
(2014) 03 DEL CK 0100
In the Delhi High Court
Case No : Writ Petition (C) 4254 of 1999

Brahm Pal Singh	Vs	APPELLANT
P.O., Industrial Tribunal No. II and Another		RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 2 2(oo)(bb) 25(B) 25(F) 25(G)

Citation : (2014) 141 FLR 688 : (2014) 2 LLJ 142 : (2014) LLR 400

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Rajiv Aggarwal, for the Appellant; Amita Gupta and Mr. Ramakant Tripathi, Advocates for MCD, for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—The petitioner in this writ petition has challenged the Award dated August 20, 1997 of the Industrial Tribunal in I.D. No. 1336/1990, whereby the Tribunal has not granted any relief to the petitioner. The industrial dispute was referred to the Industrial Tribunal with the following terms of reference:

Whether the termination of services of Sh. Brahm Pal Singh is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect.

It was the case of the petitioner workman before the Tribunal that he was employed by the respondent corporation with effect from August 21, 1988 as a Cattle Catcher and was being treated as daily rater/casual/muster roll worker and was being paid wages as per the minimum wages for unskilled casual worker and further that his services were terminated with effect from April 18, 1989 without assigning any reasons and in violation of Section 25(F), 25(G) and 25(H) of the Industrial Disputes Act, 1947 ("Act" in short) read with Rules 76 & 77 of the Industrial Disputes (Central) Rules, 1957 ("Rules" in short). He would plead

that no seniority list was displayed. Persons junior to him have been retained in service. He had prayed for reinstatement with continuity of service with full back wages in proper scale.

2. The MCD contested the claim of the petitioner on the ground that he was daily wagger on a specific sanction obtained from the Competent Authority on month to month basis and he had not worked continuously for 240 days in a year and therefore he is not entitled to any notice, notice pay or retrenchment compensation. His sanction being till April 17, 1989, his services were "disbanded" on the said date. The Industrial Tribunal framed two issues for its consideration, the first one being whether the workman worked for 240 days in a calendar year? If not, to what effect; and the second one being as per terms of reference.

3. The petitioner examined himself. The respondent corporation did not produce any evidence.

4. The Tribunal on the basis of the record was of the view that the petitioner had not worked for 240 days. It has come to such a conclusion primarily for the reason that even though he had been engaged with effect from August 21, 1988, he had not worked on that day and his presence having been shown for the first time on August 22, 1988, coupled with the fact that there were other holidays during the period of employment of the petitioner which have to be excluded, so there was no necessity of compliance of provisions of Section 25(F) of the Act by the respondent.

5. It was also the finding of the Tribunal, on violation of Section 25(G) & 25(H) of the Act that as the petitioner had not named the workers junior to him who have been retained in service, the same cannot be said to have been proved.

6. Mr. Rajiv Aggarwal, learned counsel for the petitioner would reiterate the submissions as were primarily made on behalf of the petitioner before the Tribunal inasmuch as the work which the petitioner was doing was of a perennial in nature and the services of the petitioner could not have been disbanded, more so without following the provisions of Section 25(F), 25(G) & 25(H) of the Act. He has drawn my attention to the claim petition filed by the claimant before the Industrial Tribunal specially to paragraph 4(iii), 4(iv), 4(v) & 4(viii) to contend, the onus was on the respondent corporation to disprove the stand of the petitioner in the claim by producing cogent evidence. He would state that since no seniority list has been framed by the respondent despite obligation under Rules 76 & 77 of the Rules, it is a case where the respondent corporation should have accepted the case put forward by the petitioner and reinstated him. Learned counsel for the petitioner has also drawn my attention to the cross examination of the petitioner by the respondent corporation, wherein no suggestion was even given to the extent no juniors have been retained nor any fresh hands have been engaged after the services of the petitioner were disbanded. He would rely upon the following judgments in support of his

contentions:

(a) Civil Appeal No. 10957/2013 BSNL vs. Bhuru Mal decided on December 11, 2013.

(b) Hari Mohan Rastogi Vs. Labour Court and Another,

(c) Director, Fisheries Terminal Division Vs. Bhikubhai Meghajibhai Chavda,

(d) Municipal Corporation of Delhi Vs. Gauri Shankar and Others,

(e) Mohan Lal Vs. Management of Bharat Electronics Ltd.,

(f) Writ Petition (Civil) No. 6024/1999 decided on August 25, 2011, Management of Municipal Corporation of Delhi vs. Presiding Officer, Industrial Tribunal & Anr.

