

(2002) 01 DEL CK 0122

In the Delhi High Court

Case No : Civil Writ No. 896 of 1998 with C.M. No's. 6213 of 1998, 1496 and 2413 of 1999, 11075 of 2000 and 6171, 7536, 9284 and 9285 of 2001

Delhi Consumer Cooperative Wholesale Stores Ltd.

APPELLANT

Vs

Jage Ram and Others

RESPONDENT

Date of Decision : 09-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33C(1)

Citation : (2002) 97 DLT 749 : (2002) 94 FLR 470 : (2003) 1 SLJ 106

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : A.K. Singh, for the Appellant; H.K. Chaturvedi and Nemo, for the Respondent

Judgement

Mukundakam Sharma, J.—Being aggrieved by the award passed by the Industrial Tribunal directing for reinstatement of the petitioner in service with continuity of service and full back wages, the present petition is preferred by the petitioner praying for quashing and setting aside of the said award passed by the Industrial Tribunal.

2. As dispute had arisen between the petitioner/Management and the respondent/workman, a reference was made to the Industrial Tribunal to adjudicate upon the issue as to whether the termination of service of the respondent /workman herein was illegal and/or unjustified and if so, to what relief the workman was entitled to. In the statement of claim filed by the respondent/workman before the Tribunal, it was contended by the respondent/workman that he was appointed as a Bill Clerk-cum-Cashier on August 12, 1966 and thereafter as Assistant Salesman. It was alleged by the respondent/workman that his service was terminated on September 4, 1975 by the then Secretary of the petitioner/Management though he was not authorised and competent to terminate his services. It was also alleged that the enquiry conducted by the petitioner/Management pertaining to certain imputation of charges were also conducted in

violation of the principles of natural justice and that the action taken on the basis of the same was also bad. The Management, however/refuted the aforesaid allegations in its written statement filed.

3. On the basis of the pleadings of the parties, originally ten issues were framed in the reference which was, however, subsequently re-casted into four issues and thereafter evidence was received by the Tribunal from the parties. One of the issues that was framed was whether fair and proper enquiry was conducted before terminating the services of the workman and if not, to what effect? The aforesaid issue was taken up by the Tribunal as a preliminary issue in the light of the decision of the Supreme Court in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, . Considering the evidence adduced by the parties, the Tribunal by order dated September 27, 1984, came to the conclusion that the Management had failed to conduct a fair and proper enquiry and held that the entire enquiry proceedings were vitiated. An opportunity was given to the Management to adduce further evidence. Availing of the opportunity further evidence was led.

4. With regard to the issue framed as to whether the reference was bad and as to whether the petitioner was a workman within the meaning of the Industrial Disputes Act, the Tribunal after considering the contentions raised and the evidence on record held that the workman would be definitely covered within the definition of "workman" and that the reference made is valid and legal. Having held thus, the Tribunal further held that the termination of the service of the workman was bad and void ab initio with a further declaration that he would be deemed to be in service of the Management. The Tribunal further considered as to the nature of the consequential relief that the workman is entitled to and on consideration of the evidence on record, it was held that the workman would be entitled to reinstatement in service with full back wages and continuity in service. Being aggrieved by the said order, the present petition is preferred by the petitioner/Management.

5. It is necessary to mention at this stage that after passing of the award and filing of the present petition, the petitioner/Management had reinstated the respondent/workman in service wherein he worked subsequent to the passing of the award and has since retired from service during the pendency of the present writ petition. As the respondent/workman was reinstated in service and as he worked with the petitioner/Management and retired from service in due course he shall also be entitled to the retiral benefits in accordance with law provided the present writ petition is found to be without any merit.

6. Counsel appearing for the petitioner during the course of arguments submitted that the findings recorded by the Tribunal is perverse and illegal and the same is liable to be set aside and quashed. He also submitted that even if the Tribunal was of the view that the workman was required to be reinstated in service, considering the delay in disposal of the reference by the Tribunal, the Tribunal should not have awarded full back wages and should have considered the alternative relief of compensation. It was also submitted that the conduct of the

workman was also a factor to be taken into consideration while deciding the reference and having not done so, the award should be held to be illegal and void.

7. Counsel appearing for the respondent/workman, however, submitted that all the findings recorded by the Tribunal are findings of fact and cannot be challenged in a petition under Article 226 of the Constitution of India in the light of the decision of the Supreme Court in D.P. Maheshwari Vs. Delhi Administration and Others, , and Andhra Scientific Co. Ltd. Vs. A. Seshagiri Rao and Another, . It was also submitted by him that it was the Management who delayed the proceedings before the Tribunal. He also contended that the Management took several years for leading evidence in support of the enquiry and, Therefore, the contention that the Tribunal should not have awarded fullback wages and should have instead awarded only compensation is misplaced and is liable to be rejected. It was submitted by him that when the enquiry was found to be invalid and when it was held by the Tribunal that the charges leveled against the workman was not proved in the enquiry proceedings, the workman was definitely entitled to receive full back wages .

