

(2007) 10 DEL CK 0252

In the Delhi High Court

Case No : Writ Petition (C) No's. 8875-78 of 2004

Balram Dass (Deceased) through LR's and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 09-10-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B, 25F, 25G, 25H

Citation : (2008) 150 DLT 161 : (2008) 118 FLR 353 : (2008) 3 LLJ 286 :
(2009) 3 SLJ 262

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Varun Prasad, for the Appellant; Richa Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The present writ petition is filed by the petitioner workmen challenging the award dated 2.9.1998 passed by the Central Government Industrial Tribunal (hereinafter referred to as "the Tribunal") by which the respondent/CPWD was directed to pay compensation of Rs. 10,000/- to the four petitioner workmen for the reason that the termination of their services by the respondent/CPWD was held to be bad for non-compliance with the provisions of Section 25G of the Industrial Disputes Act (for short "the Act"), but it was held that since none of the petitioner workmen had completed 240 days of service in any calendar year, Therefore they were not entitled to reinstatement in service. It is prayed that the said award be set aside and directions be issued to the respondent/CPWD to reinstate the petitioner workmen No. 2 to 4 in service w.e.f. 22.4.1984, with full back wages and continuity of service and grant all monetary and consequential benefits to the legal representatives of the petitioner/workman No. 1. (since deceased), w.e.f. 22.4.1984, up to the date of his death, i.e., 1.11.2003.

2. Facts of the case are that allegedly the four petitioner workmen were engaged by the respondent/CPWD on 27.5.1982, 10.4.1973, 15.4.1982 and 10.6.1972

respectively. The services of seven workmen, including the four petitioners in the present case, were terminated by the respondent/CPWD. The services of all the four petitioner workmen were terminated w.e.f. 22.2.1984. The said workmen raised an industrial dispute which was referred for adjudication to the Tribunal in the following terms of reference:

Whether action of management of CPWD in stopping from work Smt. Siddhi Bai, Vijay Kumar Soni, Balram Das, Sunil, Abid Khan, Chaiman Lal, w.e.f. 15.08.1985, 20.3.1982, 12.7.1983, 22.2.1984, 22.2.1984, 22.2.1984 and 22.2.1984 respectively is justified" If not, what relief the above workmen are entitled to.

3. The petitioner workmen filed their statement of claim in which it was stated that all the seven workmen had completed 240 days of service as required u/s 25B of the Act on the day preceding their termination, but the respondent/CPWD did not comply with the provisions of law and natural justice and that their services were wrongfully terminated in violation of the provisions of Section 25F of the Act. The respondent/CPWD, in its written statement claimed that while the first three workmen were never terminated from service and they had voluntarily left their jobs, the four petitioner workmen were engaged only for a short term for contingent work, on daily wages, in the Food Storage Department, and Therefore their services were dispensed with when they were no more required, and that they could not be absorbed on a permanent post.

4. After going through the material placed on the record and after hearing the arguments urged by the representatives of both the parties, the Tribunal passed the impugned award dated 2.9.1998, and held that in the case of the first three workmen, the respondent/CPWD had failed to prove abandonment, and it was directed that they be reinstated with 50% back wages, with immediate effect. However, in case of the four petitioner workmen, it was held that the records show that they had worked only for 42 days in each year starting from 8.2.1983 to 1985. They were thus not found entitled to be reinstated in view of the fact that none of them had completed 240 days of service in any calendar year, and on the basis of the statement of the Deputy Director of the respondent/CPWD, to the effect that certain persons were appointed on temporary and casual basis against the vacancies of the petitioner workmen, as and when need arose, and no offer was sent to the petitioner workmen as was the requirement of law, compensation was awarded to them @ Rs. 10,000/- per person. While the first three workmen challenged the award by filing a writ petition being W.P. (C) No. 4849/2003, which was dismissed as withdrawn by order dated 12.4.2004, the petitioner workmen preferred the present petition to assail the award.

5. During the course of arguments, counsel for the petitioner workmen submitted that he did not wish to press the issue as to whether the petitioner workmen had completed 240 days of service or not. The bone of contention is that the Tribunal overlooked the fact that the services of the petitioner workmen were terminated without complying with the provisions of Sections 25G and 25H of the Act. The attention of the Court was drawn to the affidavits filed by the petitioner workmen

before the Tribunal wherein a clear averment was made to the effect that many persons junior to the petitioner workmen had been retained in service and their service had also been regularized, and the said persons who were alleged to have been retained were also specifically named. It was submitted that the said averment was also made in the statement of claim filed by the petitioner workmen. Reference was made to the written statement filed by the respondent/CPWD before the Tribunal to state that only a bald denial had been made by the respondent/CPWD as against the averments of the petitioner workmen and that the same was not sufficient to discharge the onus placed on it and to disprove the contentions of the petitioner workmen. Reliance was placed on the judgment rendered by a Single Judge of this High Court in the case of Amar Pal (Shri) and Anr. v. MCD reported as 2006 II AD (Delhi) 43 in support of his contention that oral assertions and averment of the petitioner workmen regarding the fact that his juniors were retained while his services were terminated, could have been repelled only by cogent evidence being led by the respondent/CPWD, and in the absence of the same, the provisions of Sections 25G and 25H are deemed to be violated. Reliance was also placed on the following judgments rendered by the Supreme Court:

(i) Workmen of Sudder Workshop of Jorehaut Tea Co. Ltd. v. the Management of Jorehaut Tea Co. Ltd. 1980 (40) FLR 474.

