
(2009) 02 DEL CK 0264

In the Delhi High Court

Case No : Writ Petition (C) No. 2858 of 2007

Alex P. Mohan

APPELLANT

Vs

Govt. NCT Delhi and Others

RESPONDENT

Date of Decision : 18-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 25F, 25K, 25O, 25O(6)

Citation : (2009) 02 DEL CK 0264

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Manoj V. George, for the Appellant; K.C. Dubey, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By way of the present petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the alleged action of the respondent in terminating the service of the petitioner and setting aside the impugned order dated 4.1.2007 passed by the Presiding Officer, Labour Court-V.

2. Brief facts of the case relevant for deciding the present appeal are as under:

3. The workman Shri Alex P. Mohan was appointed in management company on 21.6.91 as a garment checker and at that time his consolidated salary was Rs. 1800/- p.m. He was given additional responsibilities and was placed in embroidery department as a Quantity Checker/Controller and his last drawn salary was Rs. 10,550/- p.m. According to the workman, he was performing his duties with due diligence and honesty but for raising demand for legal benefits, his services were terminated by the management on 3.3.2005 without assigning any reason or show cause notice. Aggrieved with the said illegal termination, he raised an industrial dispute and upon reference by Secretary, Labour Deptt. an award was passed by the Labour Court, Karkardooma, Delhi on 4.1.2007. Aggrieved with the said award the present writ petition has been preferred by

the workman.

4. Counsel for the petitioner submits that proper procedure as envisaged u/s 25-O of the Industrial Disputes Act was not adhered to by respondent No. 2 before taking a decision to close down their unit. Counsel for the petitioner further submits that admittedly 100 to 125 employees were working in respondent No. 2 when the closure took place as would be evident from the cross-examination of MW1 Jagdamba Prasad, who in his cross-examination stated that there were about 100-125 employees when the closure took place. Contention of the Counsel for the petitioner is that clearly the provision of Section 25-K of the Industrial Disputes Act was attracted which deals with all those establishments in which not less than 100 workmen were employed on an average per working day for the preceding 12 months. Counsel further submitted that in view of the fact that no proper procedure was adopted by the management to close down its unit as envisaged u/s 25-O of the Industrial Disputes Act, therefore, the petitioner became entitled to all the benefits as if the said unit was not closed as provided u/s 25-O(6) of the Industrial Disputes Act. Counsel for the petitioner further submits that on the pleadings of the parties the Tribunal was to deal with the issue of grant of closure benefits to the petitioner and the Tribunal has committed grave illegality in not properly deciding the said issue ignoring the provisions of Section 25-K, 25-O(i) and 25-O(6) of the Industrial Disputes Act. In support of his argument Counsel for the petitioner also placed reliance on the judgment of the Apex Court reported in Hindalco Industries Ltd. Vs. Union of India (UOI) and Others,

5. Refuting the said submissions made by the Counsel for the petitioner, Counsel for the respondent submits that the petitioner has raised altogether new issues which were never raised by him before the Labour Court and therefore, once the Labour Court had no occasion to deal with such issues then the validity of the same cannot be decided by this Court while exercising power of judicial review over the order passed by the Labour Court. Counsel for the respondent further submitted that only issue before the Lower Court was to examine as to whether the respondent offered closure benefits to the petitioner and the same were refused by him or not. The evidence was led by the respective parties on the said issue and the learned Labour Court came to the conclusion that the amount of the closure benefits offered by the respondent were less than that of the amount payable and accordingly awarded a sum of Rs. 48,508/- with interest @ 9% per annum till the final realization of the said amount. In addition to the award of the said amount the Labour Court also awarded a sum of Rs. 10,000/- towards the litigation expenses in favour of the petitioner. Counsel for the respondent thus submits that the petitioner cannot rake up the controversy of non-compliance of the procedure by the respondent as envisaged u/s 25-O of the Industrial Disputes Act before the closure of their unit. Counsel for the respondent further submits that the judgment of the Apex Court in Hindalco Industries Ltd. (supra) is not applicable to the facts of the present case.

6. I have heard learned Counsel for the parties and perused the record.

7. The petitioner in his statement of claim filed before the Labour Court raised the grievance of his illegal termination and claimed his reinstatement with full back wages and continuity of service. The respondent management in their written statement besides raising various legal and factual objections mainly contended that its entire business and manufacturing activities were closed down w.e.f. 28.2.2005 and consequently it offered all legal dues to all the employees working with them including the present petitioner. The respondent also averred that since they had closed down their business activities, therefore, there was no job left for the claimant after the closure of their establishment. The respondent management also offered payment of all legal dues to the petitioner, but he himself did not come forward to accept the dues but preferred to file a false case against the respondent. Based on the said pleadings the Tribunal framed the following issues:

1. Whether the workman was offered closure benefits and the same were refused by him?

2. Relief.

8. Both the parties led evidence on the said issues and the Labour Court found that refusal on the part of the petitioner to accept the closure benefits as were being offered to him by the management was justified as the said offer made by the management was not in accordance with the mandate of Section 25-F of the Industrial Disputes Act. On issue No. 2 the Labour Court gave directions to the respondent management to pay a sum of Rs. 38,508/- towards the compensation payable u/s 25-F of the Industrial Disputes Act and a sum of Rs. 10,000/- towards wages in lieu of one month notice. It would be thus apparent that the controversy which the petitioner has raised in the present writ petition and as canvassed by the Counsel for the petitioner was not before the Labour Court as no such case was set up by the petitioner that the closure of the establishment of the respondent was not as per the mandate of Section 25-O of the Industrial Disputes Act.

9. Although the amplitude of plenary powers of the writ Court under Article 226 are very vast but normally while exercising power of judicial review to test the legality and validity of the order of any adjudicating Authority it will not deal with those issues which were never tried by such Authority. In the present case the legality, correctness and validity of the order of the Labour Court is under scrutiny and when no controversy with regard to the illegal closure of the respondent was taken up by the petitioner before the Labour Court then I am at loss, as to how the petitioner can be allowed to rake up such a controversy at this stage more particularly when the Labour Court had no occasion to give any finding on the same. In this regard the Hon'ble Apex Court in *Krishi Utpadan Mandi Samiti v. Arvind Chaubey*, (2002) 9 SCC 549 observed as under:

2. Learned Senior Counsel for the appellant contended that the appellant Mandi

Samiti is not an "industry" governed by the provisions of the U.P. Industrial Disputes Act, 1947. The High Court has held against the appellant on the ground that such a contention was not canvassed before the Industrial Tribunal and also following an earlier decision of another Bench, the High Court dismissed the writ petition. Once the appellant did not raise such a contention before the Industrial Tribunal, it was not available to be canvassed higher up.

10. The judgment of the Apex Court reported in Hindalco Industries Ltd. (Supra) with great respect shall not be applicable in the facts of the present case as the matter before the Apex Court was that the mining activity was closed by the company without following the mandate of Section 25-O of the Industrial Disputes Act and one of the contentions raised by the company was that Section 25-O would be applicable only in a case where the closure by the management is voluntary and without any force. Repelling the said contention of the management, the Apex Court held that Section 25-O of the Industrial Disputes Act would also apply to a case of planned and intended closure. Scenario in the present case is entirely different as no such controversy was raised by the petitioner before the Labour Court, therefore, the said judgment of the Apex Court is of no help to the petitioner.

11. In the light of the above discussion, I do not find that there is any merit in the present writ petition. The same is hereby dismissed.