

(2001) 02 DEL CK 0142
In the Delhi High Court
Case No : C.W. No. 4004 of 1992

Coal India Ltd.

APPELLANT

Vs

P.O. (Labour Court-3) and Others

RESPONDENT

Date of Decision : 20-02-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2001) 89 FLR 929 : (2001) 2 LLJ 45

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : P.P.S. Premi, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—By the order dated August 12, 1999, this writ petition was directed to be listed for hearing in the week commencing from December 13, 1999. Thereafter on February 16, 2001 this petition was shown in the advance cause list for hearing in the week commencing from February 19, 2001. There was no appearance on behalf of the petitioner on the last date of hearing on February 19, 2001 when in the interest of justice orders were deferred though counsel for respondent No. 2 was present. There is no appearance on behalf of the petitioner even today. Accordingly, the writ petition which is of the year 1992 is being taken up today for hearing.

2. Learned counsel for respondent No. 2 states this Court had directed that a sum of Rs. 3,000/- towards litigation expenses be paid to counsel for respondent No. 2-workman. He further says that this order had also not been complied with up to date.

3. The respondent No. 2 was working as a part-time sweeper on daily wage basis @ Rs. 10/- per day from February 21, 1983 with the petitioner-Coal India Ltd. The Labour Court found that the respondent No. 2-workman was employed as part-time and the aforesaid finding has not been challenged.

4. This writ petition proceeds on the presumption that the respondent No. 2-Ram Pal was in part-time employment with the petitioner-Coal India Ltd. The case of the petitioner is that during 1984 Riots and due to the consequent imposition of curfew and tense situation in Delhi, the petitioner had some difficulty in reporting for work and accordingly asked for an Identity Card from the petitioner-management which was refused. The petitioner after the improvement in the situation reported for duty on November 10, 1984 but was not given any duty and was told that his services were terminated. There was no response to the respondent No. 2's Notice dated November 20, 1984 demanding his reinstatement. The respondent No. 2-workman challenged the dismissal by raising the industrial dispute leading to the impugned Award. The petitioner-management took up the stand before the Labour Court that the workman was engaged as a part-time Sweeper on daily wage basis of Rs. 10/- per day with effect from February 21, 1983 and since he was a part-time Sweeper, there was no question of paying the minimum wages to workman and since the workman-respondent No. 2 did not come for duty from November 5, 1984 to November 9, 1984 his part-time services were discontinued with effect from November 10, 1984. It is also stated that on various occasions the workman was warned and it was found that his services were unsatisfactory and on finding no improvement having taken place subsequent to warnings issued to him, applicant's/workman's services were terminated.

5. Before the Tribunal the respondent No. 2-workman contended that his services were terminated illegally because there was no notice or pay in lieu thereof or any compensation paid to him at the time of termination of the services. There was no complaint regarding his work and in case there was any complaint regarding his work or misconduct he ought to have been charge-sheeted and an enquiry ought to have been held. Not having done all this, the management is not entitled to plead unsatisfactory conduct on his part. The plea of the management is that in case of a part-time employee on daily wage basis, there was no need to serve him any notice or to hold any enquiry. It is further stated on behalf of the management that notice to show cause and the compensation was only called for when the person is appointed on regular basis.

6. The Labour Court has relied upon the definition of Section 2(s) of the Industrial Disputes Act, defining the workman and found that according to the said definition a part-time employee will also be a workman as per Section 2(s) of the Act.

7. The Labour Court has also relied upon the judgments reported as *State and Ors. v. K.C. Dutta*; *K. Ramachandran v. State of Kerala*; *Gurudarshan Singh v. State of Punjab*, 1983 (1) SLJ 399; *Kanubhai Maru v. N.K. Desai* 1988 1 LLN 1004, and *Yashwant Singh Yadav, v. State of Rajasthan and Ors.* 1987 LLR 96, to come to a conclusion that the definition of the workman is comprehensive and wide enough to include a part-time employee. The Labour Court further found that the part-time employee is covered by the definition as per Section 2(s) of

the Industrial Disputes Act. I am satisfied that the aforesaid finding of the Labour Court regarding the availability of the protection of Section 2(s) and other cognate sections is legally sustainable and does not call for any interference. In particular I am in respectful agreement with the law laid down in *Kanubhai Maru v. N.K. Desai* (supra), by the Gujarat High Court where a part-time servant doing the work of a sweeper was held to be a workman and the law laid down in *Yashwant Singh v. State of Rajasthan and Others* (supra), by Rajasthan High Court which held that Section 2(s) of the Industrial Disputes Act covers a part-time employee also. It was admitted that the workman was employed since February 21, 1983 and worked till October 31, 1984 and there was no gap or absence in his duty and he had been continuously employed during the said period. The Labour Court held that having thus worked for more than a year, his services could not be terminated without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act.

8. The aforesaid findings of the Labour Court are unassailable and disclose no error apparent calling for interference under Article 226 of the Constitution in view of the finding of fact that the workman was not issued any show cause notice or given any notice or pay in lieu thereof. This has not been disputed by the management, the petitioner herein.

9. Apart from the merits of the case even the conduct of the petitioner during the pendency of the petition in this Court demonstrates that it has been cavalier and indifferent to the orders of this Court. The order dated March 17, 1999, directing the petitioner to make payment of Rs. 3,000/- to Counsel for respondent No. 2-workman towards litigation expenses has not been complied with even up to date.

Accordingly, the writ petition has no merits and is accordingly dismissed with costs quantified at Rs. 7,500/- in addition to the sum of Rs. 3,000/- payable to counsel for respondent No. 2-workman towards litigation expenses as already directed by this Court's order dated March 17, 1999. The costs would be payable within four weeks from today.