wages to the respondent, for the period 1st June, 1981 to 30th September, 1988. An objection, regarding delay and laches in preferring the execution petition, as raised by the present petitioner before the learned Industrial Tribunal, was rejected, on the ground that the execution petition had been filed consequent to the directions contained in the order dated 9th February, 2015, passed by the learned Single Judge in WP (C) 3/2014.

9. The present CM (M) 1297/2018, of the judgment passed wherein review is now being sought, was directed against the aforementioned order, dated 5th September, 2018, of the learned ADJ in Ex. P. 5522/2016.

10. Vide my judgment under review, I have held that the learned ADJ erred in

awarding monetary benefits from 1st June, 1981, as the award, dated 26th September, 1997 specifically limited back wages from 30th September, 1988 onwards. I have also found the plea, of the petitioner, regarding the execution petition having been filed belatedly, and beyond the 12 year limitation period available therefor, to have substance. The writ petition was, therefore, allowed on both these counts, and the order, dated 5th September, 2018, of the learned ADJ, was set aside.

11. Review is, now, being sought of the aforesaid judgment dated 10th October, 2019.

12. Ms. Archana Sharma, appearing for the review petitioner, i.e. the respondent/workman in the review petition, submits that her client was not required to file any execution petition at all, as the award of the learned ADJ was bound to be complied with by the respondent. She submits, therefore, that the plea of delay and laches, which has found favour with this court, was without substance. She also submits that jurisdiction of the learned ADJ, to adjudicate on the execution petition, would arise only after the provision for execution was introduced in Section 11(9) of the ID Act in 2010. She submits that, prior to the introduction of the said provision, it was not open to her client to file any execution petition at all.

13. A reading of the review petition reveals that the aforementioned arguments, as canvassed by learned counsel for the review petitioner, do not find any place in the review petition. Nor were these contentions urged before me during the hearing of CM (M) 1297/2018. They cannot, therefore, be allowed to be raised in a review petition, the parameters of review being to those circumscribed by Order XLVII of the Code of Civil Procedure, 1908.

14. That apart, even on merits, I do not find any substance in the contention of learned counsel for the review petitioner. The respondent review petitioner having himself preferred an execution petition, and having succeeded therein, it hardly lies in the mouth of the respondent, having lost in the writ petition preferred by the petitioner against the order dated 5th September, 2018, to now seek to contend that no execution petition was required to be filed at all. In any event, such a ground cannot be countenanced by me, in the present review petition, in view of the opinion expressed by the Coordinate Bench of this Court, in its order dated 9th February, 2015, in WP (C) 3/2014, on the basis whereof the execution petition was filed in the first place.

15. The execution petition, if read, specifically pressed for execution of the award dated 26th November, 1997. The execution petition was filed 18 years after the award was passed and became executable and in fact, 5 years even after the introduction of Section 11(9) in the ID Act.

16. In view thereof, I do not find that the review petition has highlighted any error, apparent on the face of the record, in my judgment dated 10th October, 2019, or made out any other ground, as would justify review thereof.

17. The review petition is accordingly dismissed.