
(2011) 05 DEL CK 0031

In the Delhi High Court

Case No : Writ Petition (C) 2163 of 2000

Ceeko Transformers

APPELLANT

Vs

P.O. Labour Court No. 1 and Others

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Citation : (2011) 124 DRJ 416

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Suman Malhotra and Savita Malhotra, for the Appellant; K.C. Dubey, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the award dated 5th August, 1999 of the Industrial Adjudicator granting the relief to the Respondent No. 2 workman of reinstatement with 75% of the back wages. The petition came up before this Court first on 5th May, 2000 when the counsel for the Petitioner employer stated that the challenge was being made only to the extent of grant of 75% of the back wages. Notice of the petition was issued and the award to the extent of grant of 75% of the back wages was stayed and remains stayed. The counsels have informed that though the Respondent No. 2 workman, in implementation of the award was reinstated but thereafter the Petitioner employer effected closure and closure compensation has been paid to the Respondent No. 2 workman and the dispute in that regard does not survive. The counsels have argued only on the validity of the award in so far as for back wages to the extent of 75%. The termination being of 3rd June, 1988 and the award being of 5th August, 1999, the period of back wages is for a period of approximately 11 years. It was enquired from the counsel for the Petitioner employer as to what was the amount due under the award; the counsel states that no computation has been done. The counsel for the Respondent No. 2 workman states that back wages, even if calculated at the rate of minimum wages, approximately Rs. 3.75 lacs would be due under the award.

2. The Industrial Adjudicator though holding that on termination being held illegal, workman becomes entitled to full back wages, reduced the same by 25% for the reason of the Respondent No. 2 workman having not re-joined the service despite offer by the Petitioner employer. The counsel for the Petitioner employer has contended that in the face of the said finding of fact of the Respondent No. 2 workman having not joined service inspite of offer of the Petitioner employer, the Industrial Adjudicator ought not to have awarded any back wages whatsoever to the Respondent No. 2 workman.

3. In the facts of the present case, as well as similar facts in other cases coming before this Court, a very disturbing feature which emerges is of a dispute being referred and entertained and kept pending inspite of the employers taking a stand on record of having not terminated the services and/or of being willing to take back the workman. It appears that references are being made, disputes entertained and kept pending without regard to the pleadings. Once the employer, before the Conciliator or before the Industrial Adjudicator takes a stand that no termination had been effected or the termination even if effected, the employer is willing to take back the workman or that it is the workman who had abandoned the employment, the dispute at least in so far as of cessation of employment, ought not to be referred, entertained or kept pending and immediate directions/orders should be made to make the workman join back duty with the employer and to make the employer so pleading take back the workman on duty. The special process, of pre-dispute conciliation and courts of Industrial Adjudicators were created/established under the Industrial Disputes Act feeling the need for special treatment for workmen and for disposing of the dispute(s) of the workmen with their employers expeditiously and to avoid the workmen from venting their grievances in the Civil Court, proceedings wherein were felt to be technical and long drawn. It was expected that by creating such special procedure and forum, the adjudication of the said disputes would be free from the technicalities of the civil procedure which the Civil Court is required to follow and will provide a forum where the disputes would be considered, dealt with and adjudicated with a humane approach and expeditiously. However it appears that somewhere along the way, the said purpose behind establishment of the Industrial Adjudicators and Conciliators has been lost and the Conciliators instead of bringing about conciliation and notwithstanding the written response of the employer of having not terminated the services or of being willing to take the workman, have been reporting failure of conciliation and mindlessly references of disputes are being made and the Industrial Adjudicator proceeding to answer the reference as to illegality and validity of termination when the employers in their pleadings have denied termination and expressed willingness to take back the employee.

4. This Court is of the opinion that whenever before the Conciliator, the employer takes a stand of having not terminated or of willingness to take back the employee, it is the duty of the Conciliator to ensure that the workman joins duty with the employer and if Conciliator finds either that the workman is not willing

to so join back the duty or that the employer notwithstanding having taken such a stand is creating impediments to the workman joining back duty, to make a report thereon. Else, if duty is so re-joined, attempt should be made at resolving the dispute as to emoluments for the interregnum and if such dispute remains unsettled, to refer the dispute to the said limited extent only, for adjudication by Industrial Adjudicator.

5. It has also been noticed in a large number of cases the employers take the plea of the employee having abandoned the service. I am of the view that if the workman has approached the Conciliator/Industrial Adjudicator within a short span and expeditiously, the Conciliator/Industrial Adjudicator should again ensure that the employee joins back duty. It is the settled legal position in law that abandonment is a misconduct and to be actionable it is incumbent upon the employer to conduct an enquiry. The Conciliator/Industrial Adjudicator is expected to advise the parties so and to attempt to resolve the controversy at the threshold only rather than put it through the usual course of trial.

