
(2006) 07 DEL CK 0161

In the Delhi High Court

Case No : Writ Petition (C) No. 865 of 1996

Babu Ram Sagar

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 05-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F, 25G, 25H

Citation : (2007) 1 LLJ 930

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The petitioner was appointed as a Peon on daily wage basis with M/s. Delhi Khadi and Village Industries Board with effect from December 5, 1987. Thereafter, he was taken as Chowkidar on regular pay-scale of Rs. 750-950 plus admissible allowances on March 23, 1988. He had been serving in the aforesaid post when on a complaint lodged by another. Chowkidar Mr. Ajab Singh on November 6, 1991, his services were terminated. In the complaint it is alleged that the petitioner brought a lady in the office and on the complaint by someone to the Police Control. Room, the police party came to the office of the management. According to the management, this has been such an ugly incident that the good-will of the management was at stake. It is also mentioned that at that relevant time, office of the management was at ISBT and the location of the office was sensitive from the security point of view and Delhi Police had also emphasized from time to time to take care to avoid such incidents. Before terminating his services, no charge sheet was served or enquiry held and petitioner was also not given any retrenchment compensation. He, Therefore, treated his termination as mala fide, illegal and in violation of Sections 25F, G & H of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") and raised an industrial dispute which was referred to respondent No. 1 for adjudication and culminated in award dated September 28, 1995.

2. The learned Labour Court in this impugned award has held that termination of the services of the petitioner was in violation of Section 25-F of the Act and, Therefore, illegal. However, in the form of relief, petitioner is given damages/ compensation of Rs. 40,000. Petitioner is aggrieved against this award insofar as it denies the petitioner relief or reinstatement with full back wages and hence this petition is filed challenging the impugned award to the aforesaid extent.

3. The reason because of which the learned labour Court granted compensation of Rs. 40,000 and denied the relief of reinstatement is found in paras 30 & 31 of the award, which are reproduced below:

30. The management has filed the noting dated November 6, 1991 of the official/ officers of the management when they arrived at the decision to terminate the services of the workman. In this noting it is mentioned that Babu Ram remained under suspension from May 8, 1990 to August 29, 1990 as during the period from March, 1988 to May, 1990 he was found disrespectful and disobedient. An enquiry was made under Rule 40 of the CCS (CCA Rules 1965). It is an admitted fact that the workman was reinstated afterwards. It has been further mentioned in the noting that claimant was in the habit of remaining absent from duty. It has been further mentioned that the office of the management is situated in I.S.B.T. Building Kashmere Gate, Delhi - 6 and the notes state that police has confirmed about certain complaints regarding the happening in the office of the management. While Babu Ram alleged, that it was he who has made complaint regarding drinking wine by other officers and officials of the management. The allegation of the management is that they suspected that Babu Ram has not been doing, his duty faithfully. The management has also alleged that November 8, 1991 the office was found closed and the claimant was on duty on that morning, he locked the main gate and failed to open the same when the office was to be opened. Although it is true that the management has not proved the allegations against Babu Ram by any satisfactory evidence on the record yet the facts remain that from plea taken by the management in the written statement and the noting dated November 6, 1991 regarding to the reasons of the termination of the service of the workman it becomes clear that there was a case of loss of confidence by the management in their employee Babu Ram Sagar, chowkidar. In these circumstances in the opinion of the Court to direct the reinstatement of the workman would not be conclusive to the proper functioning of the management because the claimant was working as a chowkidar of the office of the management situated at the building which was at I. S.B.T. Delhi besides this more than three years have elapsed since the termination of the service of the workman.

31. In the facts and circumstances of the case in the opinion of the Court it would be proper that a lump sum amount should be awarded to the workman by way of compensation for reinstatement as well as back wages. In his affidavit in evidence Babu Ram has mentioned that he was drawing salary of Rs. 62 plus other allowance. Keeping in view the salary that was being paid to the claimant

at the time when his services were terminated and the further fact is that the management has not established that the claimant is gainfully employed after the termination of service, in the opinion of the Court Rs. 40,000 (Rs. Forty Thousand Only) would be an adequate amount for such compensation. Therefore, it is held that the services of Babu Ram have been terminated illegally by the management and in lieu of reinstatements consequential benefits the management shall pay the workman the lump sum compensation of Rs. 40,000 to the workman.

4. It is clear that certain allegations against the petitioner alleging that he was disrespectful and disobedient weighed with the learned labour Court to come to the conclusion that it was a case where the management had lost confidence in the petitioner and, Therefore, the relief of reinstatement was denied. In order to act on the aforesaid allegations leveled by the management against the petitioner, the learned labour Court relied upon the plea taken by the management in the written statement as well as note dated November 6, 1991 in its record while arriving at a decision to terminate the services of the petitioner. At the same time, learned labour Court has observed that management has not proved the allegations by any satisfactory evidence on their record, in view of this fact that no such satisfactory evidence was produced in respect of the plea that petitioner was found disrespectful and disobedient, I am of the opinion that it was a clear case of loss of confidence by the management in their employee i.e., the petitioner herein. Having said so, at the same time, I am of the view that it is not necessary to grant the relief of reinstatement because of the following factors:

- (a) the services of the petitioner were terminated on November 6, 1991 i.e., more than 14 years ago, though dispute raised by him was adjudicated upon and award was passed on August 29, 1995 i.e., about four years after his termination;
- (b) relief of reinstatement was not granted by the Labour Court and more than 10 years have passed since then; and
- (c) it is unbelievable that the petitioner has remained unemployed during all this period.

No doubt in the award it is mentioned that the management has not been able to prove that the petitioner got any employment, but having regard to the recent judgment of the Supreme Court in Allahabad Jal Sansthan Vs. Daya Shankar Rai and Another, , the onus is on the workman to prove that he remained unemployed. Petitioner was only a Chowkidar i.e., Class-IV 1 employee. Keeping in view the nature of the job performed by the petitioner it is highly improbable that he would not have got alternate job. The jurisdiction under Article 226 of the Constitution of India is discretionary and taking into consideration the aforesaid factors, I am not inclined to exercise this discretionary jurisdiction in the instant case. It is also to be borne in mind that from the date of appointment till his termination he was in service for about four years only and thereafter there is a

break of more than 14 years. Therefore, it would not be proper to interfere with the discretion exercised by the Labour Court in denying the relief of reinstatement because of these reasons, though reason given by the Labour Court may not be convincing.

5. Writ petition is accordingly dismissed with no order as to costs.