

(2019) 10 DEL CK 0032

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 1297 Of 2018

Airports Authority Of India

APPELLANT

Vs

Yashpal Singh Tanwar

RESPONDENT

Date of Decision : 10-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 227
Limitation Act, 1963 — Article 136
Industrial Disputes (Central) Rules, 1957 — Rule 28
Industrial Disputes Act, 1947 — Section 11(9), 33C

Citation : (2019) 10 DEL CK 0032

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : K.K.Rai, Divvijay Rai, Anshul Rai, Kustubh Singh, Ashish Virmani, Himanshu, G.Sri Hashan

Final Decision : Allowed

Judgement

C. Hari Shankar, J

1. The services of the respondent were terminated, by the petitioner, on 1st June, 1981.
2. The respondent initiated an industrial dispute, which was referred, by the Central Government, to the Industrial Tribunal, vide order dated 27th September, 1988. The sole issue, as framed by the referral order, was whether the termination of the services of the respondent, by the petitioner, w.e.f. 1st June, 1981, was justified and, if so, the relief to which the respondent would be entitled.
3. The reference was adjudicated, by the Industrial Tribunal, vide award dated 26th September, 1997. The Industrial Tribunal held, in the penultimate para (para 9) of the award, that "the termination of the services of the workman after the expiry of the probation period and after the initiation of the enquiry against

him but without completing the enquiry the termination was not at all justified." It was held, consequently, that the respondent deserved to be reinstated. On the issue of back wages, para 10 of the award held as under:

"As regards the back wages of the workman concerned, I am guided by the judgement in R. C. Yadav v. State of Bihar 1988 II LLJ 343 SC that the workman was responsible for unnecessary delay in approaching the Court. He had gone to the High Court in this case and the reference was received only on 30.9.88 when his services were terminated on 1.6.81. He was not entitled to back wages from the date of his termination till the date of reference to this Court. I, therefore, order that the workman be reinstated with full back wages and continuity of service from 30.9.88 upto the date of his reinstatement with all benefits attached to this post. Parties shall, however, bear their own costs of this dispute."

4. The respondent was reinstated, in service, by the petitioner, on 14th May, 1998.

5. Apparently, the petitioner challenged the aforesaid award, dated 26th September, 1997, before this Court, by way of a writ petition which was, however, dismissed. It has to be stated, regrettably, that this fact finds no mention in the writ petition, though it is reflected in order, dated 9th February, 2015, passed by this Court in WP (C) 3/2014, to which I would, presently, be referring.

6. As, with the dismissal of the writ petition, filed by the petitioner, challenging the Award dated 26th September, 1997, the said Award had become final, the respondent moved this Court by way of WP (C) 3/2014, claiming (i) monetary emoluments and monetary benefits, alleged to be due to the respondent, from the petitioner, consequent upon the award, dated 26th September, 1997 supra, of the Industrial Tribunal and (ii) promotion, w.e.f. 4th November, 1985 with consequential benefits, also claimed on the basis of the award of the Industrial Tribunal.

7. Vide order dated 9th February, 2015, the aforesaid WP (C) 3/2014, preferred by the respondent, was disposed of, by a learned Single Judge of this Court. Neither of the reliefs, sought by the respondent in the writ petition, was granted. The learned Single Judge held that, for recovery of balance of emoluments, if any, due to him consequent on the Award dated 26th September, 1997 supra, of the Industrial Tribunal, the respondent would have to move for execution of the said Award. Something turns on para 2 of the order, dated 9th February, 2015 supra, of the learned Single Judge which, therefore, may be reproduced thus:

"2. So far as the payments of monetary emoluments are concerned, the writ petition may possibly seem to say that only part of monetary emoluments have been received, and not the entire monetary emoluments which were due after promotion, but assuming that certain monetary emoluments are due, in view of Section 11(9) of the Industrial Disputes Act, 1947 as amended w.e.f. 2010, the decree of a Labour Court will be and executable decree by the civil Court and

petitioner therefore in case any monetary emoluments are due, of course not for promotion in terms of the judgement of the Labour Court/Industrial Tribunal, the petitioner will have to file for execution of the judgement of the Labour Court/Industrial Tribunal dated 26.11.1997."

(Emphasis supplied)

The learned Single Judge held, further, that the prayer, of the respondent, for promotion, would have to be ventilated by means of independent proceedings, for which liberty was granted.

8. Apparently in view of the opinion expressed, by this Court, in its order, dated 9th February, 2015 supra, in WP (C) 3/2014, the respondent filed an Execution Petition (Ex. P. 5522/2016), before the Industrial Tribunal, seeking execution of the award, dated 26th November, 1997 supra.