7. On the other hand, Ms. Amita Gupta, learned counsel for the respondent corporation would justify the award of the Industrial Tribunal. She would state that the actual days between the period August 22, 1988 to April 17, 1989 were 239. In other words the total days being 239, the petitioner could not have worked for 240 days. Hence there is no requirement to follow the procedure u/s 25(F) of the Act. She would further state that the petitioner had not named any junior who has been retained in service nor had named any outsider who had been engaged after his services were disbanded. According to her in the absence of any name in the claim petition, the respondent corporation could only deny the averments which it has done in its written statement. According to her, the engagement of the petitioner was on daily wage basis on a specific sanction and the same would not give any right to the petitioner to seek reinstatement with back wages and continuity in service. She would rely upon the following judgments in support of her contentions:

(a) State of Haryana and Others Vs. Devi Dutt and Others,

(b) General Manager, Haryana Roadways Vs. Rudhan Singh,

(c) 2008 (17) SCC 729 State of Rajasthan vs. Deepa Ram

8. Having heard the learned counsel for the parties, insofar as the issue of the petitioner having worked for 240 days is concerned, it is an accepted position that the engagement of the petitioner was with effect from August 21, 1988. It has also come on record on the basis of the muster roll produced before the Industrial Tribunal that the petitioner had not worked on August 21, 1988. He started working with effect from August 22, 1988. I have been shown the calendar for the month of August, 1988. It is noted that August 21, 1988 was a Sunday. If Sunday was a holiday in the respondent corporation, then no Cattle Catcher would have worked on that day. I note from the Muster Roll (Attendant Sheet) that some workers had marked their attendance on August 21, 1988. Against the name of the petitioner, there is no marking of the word "P" on August 21, 1988. If it is a case of a holiday, it is justifiable for the petitioner not to have worked on that particular day and get the benefit of the day for

computing 240 days. He was required to be present, but was not present and would not get the benefit of continuous service u/s 25(B) of the Act. In fact nothing has been pleaded by the petitioner, justifying the absence. I note that the Industrial Tribunal on this particular aspect has come to the following conclusion:

The first attendance sheet itself shows that the workman concerned whose name appears therein at serial no. 6 had not worked on the first date of joining i.e. shown on 21.8.88 and his presence for the first time is shown on 22.8.88. Although in the said attendance sheet the month and year are not mentioned but the same definitely appears to be in respect of August, 1988 since the workman himself claims to have been appointed by the management w.e.f. 21.8.88 and the next attendance sheet is of September, 1988 and the other attendance sheets are for subsequently months till April, 1989. Thus, the workman having not worked on 21.8.88 cannot be said to have actually worked for 240 days.

9. The finding of the Tribunal being a finding of fact and based on credible evidence, not perverse I am not inclined to accept the submission of the learned counsel for the petitioner that the petitioner has worked for 240 days.

10. Insofar as the submission made by the learned counsel for the petitioner for the action of the respondent in disbanding the services of the petitioner in violation of Section 25(G) & 25(H) of the Act, I note that no names have been given by the petitioner in his claim petition. The plea that in the absence of seniority list, the petitioner could not have given any names is not acceptable. Surely the petitioner would know the names of his co-workers who had joined subsequent to him as Cattle Catchers. Even otherwise the petitioner was within his rights to file an application seeking a direction from the Tribunal to call for the records from the respondent naming the persons who have been retained in service after his services have been disbanded. I agree with the conclusion of the Tribunal in this regard, which I reproduce as under:

It was submitted by the authorized representative of the workman that the management had also not completed with the provisions of Section 25G of the Act as well as rules 77 of the Industrial Disputes (Central) Rules, 1957 by not displaying the seniority list of daily wagers and by retaining employees who were junior to workman concerned at the time of termination of services and therefore for this reason also the termination of services of the workman was illegal. In my view this submission of the authorized representative of the workman has no merit and is liable to be rejected for the reason that the workman himself is claiming that employees who were junior to him had been retained while he had been retrenched which shows that the workman was aware about his seniority and that could be possible only if the management had prepared and displayed the seniority list. Now, as far as his plea that employees junior to him had been retained in service is concerned the same does not stand proved. He has not given names of those employees which according to him were juniors to him and had been retained in service after 17.4.89. Those names were not given either in

the statement of claim nor in the evidence of the workman. The workman concerned having not disclosed the names of those employees who according to him were juniors to him and had been retained in service after 17.4.89. Those names were not given either in the statement of claim nor in the evidence of the workman. The workman concerned having not disclosed the names of those employees who according to him were junior to him and had been retained in service it has to be inferred that in fact no one junior to the workman concerned had been retained in service at the time of termination of his services.

