

(2014) 11 DEL CK 0295

In the Delhi High Court

Case No : Writ Petition (Civil) 14/2012 and CM No. 10761/2012

Ajay Service Station

APPELLANT

Vs

Dilbagh Singh

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Citation : (2014) 11 DEL CK 0295

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Sanat Kumar, Sr. Advocate and B.S. Sapra, Advocate for the Appellant; Akarsh Bhalla, Advocate for the Respondent

Judgement

Suresh Kait, J.—Vide the present petition the petitioner has assailed the award dated 05.10.2010 passed by learned Industrial Tribunal, Karkardooma Courts, Delhi.

2. The present petition is the second round of litigation before this Court. Earlier vide ex-parte award dated 15.01.2005 the learned Tribunal granted reinstatement with payment of full back wages in favour of the respondents/workmen.

3. The petitioner challenged the same before this Court in W.P(C) No.10894/2006. The same was allowed vide order dated 16.02.2009 by setting aside the ex-parte award dated 15.01.2005. Accordingly, directed the parties to appear before the Industrial Tribunal-I, Karkardooma Courts, Delhi on 03.03.2009.

4. It is pertinent to mention here that aforesaid ex-parte award was set aside subject to cost of Rs.25,000/- to be paid by the petitioner.

5. Order sheets dated 03.03.2009 and 24.03.2009 of the Tribunal reveal that appeared none on behalf of the parties. A notice was issued to Workman on 24.03.2009, however, Mr.Saurabh Munjal, authorised representative appeared on

behalf of the management petitioner. Since appeared none on behalf of the workman, notice was directed to be issued at the address of Union, returnable on 28.05.2009. Ultimately, Sh.Kailash Kumar, authorised representative appeared for workman and Sh.Saurabh Munjal appeared on behalf of the management on 14.01.2010. Thereafter, appeared none on behalf of the management on 21.01.2010 and 26.04.2010.

6. I note, on 20.05.2010 Sh.Jitesh Pandey and Saurabh Munjal appeared on behalf of the petitioner management who submitted that they did not have instructions from their client in the case. Accordingly, the learned Tribunal recorded as under:-

"Hon"ble High Court vide its order dated 16.02.2009 had set aside the exparte award against the management subject to cost of Rs.25,000/-. Neither the cost has been paid nor the WS has been filed. Rather ARs of the Management submit that they have no instructions. In these circumstances Management is proceeded with exparte."

Thereafter, case was fixed for ex-parte evidence of workman on 07.08.2010.

7. It is important to note that the order dated 20.05.2010, whereby the petitioner was proceeded ex-parte, was not challenged by the petitioner management. On 07.08.2010 also appeared none on behalf of the management. The learned Tribunal accordingly passed order as under:-

"Neither the management has paid the cost nor anybody has appeared on behalf of the management. The AR for the workman has adopted his evidence recorded earlier. Since the management has already been proceeded with exparte earlier, therefore, after adopting his earlier evidence, the AR for the workman also does not want to lead additional evidence. Let his statement be recorded separately."

8. Thereafter, the matter was fixed for arguments on 20.08.2010. On 20.08.2010 and 05.10.2010 appeared none on behalf of the petitioner management. However, vide order dated 05.10.2010 the learned Tribunal passed its order at 2.30 P.M as under:-

"Vide separate award, the award dated 15.01.2005 passed by Industrial Tribunal is revived except as regards relief of reinstatement to workman Raj Singh, who has expired after passing of award dated 15.01.2005.

Copy of this award as well as copy of award dated 15.01.2005 be sent to Govt. of NCT for publication and file be consigned to record room."

9. On the same date the impugned award was passed as under:-

"1. Workman have raised the present industrial dispute through Union and on failure of conciliation proceedings, GNCT of Delhi referred the dispute to this Tribunal for adjudication in following terms of reference:-

"Whether the services of workmen as shown in Annexure "A" have been

terminated illegally and/or unjustifiably by the management and if so, to what relief are they entitled and what directions are necessary in this respect?"