9. In the interregnum, the respondent, apparently, filed an application for correction of the aforementioned Award, dated 26th September, 1997, which was allowed, by the Industrial Tribunal, vide order dated 19th November, 2015. The order discloses that notice was served, on the petitioner, of the said application, but the petitioner did not enter appearance. The industrial Tribunal, in the circumstances, allowed the application of the respondent, in the following terms:

"3. After hearing the learned A/R for the claimant on the application and perusal of the award, I am of the view that application deserves to be allowed. It is clear from perusal of the advertisement published in the Gazette of India No. 52 dated 29.07.1978 that the pay scale of Switch Board Attendant is mentioned at Serial No. 6 of the advertisement and the same is Rs. 260-350. Similarly, date of termination of the workman herein is admittedly 01.06.1981 as is clear from order dated 27/26.09.1988. Annexure A, wherein Sh. Tanwar was terminated on 01.06.1981.

4. Since the errors mentioned above are accidental or clerical in nature, as such, this Tribunal is competent to rectify the same in view of the powers vested with this Tribunal under Rule 28 of the Industrial Disputes (Central) Rules, 1957. Resultantly, application is allowed and it is held that in para 10 of the award, pay scale of the workman is liable to be corrected as Rs. 260-350 instead of Rs. 210-360 and is also held that the date of termination of the workman to 01.06.1981 and not 30.09.1988. Consequently, it is held the date of termination of the workman in fact to 01.08.1981 instead of 30.09.1988 as mentioned in the concluding part of para 10 of the award dated 26.11.1997."

(Emphasis supplied)

For ready reference, Rule 28 of the Industrial Disputes (Central) Rules, 1957 (hereinafter referred to as "the ID Rules") may be reproduced, thus:

"28. Correction of errors

A Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may at any

time correct any clerical mistake or error arising from an accidental slip or omission in any Proceedings, report, award or decision, either of its or his own motion or on application of any of the parties."

10. The petitioner claims that it came to know, of the aforesaid order, dated 19 November, 2015, of the Industrial Tribunal, only on receipt of notice in Ex. P. 5522/2016 and that, on coming to know of the said order, the petitioner immediately applied for correction thereof. The petitioner has not chosen to place, on record, any copy of the said application. The order, dated 22nd June, 2016, passed by the Industrial Tribunal on the said application has, however, been filed, and para 4 thereof reads as under:

"4. It is neither in doubt nor in dispute that this Tribunal has powers under Rule 28 of the Industrial Disputes (Central) Rules, 1957 to correct any clerical mistakes or error arising from accidental slip or omission in any proceedings, report, award or order passed by this Tribunal. There is no legal bar to even file more than one application for correction of such error or mistake, the facts and circumstances of the case so warrant. Learned authorised representatives for the respective parties during the course of arguments, in all fairness, conceded that there is no mention of pay scale of Rs. 210-360 in para 10 of the main award dated 26.11.1997. Instead, there is mention of pay scale of Rs. 210-360 in 4th line of para 2 of the main award dated 26.11.1997. In para 10 of the award passed by my learned predecessor there is no mention of any pay scale of Rs. 210-360. Therefore, observations made by this Tribunal in its order dated 19.11.2015 in para 4 to the effect that it is held in para 10 of the award, pay scale of the workman is liable to be corrected as Rs. 260-350 instead of Rs. 210-360 is liable to be corrected to the extent that instead of "para 10" the word "para 2" is ordered to be substituted and corrected. Resultantly, application is allowed and it is held that in para 2 of the award dated 26.11.1997, pay scale of the workman is liable to be corrected as Rs. 260-350 instead of Rs. 210-360. Accordingly, application is allowed in the above manner."

11. This order, dated 22nd June, 2016, of the Industrial Tribunal, has never been challenged. It binds, therefore, the petitioner and the respondent inter se.

12. Ex. P. 5522/2016, which had been preferred, by the respondent, before the Industrial Tribunal, for execution of the award, dated 26th November, 1997 supra, was opposed, by the petitioner, on the ground that it was hit by delay and laches, and that it was not maintainable, as enforcement of an award, passed by the Industrial Tribunal, had to be in accordance with Section 33C of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act"), which reads thus:

"33C. Recovery of money due from an employer. -

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA or Chapter VB, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice

to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months:

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub- section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation.-- In this section "Labour Court" includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State."

13. The petitioner submitted, in response to the Execution Petition of the respondent, that the respondent had filed the said Execution Petition as many as 18 years after the passing of the award, of which execution was sought, only so

as to escape the one-year period stipulated in Section 33-C of the ID Act. The petitioner also opposed the prayer, in the Execution Petition, on merits, contending that all monetary emoluments, due to the respondent, for the period 30th September, 1988 to 14th May, 1998, stood paid, to him, by the petitioner, including basic pay, FDA, VDA, HRA, CCA, earned leave/half pay leave, FPA, LTC, ex gratia, PLI, Festival Allowance and Children Allowance. No amount, therefore, it was pleaded, remained to be paid, by the petitioner, to the respondent.

