
(2023) 03 DEL CK 0024

In the Delhi High Court

Case No : Civil Writ Petition No. 3641 Of 2007, Civil Miscellaneous No. 6829 Of 2007, 29760 Of 2015

Bharat Sanchar Nigm Ltd.

APPELLANT

Vs

Sher Singh

RESPONDENT

Date of Decision : 03-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 17B

Citation : (2023) 03 DEL CK 0024

Hon'ble Judges : Gaurang Kanth, J

Bench : Single Bench

Advocate : Pradeep Kumar Mathur, Chiranjeev Johri

Final Decision : Allowed

Judgement

Gaurang Kanth, J

1. This is a petition filed under Articles 226 and 227 of the Constitution of India for setting aside the Impugned Award dated 04.12.2006 ("impugned award") passed by Presiding Officer, Central Government, Industrial Tribunal-cum-Labour Court-II, Rajendra Bhawan, New Delhi.

2. At the outset, it is necessary to point out that vide order dated 24.05.2019, Court Notice was issued to the Respondents. As per office report, court notice issued to Respondent No.1/workman was 'Unserved' with report 'incorrect address'. No steps have been taken by the respondents to contest the present writ petition. Even on 22.02.2023 none appeared on behalf of the Respondent and the Writ Petition was placed for final hearing.

3. Mr. Pradeep Kumar Mathur, learned counsel appearing on behalf of the Petitioner submitted that the Respondent in the present proceedings filed a claim statement before the learned Labour Court. Learned Labour Court vide common impugned award dated 04.12.2006 held the Respondent to be an employee of

the petitioner and further held the termination of respondent no. 1 to be illegal. Learned counsel further submitted that vide the impugned award, respondent and other similarly situated employees/claimants were granted reinstatement with 50% backwages. He further submits that the impugned award herein passed by the learned Labour Court was challenged in a batch of petitions before the learned Single Judge. The learned Single Judge in WP(C) 3150/2007 titled as B.S.N.L. Vs Attar Singh (lead case) vide judgment dated 20.03.2013 allowed the writ petitions filed by B.S.N.L. and set aside the impugned Award dated 04.12.2006. The said Judgment dated 20.03.2013 alongwith other Writ Petitions were challenged before the Division Bench of this Court in LPA 408/2013 titled as Gopal vs Bharat Sanchar Nigam Ltd and other 24 connected appeals by the employees. The Division Bench of this Court vide common Judgment dated 03.07.2014 dismissed the appeals filed by the employees and upheld the judgment dated 20.03.2013 passed by the learned Single Judge. Learned counsel for the petitioner contended that the Judgment 03.07.2014 passed by the Division Bench of this Court in LPA 408/2013 and other 24 connected appeals filed by the employees has attained finality and the present writ petition is liable to be allowed.

4. This Court has gone through the Judgment dated 20.03.2013 passed by the Learned Single Judge in WP(C) 3150/2007 as also the Judgment dated 03.07.2014 passed by the Division Bench of this Court in LPA 408/2013 and other 24 connected appeals filed by the employees.

5. At this stage, it is relevant to recapitulate the portion of Judgment dated 20.03.2013 passed by the learned Single Judge in WP(C) 3150/2007 germane to the present matter and reads as under:-

"34. Learned counsel for the petitioner points out that the respondent workmen have been receiving wages under section 17B of the Act. The Court has directed payment of the last drawn wages or the minimum wages, whichever is higher. The same has been paid from the date of the award onwards i.e. 04.12.2006 and the same continues to be paid even now. These wages have already been paid for over six years. It is submitted that each of the respondents have received wages under section 17B of the Act to the tune of over Rs.3 lacs (on the basis of the revised minimum wages from time to time, as they were higher than the last drawn wages) except in respect of the respondents in W.P.(C.) Nos.3152/2007, 3153/2007, 3154/2007, 3156/2007, 3159/2007, 3160/2007, 3596/2007 and 3650/2007, where the applications under section 17B are still pending consideration. These applications are being dealt with separately.

35. The respondents, as aforesaid, have received wages under section 17B in excess of Rs.3 lacs after their termination. I may observe that though while allowing the applications of the workman under section 17B of the Act, vide common order dated 13.10.2011, the Court had required the workman to give an undertaking to the Court that in case the writ petition succeeds, they shall refund the difference between the amount of last drawn wages and the minimum

wages. The respondents have been receiving wages under section 17B at the minimum wages rates prevalent from time to time, which is higher than the last drawn wages drawn by them. The effect of the award being set aside would be that they would be required to refund the said difference. However, I am not inclined to direct the same, and the said amount could well be treated as adequate compensation payable to them in lieu of reinstatement and back wages, even if it were to be accepted for the sake of argument that they were the casual workman of the petitioner. However, in respect of workmen who are found not entitled to wages under Section 17-B of the Act, no compensation is payable as they, in any event, are not workmen of the petitioner and, consequently, no case of retrenchment is made out by them against the petitioner

36. Accordingly, the writ petitions are allowed and the impugned common award dated 04.12.2006 is set aside, leaving the parties to bear their respective costs”

(emphasis supplied)

6. The Division Bench of this Court vide judgment dated 03.07.2014 passed in LPA 408/2013 and other 24 connected appeals filed by the employees upheld the judgment dated 20.03.2013 passed by the learned Single Judge and held that:-

“38. On careful consideration of the rival contentions of the parties, we are of the view that the appellants have not proved the relationship of employer and employee. The appellants have not produced any document to prove the employment. The respondent being a Public Sector Undertaking cannot employ any person without issuance of appointment letter and maintaining proper records of the wages. We agree with the learned Single Judge that the issue as to whether the contract between the respondent and the contractors were sham and camouflage, was not even referred to the learned Tribunal. The learned Tribunal was, therefore, clearly in error in giving a finding with respect to the same.

39. We do not find any infirmity in the impugned judgment and agree with the findings of the learned Single Judge. We also note that the appellants have received wages in the range of Rs.3,00,000/- under Section 17B of the Industrial Disputes Act which is treated as compensation and the appellants are therefore not liable to return the same. This is sufficient compensation to the appellants.”

(emphasis supplied)

7. This Court is of the view that the present petition is squarely covered by the judgment dated 20.03.2013 passed by learned Single Judge in WP(C) 3150/2007 and subsequent judgment of Division Bench of this Court passed in LPA 408/2013 and other 24 connected appeals filed by the employees dated 03.07.2014, which has attained finality.

8. Accordingly, the impugned award dated 04.12.2006 passed by Presiding Officer, Central Government, Industrial Tribunal-cum-Labour Court-II, Rajendra Bhawan, New Delhi is hereby set aside. Needless, to mention that the amount

already paid to respondent shall not recoverable.

9. The Writ Petition is allowed. No order as to costs.

10. Pending application also stands disposed of.