Dispute has been raised by following 8 workmen:-

1. Sh.Dilbagh Singh S/o.Ram Kla
2. Sh.Raj Singh S/o. Sh.Phool Singh
3. Pardeep Chouhan S/o. Sh.Mahesh Chander
4. Sh.Ram Kumar S/o. Late Sh.Umrao Singh Sharma
5. Sh.Dhiraj Negi S/o. Late Sh.Dev Singh
6. Sh.Mahesh Mishra S/o. Late Sh.Kedar Nath Mishra
7. Sh.Mahaveer S/o. Sh.Jeet Ram
8. Sh.Virender S/o. Sh.Chander Bhan

3. Vide award dated 15.01.2005, Ld.Predecessor Court passed award in favour of workmen and against the management directing the management for reinstatement of workmen with full back wages and continuity of services. No dispute award was passed qua Sh.Mahesh Mishra. Thus reference was answered in favour of all workmen except Workman Sh.Mahesh Mishra.

4. Vide order dated 16.02.2009 of Hon"ble High Court, award dated 15.01.2005 was set aside subject to cost of Rs.25,000/-. The said cost has not been paid by the management. Ld.AR Sh.Kailash Sharma for the workman has given his statement, praying that award dated 15.01.2005 passed by the Industrial Tribunal No.1 be revived except as regard the relief of reinstatement to workman Raj Singh, who has expired after passing of the said award dated 15.01.2005.

5. Since, the cost of Rs.25,000/- imposed by the Hon"ble High Court has not been paid by the management, award dated 15.01.2005 passed by the then Industrial Tribunal is revived except as regards relief of reinstatement to workman Raj Singh, who has expired after passing of award dated 15.1.2005.

6. Copy of the award as well as copy of award dated 15.01.2005 be sent to GNCT of Delhi for publication. File be consigned to record room."

10. It is important to note that the petitioner has not deposited the amount of Rs.25,000/- imposed by this Court vide order dated 16.02.2009. Counsel appearing on behalf of the petitioner submits that the petitioner is ready to pay the cost amount.

11. Mr.Sanat Kumar, learned counsel appearing on behalf of the petitioner submits that Sh.Jitender Pandey and Sh.Saurabh Munjal who appeared before the Tribunal were not the authorised representative of the petitioner and if they informed the Tribunal that they did not have any instructions, in that eventuality the Tribunal was supposed to send notice to the petitioner. However, the Tribunal

failed to do so.

12. Learned counsel further submits that the petitioner had no knowledge about the proceedings pending before the Tribunal, therefore, appeared none on behalf of the petitioner. Moreover the respondents/workmen led no evidence before the Tribunal and in such an eventuality the impugned order dated 05.10.2010 is liable to be set aside.

13. Learned counsel further submits that the earlier award dated 15.01.2005 has already been set aside by this Court, therefore, the said award cannot be allowed to be implemented pursuant to order dated 05.10.2010.

14. To strengthen his arguments, learned counsel has relied upon the case of Malkiat Singh and Another Vs. Joginder Singh and Others, wherein the Apex Court observed as under:-

"There is no denying the fact that the appellants had engaged a counsel to defend him in the civil suit. The counsel for the appellants pleaded "no instructions" but the court did not issue any notice to the appellants, who were admittedly not present on the date when their counsel reported no instructions in the court. It is nobody's case that the counsel informed them after he had reported no instructions to the court. The appellants only came to know about the order dated 18.11.1991 and the ex parte decree dated 8.2.1992 when they approached their counsel on 6.6.1992. It was within four days thereafter that the appellants filed an application under Order 9 Rule 13 CPC for setting aside the order dated 18.11.1991 and the decree dated 8.12.1992."

15. Learned counsel also relied upon case of Tahil Ram Issardas Sadarangani and others Vs. Ramchand Issardas Sadarangani and another, wherein the Apex Court held as under:-

"It is not disputed in the present case that on March 15, 1974 when Mr. Adhia, advocate withdrew from the case, the petitioners were not present in court. There is nothing on the record to show as to whether the petitioners had the notice of the hearing of the case on that day. We are of the view, when Mr. Adhia withdrew from the case, the interests of justice required, that a fresh notice for actual date hearing should have been sent to the parties. In any case in the facts and circumstances of this case we feel that the party in person was not at fault and as such should not be made to suffer."

16. Learned counsel for the petitioner submits that there is no evidence of the respondents/workmen to the effect that they have completed more than 240 days in the calendar year and in the absence of any evidence the award passed by the learned Tribunal is liable to be set aside.