11. Insofar as the judgments relied upon by the learned counsel for the petitioner, I note that in para No. 25 of BSNL case (supra) on which reliance was placed has no applicability inasmuch as the Supreme Court had observed that in the eventuality a concerned workman is terminated, whereas a person junior to him has been regularized, in that eventuality the terminated worker should not be denied reinstatement. In the present case, such is not the position as no names of so called juniors who have been retained have been given by the petitioner nor the names of fresh hands engaged after his services were disbanded have been given.

12. Insofar as the judgment in Hari Mohan Rastogi's case (supra) is concerned, the Supreme Court has held that non-compliance of Section 25(F) of the Act would render the termination void, reinstatement with full back wages must follow. I note for benefit the latest opinion of the Supreme Court in BSNL case (supra) wherein in para Nos. 23 & 24 the Supreme Court has held as under:

23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

24. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required u/s 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (See Secretary, State of Karnataka and Others Vs. Umadevi and Others,). Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in

reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

13. Even otherwise in the case in hand as I have concluded that Section 25(F) of the Act has no applicability, the judgment of Hari Mohan Rastogi's case (supra) has no applicability in the facts of this case.

14. Insofar as the judgment in Bhikubhai Meghajibhai Chavda's case (supra) is concerned, the same is primarily on the issue that onus to prove that the workman had not completed 240 days when the workman had contended that he has been terminated without giving notice and without complying with the provisions of Industrial Disputes Act is on the employer. The Supreme Court while agreeing with the finding of the Labour Court had held that since the workman would have difficulty in having access to all the official documents muster roll etc. in connection with his service the burden of proof shifts to the employer to prove he did not complete 240 days of service. In the present case the Tribunal had on the basis of the muster roll (attendance register) came to a conclusion that the petitioner had worked for 239 days and this Court has accepted the finding of fact, the judgment as referred to by learned counsel for the petitioner would be of no help. The learned counsel for the petitioner would urge that the respondent corporation should have produced cogent evidence to show that no person junior to the petitioner had been retained and no fresh hands have been engaged after the services of the petitioner were disbanded. I would have agreed with the learned counsel for the petitioner, had the petitioner named the co-workers who have been retained in the service or the names of the fresh hands who have been engaged after he has been disbanded. In the absence of the names having been given by the petitioner surely the Industrial Tribunal would not have conducted a roving enquiry to ascertain their names. I reiterate that in the given facts the judgment has no applicability.

15. Insofar as the judgment in Gauri Shankar's case (supra) is concerned, the same has no applicability in the facts of this case inasmuch as in that judgment the learned Single Judge of this Court has held that no workman could have been regularized from the date of initial employment. The case has no applicability in the facts of the case in hand.

16. Insofar as the reliance placed by the petitioner on the judgment of the Supreme Court in Mohan Lal's case (supra) is concerned, in the said judgment the Supreme Court had allowed the appeal, as this termination was in violation of Section 25F of the Act, the workman having worked for 240 days which is not the case here.

17. Insofar as the judgment of the learned Single Judge of this Court in Management of Municipal Corporation of Delhi case (supra) is concerned, the

same would have no applicability in view of the finding of the Industrial Tribunal.

18. Insofar as the judgment relied by the learned counsel for the respondent corporation in *Devi Dutt & Ors.* is concerned, the Supreme Court has noted that when a Labour Court has given a finding based on evidence on record interference by the High Court is not proper. The judgment relied upon by the learned counsel for the respondent would be applicable in the case in hand as the Industrial Tribunal had concluded that the petitioner had not worked for 240 days, which does not call for any interference.

19. The reliance placed by the learned counsel for the respondent on the judgment in *Rudhan Singh's* case (*supra*) is concerned, the Supreme Court has denied the back wages to the workman in the said case keeping in view the facts of that case. The said judgment has no relevance as this Court is in agreement with the Industrial Tribunal that provision of Section 25F of the Act were not required to be followed.

20. In *Deepa Ram's* case (*supra*), the workman who was dis-engaged before he could complete 240 days, the Supreme Court was of the view that the decision taken to discontinue simpliciter the employment of such daily wager who had not completed 240 days and the termination of the employment is covered by sub clause (bb) of clause (oo) of Section 2 of the Act. According to the learned counsel for the respondent, similar is the position here that the petitioner had not completed 240 days and hence disbanding the services of the petitioner would be covered by provisions of Section 2(oo)(bb). As I have agreed with the finding of the Industrial Tribunal on a finding of fact. Suffice to say that the petitioner is not entitled to any relief.

21. In view of the aforesaid conclusion, I find no merit in the writ petition. The same is dismissed. No costs.