(ii) Municipal Corporation of Delhi Vs. Khacheru, .

6. The second limb of arguments advanced by the counsel for the petitioner workmen was that as against the stand taken by the respondent/CPWD before the Tribunal that the petitioner workmen were appointed for contingent work for a short term and their services were dispensed with when they were not required any more, the case of the petitioner workmen was not covered under the exception clause of Section 2(oo)(bb) of the Act, and was rather a case of retrenchment. It was contended that the burden to prove that the petitioner workmen were indeed taken for a limited purpose, was on the respondent/CPWD, which it failed to discharge. Counsel for the petitioner workmen emphasized the fact that Section 2(oo)(bb) can be invoked only when employment was for a short period, and not in cases where the workman is in continuous employment; otherwise, it would amount to permitting the law to be misused by the employer for the purpose of avoiding its statutory liability. Reliance in this regard was placed on the following judgments:

(i) Ramkishan Vs. Samrat Ashok Technical Institute,

(ii) PWD Thr. Dy. Dir. Horticulture v. Satya Pal 2006 VIII AD (Delhi) 810

7. Counsel for the respondent/CPWD countered the stand taken by the counsel for the petitioner workmen, and stated that the principle of "first come last go" did not apply to the facts of the present case, because the petitioner workmen never summoned the seniority list before the Tribunal. It was urged that merely because a few names had been mentioned in the statement of claim, the same in

itself was not sufficient to establish that the provisions of Sections 25G and 25H of the Act were in fact violated by the respondent/CPWD, especially in view of the fact that no particulars of the place of work or the project on which the persons alleged to have been engaged etc, were given by the petitioner workmen and no positive evidence was led by them to prove their allegations. In this context it was also stated that the judgment of Amarpal Singh (supra), relied upon by the counsel for the petitioner workmen, was distinguishable from the present case on facts and, Therefore, the same was inapplicable to the case in hand.

8. Counsel for the respondent/CPWD further reiterated the stand taken before the Tribunal, that the claim of the petitioner workmen suffered from gross delay and laches as the dispute was raised only in the year 1989, while their services were allegedly terminated in the year 1984. It was also reiterated that the petitioner workmen were appointed only on a short term basis, and Therefore they were covered under the exception to retrenchment as provided u/s 2(oo) (bb) of the Act, and as such there was no need to comply with the provisions of Sections 25G and 25H of the Act.

9. I have heard the counsels for the parties and have perused the documents placed on record. It is relevant to note at the very outset that compensation to the tune of Rs. 10,000/- has already been received by each of the petitioner workmen in terms of the impugned award.

10. Insofar as the first contention of the counsel for the petitioner workmen to the effect that the provisions of Sections 25G and 25H of the Act have been violated in the present case is concerned, there is no quarrel regarding the same. A perusal of the impugned award reveals that the Tribunal, in spite of arriving at a conclusion that the petitioner workmen had not completed 240 days of continuous service, still held that their termination was wrongful for non-compliance of the provisions of Sections 25G and 25H of the Act, and rightly so. The Tribunal took into account the statement of the witness of the respondent/CPWD, Sh. S.C. Gupta, Deputy Director at the relevant time, who stated that some persons were appointed against the vacancies of the petitioner workmen on casual or temporary basis only, without making an offer to the petitioner workmen, as and when need arose, and Therefore it was held that there was violation of the provisions of Sections 25G and 25H of the Act.

11. Section 25G of the Act introduces the rule of "last come first go". Section 25H of the Act provides for re-employment of a retrenched workman and stipulates that in case the employer proposes to take into employment any person, an opportunity has to be given to the retrenched workman to offer himself for re-employment. In view of the various judgments of the Supreme Court in this regard, it is now well settled that continuous service is not a requirement for applicability of the provisions of Section 25G and 25H of the Act. The Supreme Court in Jaipur Development Authority Vs. Ram Sahai and Another, , after referring to a number of its earlier decisions on the issue, has

held as under:

10. Mr. Jain appears to be right when he submits that continuous work in terms of Section 25B of the Act is not necessary in so far as statutory requirements under Sections 25G and 25H are concerned. The said question appears to have been considered by this Court in some decisions.

11. In *Central Bank of India Vs. S. Satyam and others*, , this Court opined:

The next provision is Section 25H which is couched in wide language and is capable of application to all retrenched workmen, not merely those covered by Section 25F. It does not require curtailment of the ordinary meaning of the word "retrenchment" used therein. The provision for reemployment of retrenched workmen merely gives preference to a retrenched workman in the matter of re-employment over other persons. It is enacted for the benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman.