17. To strengthen his argument on this issue, learned counsel for the petitioner has relied upon the case of The Range Forest Officer Vs. S.T. Hadimani, whereby the Apex Court held that where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the

employer, in that eventuality, it was for the claimant to lead evidence to that effect.

18. Fact remains that vide order dated 16.02.2009 passed by this Court an ex-parte award dated 15.01.2005 was set aside subject to payment of cost of Rs.25,000/- and case was remanded back to the Tribunal. It is an admitted fact that till date the aforesaid cost has not been deposited by the petitioner. The argument of the counsel for the petitioner that the petitioner was not aware about the proceedings pending before the Tribunal, therefore, they could not appear deposit the cost amount otherwise there was no point not to deposit the said cost especially when the earlier award passed by the learned Tribunal has been set aside in favour of the petitioner.

19. The aforementioned arguments have bearing for the reason that on 16.02.2009, counsel for the petitioner appeared and parties were directed to appear before the Tribunal on 03.03.2009.

20. It is admitted fact that during the pendency of the proceedings before the Tribunal the petitioner did not bother to authorise any of the representatives to represent their case. In this manner, the petitioner enjoyed order dated 16.02.2009 passed by this Court and the respondents/workmen were left in lurch.

21. The other fact is also admitted that the respondents/workmen filed their claim in the year 2004 against the termination from the service. Since 2004 they are running to get justice. Firstly they raised dispute before the Tribunal, however, petitioner preferred not to appear. When the earlier award was set aside by this Court subject to cost of Rs.25,000/- even thereafter the petitioner did not appear. Thus the petitioner enjoyed the services of respondents / workmen without paying any amount. Moreover, the cost amount has not been paid even after passing 5 years from the order passed by this Court. Thus, the respondents/workmen have been compelled to initiate further legal proceedings by engaging counsel, spending time and wasting energy.

22. Moreover, the workmen have appeared in the witness box and have been examined as under:

"Sh. Dilbagh Singh has been examined as WW1 who has filed his affidavit Ex.WW1/1 and relied upon the documents Ex.WW1/A to WW1/F. Sh. Ram Kumar has been examined as WW2 who has filed his affidavit Ex.WW2/1 and relied upon the documents Ex.WW2/A to Ex.WW2/F. Sh. Raj Singh has been examined as WW3 who has filed his affidavit Ex.WW3/1 and relied upon the documents Ex.WW3/A to WW3/F. Sh. Pradeep Kumar has been examined as WW4 who has filed his affidavit Ex.WW4/1 and relied upon the documents Ex.WW4/A to WW4/F. Sh. Vijender Singh has been examined as WW5 who has filed his affidavit Ex.WW5/1 and relied upon the documents Ex.WW5/A to WW5/F. Sh. Dheeraj Singh has been examined as WW6 who has filed his affidavit Ex.WW6/A and relied upon the documents Ex.WW6/A to WW6/F. Sh. Manveer Singh has been examined as WW7 who has filed his affidavit Ex.WW7/1 and relied upon the

documents Ex.WW7/A to WW7/F.

23. Though Rs.2000/- per respondent/workman has been paid towards litigation expenses, in my considered opinion that is not sufficient for the journey of litigation for justice.

24. In view of the above I find no discrepancy in the order dated 05.10.2010 passed by learned Tribunal. The present petition is dismissed with cost of Rs.1 lakh to be paid in favour of the respondents/workmen within four weeks from today.

25. I further direct the petitioner to pay an amount of Rs.25,000/- pursuant to order dated February 16, 2009 with interest at the rate of 12% per annum from the said date till deposit of the amount in favour of the respondents/workmen.

26. As submitted by the counsel for the parties, the impugned award dated 05.10.2010 has not been passed in favour of respondent no.6. Therefore, respondent no.6 is not entitled to receive the amount to be paid by the petitioner pursuant to order passed by this Court. Respondent No.2 Sh.Raj Singh son of Sh.Phool Singh has expired. Therefore, the counsel for the respondents / workmen shall bring the legal heirs of the respondent no.2 on record before the Registrar within one week.

27. I hereby make it clear that after bringing the legal heirs of the respondent no.2 on record, the proportionate amount shall be released in favour of the legal heirs of the respondent no.2 including the cost amount imposed by this Court.