6. Similar is the position before the Industrial Adjudicator. If the Industrial Adjudicator finds from the pleadings, a willingness of the employer to take back the employee, there is no need for the Industrial Adjudicator to proceed with the trial and the reference should be answered immediately by observing that the employer having expressed willingness to take back the employee, the dispute as to validity of termination does not survive and proceed to determine only the dispute if any remaining as to the emoluments for the period for which the workman has not worked.

7. However what is found by this Court is that the Industrial Adjudicators are acting as a Civil Court only and functioning on the premise that a reference having been made, they have to necessarily proceed with the trial and answer the reference on the basis of the evidence led before them. In the process, as aforesaid, the spirit in providing a special mechanism for adjudication of such disputes has been lost; rather the same leads to disputes as the present one where notwithstanding a finding of the willingness of the Petitioner employer to take back the workman, the direction for reinstatement was made after 11 years of the origin of the dispute. I cannot but express frustration at such a scenario. I have during the hearing also enquired from the counsels, both of whom have experience of conducting proceedings before the Industrial Adjudicators also as to whether the record of the conciliation proceeding is brought before the Industrial Adjudicator or not. They both reply in the negative. In my opinion, the record of conciliation proceeding should, as a matter of course, be attached to the file of the Industrial Adjudicator, to enable the Industrial Adjudicator to know the stand of the workman and the employer in the conciliation proceedings and to continue with the effort at conciliation.

8. The Petitioner employer in the present case has demonstrated that even prior to the conciliation proceedings, upon the Respondent No. 2 workman making a complaint to the Labour Inspector, the Petitioner employer vide its letter of

13th/14th June, 1998 contended that it was in fact the Respondent No. 2 workman who had stopped coming for duty from 3rd June, 1988 and that the Petitioner employer had not terminated his services and had not refused duty to him and requested the Labour Inspector to advise the Respondent No. 2 workman to report for duty without any further delay. The counsel for the Petitioner employer has also drawn attention to the evidence before the Industrial Adjudicator where the said letter was proved.

9. The counsel for the Petitioner employer has also invited attention to another letter of July, 1998 to the Conciliation Officer where also a similar stand was taken. The said letter is also shown to have been proved before the Industrial Adjudicator. I am surprised that notwithstanding the said stand in writing of the Petitioner employer, the dispute was allowed to brew. It is not understandable as to why in view of such a stand conciliation was not effected and was instead reported to have resulted in failure and which consequently resulted in the reference of a dispute being made to the Industrial Adjudicator.

10. The Petitioner employer even before the Industrial Adjudicator, in reply to the statement of claim of the Respondent No. 2 workman, took the same stand and reiterated that the Respondent No. 2 workman was free to join the duty even then without any further loss of time. Even if the Labour Inspector and the Conciliator had failed, at least the Industrial Adjudicator in view of the said reply/written statement ought to have brought the dispute insofar as to the validity of the termination to an end. There is no explanation whatsoever as to why it was not so done.

11. The counsel for the Respondent No. 2 workman has of course contended that it is common practice for the employers to on the one hand take such a stand and on the other hand not allow the workman to join. It is contended that the same is a ploy adopted by the employers to avoid liability for back wages. Though such advocacy skills can be appreciated but I am still at a loss as to why the Labour Inspectors/Conciliators/ Industrial Adjudicators should allow themselves to play in the hands of such advocacy skills. The Labour Inspector/ Industrial Adjudicator as aforesaid is required to immediately take steps for making the employer abide by his written word and if finds the employer to be not so willing, to make appropriate record thereof. Else it can lead to only such situations ,as this Court is faced with today, that while the workman has pleaded and given evidence that he has remained unemployed, the employer has pleaded that he has never terminated and it is the employee who has abandoned the services and that the employer has always been willing to take back the workman.

12. The counsel for the Respondent No. 2 workman has argued that this Court in exercise of writ jurisdiction ought not to re-appreciate evidence. However, the question involved is not of re-appreciation of evidence but of the entitlement, if any, of the Respondent No. 2 workman to back wages in the face of a finding of the Respondent No. 2 workman having not rejoined service with the Petitioner

despite offer by the Petitioner employer and of, what should be the measure of that back wages in such circumstances.

13. The counsel for the Respondent No. 2 workman has also contended that all the judgments to the effect that there is a discretion in the Industrial Adjudicator qua back wages are of post the year 2008; prior thereto the view taken was that upon termination of employment being found to be illegal, full back wages necessarily follow; it is contended that the award in the present case being of prior to the year 2000, the judgments as then prevalent ought to be applied. Without going into the question whether there has been any change in the view taken by the Courts as argued, the contention cannot be accepted.