12. Yet again in *Samishta Dube Vs. City Board, Etawah and Another*, , this Court held:

We shall next deal with the point whether, in case employees junior to the appellant were retained, the directions issued by the Labour Court could be treated as valid. Section 6-P of the U.P. Act (which corresponds to Section 25G of the Central Act of 1947) states that where any workman in an industrial establishment is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workmen in this behalf the employer shall ordinarily retrench the workmen who was the last person to be employed in that category, unless for reasons to be recorded, the employer retrenches any other person. Now this provision is not controlled by conditions as to length of service contained in Section 6-N (which corresponds to Section 25F of the Industrial Disputes Act, 1947). Section 6-P does not require any particular period of continuous service as required by Section 6-N. In *Kamlesh Singh v. Presiding Officer* in a matter which arose under this very Section 6-P of the U.P. Act, it was so held. Hence the High Court was wrong in relying on the fact that the appellant had put in only three and a half months of service and in denying relief. (See also in this connection *Central Bank of India v. S. Satyam*.) Nor was the High Court correct in stating that no rule of seniority was applicable to daily-wagers. There is no such restriction in Section 6-P of the U.P. Act read with Section 2(z) of the U.P. Act which defines workman. It is true that the rule of first come, last go in Section 6-P could be deviated from by an employer because the section uses the word ordinarily. It is, Therefore, permissible for the employer to deviate from the rule in cases of lack of efficiency or loss of confidence, etc., as held in *Swadesamitran Ltd. v. Workmen*. But the burden will then be on the employer to justify the deviation. No such attempt has been made in the present case.

Hence, it is clear that there is clear violation of Section 6-P of the U.P. Act.

13. Yet again recently in Regional Manager, S.B.I. Vs. Rakesh Kumar Tewari, , this Court followed Central Bank of India (supra), stating:

Section 25G provides for the procedure for retrenchment of a workman. The respondents have correctly submitted that the provisions of Sections 25G and 25H of the Act do not require that the workman should have been in continuous employment within the meaning of Section 25B before he could said to have been retrenched.

12. As regards the second argument of the counsel for the petitioner workmen that the case of the petitioner workmen was not covered u/s 2(oo)(bb) of the Act, since they were working in a job of a continuous nature for a long period of time and that Therefore termination of their services would very well be covered under the definition of "retrenchment" as provided u/s 2(oo) of the Act, a perusal of the impugned award shows that though a categorical finding to the said effect has not been given, an inference can be drawn to that effect inasmuch as it has been held by the Tribunal that the provisions of Section 25G and 25H of the Act have been violated, for which retrenchment is a prerequisite. The Tribunal came to the said finding after having recorded and considered the plea of the respondent/CPWD to the effect that the petitioner workmen were engaged only as casual labour for a short period on purely temporary basis.

13. Both the grounds urged hereinabove, have been considered by the Tribunal and findings on both the issues were returned in favor of the petitioner workmen. The findings so arrived at are in consonance with the position of law, and do not suffer from the vices of arbitrariness, perversity etc. This Court Therefore does not find any reason to interfere with the impugned award so far as the findings therein are concerned.

14. The only issue that needs to be addressed herein pertains to the relief granted to the petitioner workmen. While awarding a lump sum compensation of Rs. 10,000/- to each of the petitioner workman, in lieu of reinstatement and back wages, the factors which weighed with the Tribunal were that the petitioner workmen had worked for only 42 days in each year starting from 8.2.83 and 1985 and that none of them had completed 240 days of service in any calendar year.

15. In Jaipur Development Authority (supra) also, in spite of coming to the conclusion that the provisions of Sections 25G and 25H of the Act had not been complied with and Therefore the termination order was illegal and unjustified, the Supreme Court still held that reinstatement of the workman would not be the appropriate relief considering that he was only a daily rated workman, and that he was not appointed in accordance with the constitutional scheme of appointment, neither was his work of perennial nature, nor did he prove that when his services were terminated any person junior to him in the same category, had been retained. Accordingly, payment of a lump sum compensation

was deemed to be an appropriate remedy. Reliance in this regard can also be placed on the following judgments:

- (i) Gujarat State Road Transport Corpn., and another Vs. Mulu Amra,
- (ii) Rattan Singh v. Union of India, (1997) 11 SCC 396
- (iii) Murari Lal Sharma Vs. Nehru Yuva Kendra Sangathan,

16. In the present case also, it cannot be lost sight that the claim suffers from gross delay. While the termination was done in the year 1984, the reference was made only in the year 1989, and 14 long years had elapsed even on the date when the impugned award was passed. As of today, it is almost 23 years since the services of the petitioner workmen were terminated, and for such a long period, the petitioner workmen have not contributed anything to the respondent/CPWD. There is also no denial to the fact that the petitioner workmen were daily rated casual workers and they were not employed as per the constitutional scheme of employment. Also, considering the nature of work being performed by the petitioner workmen, it is difficult to believe that they would have remained unemployed for all these years.

17. In view of the foregoing discussion and the position of law as discussed above, coupled with the fact that the amount of compensation as granted by the Tribunal in the impugned award has already been received by the petitioner workmen, this Court declines to interfere in the impugned award. The writ petition is dismissed. No orders as to costs.