14. The respondent filed rejoinder, to the aforesaid reply of the petitioner, in which it was contended that an amount of Rs. 1,072,678/- remained to be paid, to the respondent, for the period 1st June, 1981 to 30th September, 1988.

15. The order, impugned in the present proceedings, came to be passed by the learned Additional District Judge (hereinafter referred to as "the learned ADJ"), on the aforesaid Ex. P. 5522/2016, preferred by the respondent, on 5th September, 2018. The learned ADJ observes that, as a consequence of the award, dated 26th September, 1997, read with the two orders, dated 19th November, 2015 supra and 22nd June, 2016, supra, which effected corrections therein, two undisputed facts emerged; firstly, that the pay scale of the respondent was Rs. 260-350 per month, instead of Rs. 210-360 and, secondly, that the date of his termination was 1st June, 1981 and not 30th September, 1988. The learned ADJ further notes that, though a huge amount had been claimed, by the respondent, from the petitioner, in his Execution Petition, the respondent, during oral submissions, restricted his relief to the emoluments due to him for the period 1st June, 1981 to 30th September, 1988, as well as for notional fixation of pay, in futuro, on that basis. The learned ADJ holds, in conclusion, that, though the award, dated 26th September, 1997, disentitled the respondent to any back wages for the period 1st June, 1981 to 30th September, 1988, "the benefits arising on account of continuity of service have to be given to him and also the increments arising yearly or given periodically have to be added to the salary to reach a notional salary which the petitioner would be entitled to, had he remained in service notwithstanding/de hors the dispute." The grant, of the Industrial Tribunal, in favour of the respondent, of "continuity of service", according to the learned ADJ, necessarily led to this conclusion.

16. On the aspect of limitation, the learned ADJ has rejected the objection of the petitioner, on the ground that the Execution Petition had been filed, by the respondent, in terms of the order passed by this Court on 9th February, 2015 in WP (C) 3/2015. Thus, concludes the learned ADJ, "there is no delay as such". "The award", holds the impugned order, "is in continuation to the petition filed before Hon"ble High Court".

17. Resultantly, the impugned order directs the petitioner to recalculate the benefits and disburse the same, to the respondent-decree holder, and file compliance.

18. Aggrieved thereby, the petitioner is before this Court, in the present

proceedings, under Article 227 of the Constitution of India.

19. Inasmuch as the challenge, in the present petition, is to the order passed by the learned ADJ, and the record of the learned ADJ was available before this Court, detailed arguments, advanced by learned Senior Counsel for the petitioner, as well as learned counsel for the respondent (who was on caveat), were heard, and judgement was reserved.

20. Mr. K. K. Rai, learned Senior Counsel appearing for the petitioner, submitted that the learned ADJ had fallen in error in upholding grant of monetary benefits, to the respondent, in as much as the stipulation, in para 10 of the award, dated 26th November, 1997, that back wages and the benefits of back wages and continuity of service would be available, to the respondent "from 30.9.88 up to the date of his reinstatement with all benefits attached to this post" has never been altered or changed. Mr. Rai also submits that the learned ADJ could not have entertained the Execution Application of the respondent, 18 years after the award, in view of the period of limitation stipulated in Article 136 of the Limitation Act, 1963 (hereinafter referred to as "the Limitation Act").

21. Mr. Ashish Virmani , appearing for the respondent, on the other hand, adopted the reasoning of the learned ADJ, as contained in the impugned order, dated 5th September, 2018.

22. I am of the opinion that both submissions, of Mr. Rai, merit acceptance, and that the impugned order, dated 5th September, 2018, cannot sustain.

23. Mr. Rai is correct in pointing out that the grant of full back wages and continuity of service to the respondent, vide the award dated 26th November, 1997, was from 30th September, 1988 till the date of his reinstatement, and that this stipulation has not been challenged at any point of time thereafter. Para 10 of the award, dated 26th November, 1997, which deals with the aspect of back wages, holds, plainly, that

(i) the respondent was responsible for unnecessary delay in approaching the Industrial Tribunal,

(ii) the respondent had first approached this Court, and reference was received, by the Industrial Tribunal, only on 30th September, 1988, though the services of the respondent had been terminated on 1st June, 1981,

(iii) the respondent was not entitled to back wages from the date of his termination till the date of reference to the Industrial Tribunal, i.e. from 1st June, 1981 to 30th September, 1988, and

(iv) it was, therefore, ordered that the respondent be reinstated with full back wages and continuity of service from 30th September, 1988 up to the date of his reinstatement.