14. The judgments of the Courts are not to be interpreted like statutes and are not prospective. What is laid down by the Courts is deemed to have been the law since its enactment, unless the Courts choose to specifically lay down that interpretation so taken will be prospective only. That is not the position here.

15. The counsel for the Respondent No. 2 workman has next contended that the effect of the offer made by the Petitioner employer has to be weighed. The argument is that had there been any genuine offer on the part of the Petitioner employer to take back the workman, the dispute would have got resolved. It is contended that merely because the Petitioner employer has shown such a stand to have been taken in writing would not entitle the Petitioner employer to challenge the award on the said ground.

16. The counsel for the Petitioner has also invited attention to the order dated 11th October, 2000 in the present proceedings recording that the Respondent No. 2 workman had joined duty with the Petitioner employer w.e.f. 19th September, 2000. Attention is also invited to the order dated 16th May, 2003 where the Petitioner had agreed to pay to the Respondent No. 2 workman back wages last drawn or minimum wages whichever is higher from the date of the award till the date of the closure of the Petitioner on 1st February, 2001. He has also referred to

i. *Purafil Engineers v. Shaikh Anwar Abdul Rahman* 2000 LLR 268 where the Bombay High Court held that where the workman was offered reinstatement which he did not accept he will not be entitled to get any wages from the date of that offer.

ii. *Sonal Garments v. Trimbak Shankar Karve* 2003 LLR 5 where again the Bombay High Court held that back wages will not be awarded when the workman is not responding to the offer of the Management to resume duties.

17. The legal position in this regard is no longer *res integra*. The Division Bench of this Court also in *Triloki Nath v. Sh. Dharam Paul Arora* 2006 LLR 1043 held that if a workman fails to resume duty even when offer is made before the Conciliation Officer as well as the Industrial Tribunal, it would be irresistibly presumed that he is no longer interested and has abandoned the job. Similarly in

Sonal Garments (supra) it was held that reinstatement awarded is liable to be set aside when the workman does not report for duty despite offer and that back wages will not be awarded when workman is not responding to the offer of the management to resume duties. The Supreme Court also in Government of Tamil Nadu and Another Vs. K. Rajaram Appasamy, held that where the employee chooses not to join the duty, the direction to pay 50% of the back wages could not be sustained. The Supreme Court in State of Punjab Vs. Jagir Singh, also held that where despite several opportunities given, the workman did not join his duties, the Labour Court and the High Court committed manifest error in granting back wages. Reference may also be made to Shri Sat Narain Gupta Vs. CTC Limited where this Court refused to interfere in the award of 40% of the back wages inspite of a finding of the workman having himself declined to join duties for the reason of the same being in the discretion of the Industrial Adjudicator and no ground for interfering with the said discretion having been made out. I have also in Ramesh Chand Vs. Arihant Polymers Pvt. Ltd. refused to interfere with an award declining back wages where it was proved that the workman had declined to rejoin duty inspite of being called upon to do so.

18. The question which arises is whether there is any valid or proper finding by the Industrial Adjudicator of the Respondent workman inspite of offer having not rejoined duty. The reasoning in this regard is dehors the discussion of any evidence and the finding cursory. There is some merit in the contention of the counsel for the Respondent workman that neither the parties nor the Industrial Adjudicator were fully conscious of the aforesaid aspect. However, after such long lapse of time it is not deemed expedient to remand the matter to the Industrial Adjudicator for returning a finding on this aspect.

19. The award contains a finding of the last drawn wages of the Respondent workman to be Rs. 650/- per month. The Industrial Adjudicator has in the award not indicated whether the back wages awarded are to be computed at the rate of the last drawn wages or after taking into consideration the increments, if any, to which the workman would have become entitled. Calculated at the rate of last drawn wages, the back wages for 11 years approximately would be about Rs. 80,000/- and 75% thereof would be approximately Rs. 60,000/-. Considering the said factor as well as the long lapse of time since the award, I feel that interest of justice would be served if the award is modified by directing the Petitioner to pay to the Respondent No. 2 workman a sum of Rs. 40,000/- towards back wages. 20. The petition is accordingly allowed to the aforesaid extent. The award of the Industrial adjudicator impugned in this petition, insofar as qua back wages is modified by awarding lump sum back wages of Rs. 40,000/- only to the Respondent No. 2 workman payable within eight weeks of today failing which the same shall attract interest at 10% per annum. The petition is disposed of. Costs of litigation have already been paid.