

(2009) 05 DEL CK 0522

In the Delhi High Court

Case No : Writ Petition (Civil) No. 13062 of 2006

C.D. Security Services Network Ltd.

APPELLANT

Vs

The Labour Commissioner and Another

RESPONDENT

Date of Decision : 01-05-2009

Acts Referred:

Citation : (2009) 05 DEL CK 0522

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Mayank Kumar, for the Appellant; Rama Shankar, for the Respondent

Judgement

V.K. Shali, J.—The petitioner in the instant writ petition has challenged the award dated 11.8.2005 passed by the learned Labour Court -IX in ID No. 31/1999 in case titled Sh. Uma Shankar v. C.D.S.S. Network Ltd.

2. By the impugned award, the learned Labour Court has held the termination of services of the respondent/workman on 22.6.1998 as illegal and unjustified and accordingly it is directed for payment of 25% of back wages from the date of his termination till he is reinstated. The salary of the petitioner has been stated to be Rs. 1,937/- per month at the time of termination.

3. I have heard the learned Counsel for the parties and perused the record. The main contention of the learned Counsel is that the petitioner is only a Contractor and not the principal employer. The petitioner only used to supply the Security Guards to the principal employer and therefore, the petitioner does not come within the jurisdiction of the learned Labour Court.

4. This plea is bereft of any merit on account of the fact that this is not the case of the petitioner either in the writ petition or in the Labour Court, even during the course of oral submission raised an iota of averment made by the petitioner anywhere till passing of the award that the petitioner happens to be only a Contractor. Therefore, this argument, is without any merit and is accordingly, dismissed.

5. The second submission made by the learned Counsel for the petitioner is that the respondent/workman had superannuated in the year 2003 and ex parte award was passed against the petitioner on 11.8.2005.

6. So far as the question of superannuation of the respondent/workman is concerned, it has not been established before the learned Labour Court either by way of pleadings or by way of evidence that the respondent/workman has superannuated in the year 2003. Therefore, this plea of the petitioner seems to be totally an afterthought. It has been taken with a view to avoid the payment of monetary benefit to the petitioner. As regards the question of the award being ex parte, the petitioner admittedly had chosen to file his written statement and adduce evidence also before the learned Labour Court. If the petitioner after adducing the evidence does not appear before the learned Labour Court then it must show that it was prevented by "sufficient cause" from appearing before the learned Labour Court which may warrant setting aside of the award against the petitioner.

7. In the instant case, there is no averment as to what facts and circumstances prevented the petitioner from appearing before the learned Labour Court. Therefore, if the petitioner has absented after filing of the written statement and after adducing of its evidence, then it has done so at its own peril. The award though passed in the absence of the petitioner but the same cannot be set aside on being termed as ex parte award. Even otherwise the learned Labour Court has considered not only the written statement of the petitioner but also the evidence adduced by them. Therefore, this plea of the petitioner does not have any merit.

8. Now the question which arises for consideration is that the learned Labour Court has granted benefit of payment of 25% of the back wages from the date of termination which happens to be 22.6.98 till the time he is reinstated.

9. The contention of the learned Counsel for the petitioner is that the respondent/workman had superannuated is not borne from the record nor any evidence has been adduced in this regard before this Court. In the absence of the same, this plea that the petitioner has superannuated will also not be a ground for denying him the monetary benefits accruing him in terms of the award. There is another aspect to the matter and that is that the respondent/workman was admittedly working as a "Security Guard" with the petitioner and had just put in two years of service between the period from 04.4.1996 to 22.6.1998, the alleged date of termination.

10. The respondent/workman being a Security Guard has also been observed to have not been unemployed during the pendency of the reference before the learned Labour Court and accordingly, on the basis of the same his payment of back wages has been regulated up to 25%.

11. Merely on account of the fact that termination of services of the petitioner has been held to be illegal and unjustified, that does not unnecessarily result in passing of order of reinstatement in favour of the petitioner and the payment of

back wages. Reliance in this regard can be placed on catena of cases passed by the Apex Court, P.V.K. Distillery Ltd. Vs. Mahendra Ram, , U.P. State Electricity Board Vs. Laxmi Kant Gupta, and Rajasthan Lalit Kala Academy Vs. Radhey Shyam, .

12. Keeping in view the aforesaid broad parameters, I feel that this is a fit case where in spite of directing payment of back wages to the tune of 25% and reinstatement, it deserves to be modified and the petitioner may be directed to pay one time lump sum compensation to the respondent/workman.

13. The question would arise is how much compensation should be payable to the respondent/workman. For this purpose, the factors like service which has been put in by the respondent/workman with the petitioner, the nature of duty which he was doing and the capacity of the petitioner to pay will have to be seen.

14. The respondent/workman had just put in two years of service as a Security Guard. It is observed by the learned Labour Court that the respondent/workman would have definitely been working during the pendency of the reference as a Security Guard to sustain himself. The nature of job which was being done by the respondent/workman is obviously such where there is no dearth of jobs and he would have picked up one.

15. Therefore, keeping in view the quantum of wages which was directed to be paid by him, if we calculate the wages @ 25%, the petitioner would have been entitled to a sum of Rs. 46,000/- from the date of his termination till the date of the award. Even from the date of the award, the petitioner would have been entitled to 25% of the wages till date which would come upto Rs. 22,000/-. Adding up both these amounts, the total amount would be approximately Rs. 66,000/-.

16. I feel that an amount of Rs. 66,000/-, if paid to the respondent/workman, should be a sufficient compensation in lieu of the reinstatement and payment of back wages to the respondent/workman. Accordingly, I direct the petitioner to pay any lump sum amount of Rs. 66,000/- to the respondent/workman towards full and final settlement in lieu of reinstatement of the payment of back wages as one time compensation to the respondent/workman.

17. The petitioner is purported to have deposited a sum of Rs. 22,000/- which is stated to be kept in a fixed deposit. Apart from that he had also got a sum of Rs. 8,000/- as litigation expenses. The aforesaid amount of Rs. 22,000/- along with interest shall be released to the respondent/workman and on that score an amount of Rs. 26,000/- shall be deducted from the amount of Rs. 66,000/- and the balance amount shall be paid to the respondent/workman within four weeks from today, failing which the balance amount shall carry an interest @ 7% per annum from the date of the award till the date of realization to the respondent/workman.

18. With the aforesaid directions, the impugned award dated 11.8.2005 stands

modified with regard to the direction of reinstatement and the payment of back wages and the same is substituted by one time payment of Rs. 66,000/-. Accordingly, the writ petition is disposed of with these directions.

No order as to costs.