24. The respondent, understandably, has been seeking to capitalise on the "correction", by the Industrial Tribunal, vide order dated 19th November, 2015

supra, of the aforementioned award dated 26th November, 1997, on the application preferred by the respondent. The impugned order, dated 5th September, 2018, of the learned ADJ, has interpreted para 4 of the order dated 19th November, 2015 supra, of the Industrial Tribunal, as granting continuity of service, to the respondent, from 1st June, 1981. I am unable to agree. In fact, in my view, the "correction", qua the date of termination of the respondent, as effected in para 10 of the award dated 26th November, 1997, vide para 4 of the order dated 19th November, 2015, was no correction at all. Para 4 of the order, dated 19th November, 2015 supra, of the Industrial Tribunal, holds that "date of termination of the workman in fact is 01.06.1981 instead of 30.09.1988 as mentioned in the concluding part of para 10 of the award dated 26.11.1997".

25. With due respect to the Industrial Tribunal, I find it impossible to comprehend this observation. There is no reference, in the concluding part of para 10 of the award, dated 26th November, 1997, to any date of termination of the workman, far less to the workman having been terminated on 30th September, 1988. The only reference, to the date of termination of the respondent-workman, is to be found in the second sentence of para 10, which holds, clearly, categorically and correctly, that the services of the respondent were terminated "on 1.6.81". Having noticed this fact, the award dated 26th November, 1997, consciously restricted the benefits, granted to the respondent, for the period "from 30.9.88 up to the date of his reinstatement". As has been correctly submitted by Mr. Rai, this stipulation remains unaltered, till date. The date of termination, in para 10 of the award dated 26th November, 1997, has been noted, correctly, as 1st June, 1981 - which is why, in my opinion, the supposed correction, in para 10 of the award dated 26th November, 1997, by para 4 of the order dated 19th November, 2015, was no correction at all.

26. At the cost of repetition, it may be noted that the conscious restricting, by the Industrial Tribunal, in the award dated 26th November, 1997, of the benefits available to the workman, to the period from 30th November, 1988, being the date when the reference was received by the Industrial Tribunal, till the date of his reinstatement, remains unaltered. The learned ADJ, as an executing court was bound, while passing the impugned order dated 15th September, 2018, by the terms of the award, dated 26th November, 1997, and the benefits granted to the respondent-workman thereunder. These benefits were restricted to the period from 30th September, 1988 till the date of reinstatement of the respondent. An executing court, it is trite, cannot go behind, or beyond, the decree which it seeks to execute. It has, therefore, to be held that, in granting monetary benefits, albeit on a notional basis, to the respondent, commencing from 1st June, 1981, the learned ADJ has erred, and the impugned order, dated 5th September, 2018, consequently cannot sustain the scrutiny of law.

27. Mr. Rai's objection to the learned ADJ having entertained the Execution Petition, of the respondent, unmindful of the delay occasioned in filing the same, too, has force. The reliance, by the learned ADJ, on the order, dated 9th

February, 2015, passed by this Court in WP (C) 3/2014, is completely misconceived. Para 2 of the said order, which stands reproduced hereinabove, and on which the learned ADJ has placed reliance, does not even grant liberty, to the respondent, to file an execution petition, far less embolden him to do so, 18 years after the passing of the Award which was being sought to be executed. All that is said, in para 2 of the order dated 9th February, 2015, is that, by virtue of Section 11(9) of the ID Act, an award, of the Labour Court or of an Industrial Tribunal, is executable like a decree of a civil court and that, therefore, if the respondent was seeking any benefits on the basis of the award dated 26th November, 1997, he would have to do so by way of an execution application. In fact, the observation, by this Court, in the said para of the order dated 9th February, 2015 in WP (C) 3/2014, to the effect that the decree of the Labour Court would be executable like the decree of a civil court would, ipso facto, attract Article 136 of the Limitation Act. An execution petition, under the said Article, has necessarily to be filed within 12 years of the passing of the decree sought to be executed. Ex. P. 5522/2016, having been preferred by the respondent 18 years after the passing of the award, of which he was seeking execution, was clearly barred by time. The finding, of the learned ADJ, to the contrary, is obviously erroneous, and is also, therefore, liable to be set aside.

28. For the reasons aforesaid, I am of the opinion that the impugned order, dated 5th September, 2018, is unsustainable on facts as well as in law. It is, accordingly, quashed and set aside with consequential relief to the petitioner, if any.

29. The writ petition is, accordingly, allowed, albeit with no order as to costs.