
(2012) 02 DEL CK 0322

In the Delhi High Court

Case No : LPA 3 of 2009

Capt. R. Khosla

APPELLANT

Vs

Jetlite India Ltd.

RESPONDENT

Date of Decision : 23-02-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2012) 4 AD 452

Hon'ble Judges : Rajiv Sahai Endlaw, J; A.K. Sikri, J

Bench : Division Bench

Advocate : Deepa Arya and Mr. Jagat Singh, for the Appellant; C.U. Singh, with Mr. Rajiv Shankar Dwivedi and Mr. Dhawal Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. This Intra-Court appeal is preferred against the judgment dated 09.09.2008 passed by the learned Single Judge in W.P.(C) No. 9135/2006. By means of that judgment, the learned Single Judge has allowed the aforesaid writ petition of the respondent herein and set aside the award dated 13.02.2006 passed by the Central Government Industrial Tribunal (CGIT)-cum-Labour Court in I.D. No. 24/2000.

2. The appellant herein was appointed as Pilot in Sahara Airlines with effect from 01.11.1994. His services were terminated on 16.07.1998 after holding departmental inquiry on the charges leveled against him vide charge-sheets dated 05.06.1998 and 20.06.1998. Against the termination order, the appellant approached the proper government under the Industrial Disputes Act, 1947 and raised a dispute. This dispute was referred to CGIT with the following terms of reference:

Whether the action of the Chief Controller, Sahara Airlines Ltd. 7th Floor, Amba Deep Building, 14, Kasturba Gandhi Marg, Connaught Place, New Delhi-110 001

in terminating the services of Capt. R. Khosla, Ex. Pilot, Resident of A-160, Jalwayu Vihar, Sector : 21, Noida (UP) - 201 301 w.e.f. 16.07.1998 is justified, valid and legal? If not to what relief and benefit he is entitled.

3. As stated above, the termination was a result of departmental inquiry against the appellant, holding charges leveled against him as proved. Therefore, in a case like this, the first and foremost question is whether the departmental inquiry conducted against the appellant was fair and in accordance with the principles of natural justice. We may also record at this stage that right from the beginning the respondent management had taken up a plea that the appellant was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and therefore the proceedings under I.D. Act could be taken. This objection was persisted by the respondent management before the CGIT as well, in its written statement to the statement of claim filed by the appellant. In the affidavit filed by way of evidence, again averments to this effect were made. Therefore in addition to the validity of the departmental inquiry, CGIT was also required to determine as to whether the appellant was a "workman" or not.

4. It appears that the Tribunal did not segregate the issue of the validity of the inquiry. In fact after the evidence, arguments were heard and vide award dated 13.02.2006 all the aspects of dispute were determined and decided. The Tribunal held that the inquiry was vitiated as it was not in consonance with the principles of natural justice. The contention of the respondent management that appellant is not a workman was also taken note of at page 20 of the award. However, this contention was repealed by the Tribunal in the following manner:

This point cannot be raised as this point has been adjudicated upon after hearing both the parties in the interim proceedings and it has the effect of res judicata or at least constructive res judicata.

5. Since the issue of inquiry was decided against the respondent management, the Tribunal proceeded to answer the reference by holding that termination of the appellant's services was neither justified nor valid nor legal. Accordingly, reinstatement with full back wages with effect from 16.07.1998 was ordered and it was also directed that in case of default, the appellant will also be entitled to 10% interest per annum along with entire back wages. It is this award which was challenged by the respondent management by filing the aforesaid writ petition inter alia on the ground that the question whether the appellant is a workman or not was not decided by the Tribunal on any earlier occasion in the proceeding and therefore the finding that this issue was barred by principles of res judicata or constructive res judicata was clearly erroneous.

6. The learned Single Judge accepted the contention aforesaid of the respondent management and while setting aside the impugned award, the matter has been remanded back to the Tribunal for fresh decision in accordance with law "after affording opportunity of hearing to both the parties." Six months time was given to the Tribunal to decide the case. Challenging this order, present appeal is

preferred. Learned counsel for the appellant submitted that Pilot is held to be a workman within the meaning of Section 2(s) of the I.D. Act undoubtedly a Single Judge of this Court has in the case of Mathur Aviation Vs. Lt. Governor, Delhi 1978 (36) FLR 7 held that Pilot is a workman within the meaning of Section 2(s) of the I.D. Act. This argument however ignores that the issue of workman has to be decided and determined on the basis of evidence produced (see Management of Sonapat Cooperative Sugar Mills Ltd. Vs. Ajit Singh,). We had summoned the records of the CGIT. In the affidavit by way of evidence filed by the respondent management, it is specifically averred that having regard to the duties of the appellant, he is not a workman u/s 2(s) of the I.D. Act. Once this question is raised, CGIT was under obligation to decide the same. Though the CGIT has decided on this issue but it is on the ground that issue is barred by res judicata as at an earlier stage of the proceedings this issue has been decided. The learned Single Judge categorically recorded that the appellant could not point out as to when this issue was decided. In order to verify this averment in the order of the Tribunal, we summoned the record of the Tribunal. After going through the record, we find that this issue had not been decided at any stage prior to passing of the award. Thus the decision of the Tribunal holding that the issue is barred by res judicata/constructive res judicata is clearly erroneous and learned Single Judge was right in remitting the matter back to the Tribunal to decide this issue afresh on the basis of evidence.

7. We may clarify that neither the learned Single Judge nor we have commented upon the merits of this issue. It may be that ultimately the appellant is able to prove that he is a workman and therefore CGIT had the necessary and requisite jurisdiction to entertain the industrial dispute. However, since this issue has not been decided and is to be decided by the CGIT in the first instance, we do not find any infirmity in the order of the learned Single Judge in remanding the matter back to the Tribunal on this aspect.

8. The learned Single Judge has further rightly directed the Tribunal to decide whether opportunity has been afforded or is to be afforded to the management to prove misconduct before the Tribunal, if the departmental inquiry held is again on remand to be held to be bad. This aspect will have to be determined by the Tribunal having regard to the pleadings, charges and also the circumstances of the case.

9. Finding no merit in this appeal, the same is dismissed with no order as to costs. Having regard to the time which has elapsed, we impress upon the Tribunal to decide the case and pass the fresh award preferably within three months. Parties are directed to appear before the learned Tribunal on 19th March, 2012. The record be returned back to the Tribunal forthwith.