
(2009) 01 DEL CK 0063
In the Delhi High Court
Case No : Writ Petition (C) No. 408 of 2009

Anil Sethi

APPELLANT

Vs

Shri Satish

RESPONDENT

Date of Decision : 27-01-2009

Acts Referred:

Citation : (2009) 157 DLT 552 : (2009) 121 FLR 748 : (2009) 3 LLJ 396 :
(2009) 2 SLJ 361

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : J.S. Bhasin, for the Appellant; Nemo, 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 award dated 30.8.2007.

2. Counsel for the petitioner states that the tribunal has not taken note of the averments and the stand taken by the petitioner management in his written statement wherein it was clearly stated that the petitioner had already closed its business.

3. The contention of the counsel for the petitioner is that in such circumstances Section 25-F could not have been attracted and it is only Section 25-FFF which will attract in the facts of the present case. Counsel for the petitioner further submits that even a specific issue in this regard was framed by the tribunal i.e. Issue No. 2 and the said issue was only framed after taking into consideration the stand of the petitioner management pleading closure of its business, otherwise in normal circumstances such issue could not have been framed by the Tribunal. Counsel for the petitioner also submits that simply because of the fact that the petitioner did not appear before the tribunal, no adverse inference could have been drawn by the tribunal against him. In support of his arguments

counsel for the petitioner has placed reliance on the judgment of the Apex Court in *Municipal Corporation, Faridabad Vs. Siri Niwas*, . Counsel for the petitioner also placed reliance on yet another judgment of the Apex Court in *District Red Cross Society Vs. Babita Arora and Others*, , to support his contention that Section 25-FFF was attracted on account of the closure of the business of the petitioner.

4. I have heard learned Counsel for the petitioner at considerable length and perused the record.

5. No doubt the tribunal has framed the Issue No. 2, based on the stand of the petitioner taken in written statement to prove whether the management stands closed, if so its effect. Issue No. 2 was decided by the tribunal against the petitioner management by holding that the burden to prove this issue lay upon the management but the management had filed no document to show closure of the business of the management and therefore there being no cogent evidence placed on record by the petitioner management before the tribunal to show that its business activities were closed w.e.f. 1.7.2003, the issue was answered against the management petitioner.

6. Along with the present petition, the petitioner has placed reliance on some documents to show that the business of the petitioner management stood closed in the year 2003.

7. It is a settled legal position that the Tribunals/Labour Courts are the final courts as far as findings of facts are concerned. In this regard the Hon'ble Apex court in *Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another*, observed as under:

17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned Single Judge and in ordering restoration of the award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned Single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of

consideration undertaken, the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go by even to the facts specifically found by the Tribunal below.

8. The facts are to be pleaded and proved before the labour courts/tribunals, as this Court, under Article 226 of the Constitution of India, while exercising the jurisdiction of judicial review has to examine whether based on the facts pleaded by the parties, documents produced on record and the evidence proved in support of their respective stands, the order passed by the tribunals/labour courts is either perverse or illegal. Simply, if the petitioner management has taken some stand in the written statement the same will not suffice as any such stand as a matter of fact has to be proved and substantiated by leading cogent evidence. It is true that although strict rules of evidence may not be applicable in the industrial adjudication but still it cannot be held that without proving a particular fact before the Tribunal the party can be allowed to agitate the same issue before the Writ Court. It was obligatory upon the petitioner to have proved its stand before the tribunals to establish the said fact of its closure and once having not done so, the petitioner cannot agitate the said issue before the Writ Court. The written statement as per the counsel for the petitioner was filed by the petitioner on 24.5.2007 stating the fact that its business was closed w.e.f. 1.7.2003. Admittedly, no document was placed by the petitioner to support the said fact of closure of its business w.e.f 1.7.2003, as would be borne out from the findings given by the tribunal on the Issue No. 2, stating that the management had failed to file any document to show closure of its business. This court while exercising writ jurisdiction cannot give any weightage to any document now being placed by the petitioner which was never placed by the petitioner before the tribunal. Both the aforesaid judgments cited by the counsel for the petitioner are not applicable to the facts of the present case.

9. I do not find any merit in the present petition. The same is hereby dismissed at the admission stage itself.