8. It was also submitted by him that a recovery certificate has been issued by the appropriate Government amounting to Rs. 8,15,930.90 calculating the awarded amount as per directions contained in the award which is kept deposited with the Registrar of this Court pursuant to the order passed by this Court in C.W.P. No. 7554/2000 dated May 2, 2001. It was submitted that the said recovery certificate has not been challenged by the petitioner/Management. It was also submitted that even the retiral benefits have not been paid to the petitioner and, Therefore, the writ petition should be dismissed.

9. In the light of the aforesaid submissions, I have considered the records to appreciate the issues raised.

10. The parties led their evidence before the Tribunal and while passing the aforesaid award the Tribunal took notice of the evidence on record and thereafter has recorded the findings that not only the enquiry was vocative of the principles of natural justice but that even the charges against the workman was not proved.

Even after passing of the award, an application was filed by the workman before the Labour Commissioner, Government of N.C.T. of Delhi u/s 33-C(I) of the Industrial Disputes Act for determination of the amount due to the workman under the award and issuance of a recovery certificate for recovery of the same. Pursuant thereto, the Labour Commissioner issued a notice to the Management on February 1, 1998 in reply to which the Management also filed a reply. After making an enquiry into the matter, the Joint Labour Commissioner calculated the amount payable as Rs. 8,15,930.90 and the aforesaid amount was also approved by the Labour Commissioner as the amount to be recovered from the Management by order dated May 1,1998, in respect of which a recovery certificate was issued by the Competent Authority on September 3,1998. Pursuant thereto, an order was also passed by this Court on March 2,1998

staying the recovery proceedings subject to (he condition that the Management deposits with the Registrar of this Court the entire amount sought to be recovered pursuant to which the entire amount stands deposited with the Registrar of this Court.

11. In respect of the preliminary objection with regard to the validity of the enquiry, it was found by the Tribunal on appreciation of the evidence that no charge-sheet drawing up regular proceedings against the workman could be produced by the petitioner/Management before the Tribunal, Even the enquiry was found to have been conducted in a slipshod manner. In respect of the same also the Tribunal recorded a definite finding that the workman was not granted a fair and proper opportunity to defend himself in the proceedings. The aforesaid findings were arrived at after considering the evidence on record and they are in the nature of findings of fact which cannot be interfered with by this Court exercising jurisdiction under Article 226 of the Constitution of India. Even thereafter the Management was allowed the opportunity to lead further evidence. Even on the basis of such further evidence led, it was found by the Tribunal that the charges leveled could not be proved. While coming to the aforesaid conclusions, the Tribunal has noticed and appreciated the evidence on record. It could not be shown on behalf of the petitioner/Management as to how the said findings are erroneous. This Court while exercising jurisdiction under Article 226 of the Constitution of India cannot sit over the findings recorded by the Tribunal as the Appellate Authority and re-appreciate the entire evidence on record to come to a contrary finding than what is recorded by the Tribunal.

12. In that view of the matter, the findings that the enquiry was not conducted properly and the same was in violation of the principles of natural justice and that the charges against the workman was not proved stand upheld. Having held thus, the next issue that is to be looked into is as to whether the Tribunal was justified in awarding the entire back wages to the respondent/workman.

13. The records disclose that reference was pending before the Tribunal from 1984 onwards during which the Management could not also avail of the service of the respondent/workman. The final award was passed in 1997 almost after expiry of so many years. Counsel appearing for the petitioner/Management relied upon two decisions of the Supreme Court wherein the Supreme Court even after upholding the award of reinstatement of the respondent/workman in service has directed for payment of 50% back wages on consideration that the reference was pending in the Labour Court for a long period of time.

14. Here is a case where the respondent/workman was reinstated in service on October 26, 1999 and after working for about one and a half year, the workman retired from service on June 30,2001. However, although the workman worked from October 26, 1999 till the date of his retirement, i.e., June 30,2001, it is an admitted position that the retiral benefits have not been paid to the respondent/workman in spite of the order passed by this Court on August 14, 2001 in C. W.P. No. 4874/2001. The workman has also not received the awarded amount in view

of the stay of the recovery proceedings although the entire awarded amount stands deposited with the Registrar of this Court. There is also some force in the contention of the Counsel appearing for the respondent/workman that the Management took many opportunities for leading its evidence in the reference proceedings. The Management was to some extent responsible for the delay in passing the award. At the same time/ the fact that the Management could not get the services of the respondent/ workman for long years also cannot be lost sight of.

15. In the peculiar facts and circumstances of this case and considering the aforesaid factors and in order to do complete justice to the parties. I hold that the award passed by the Tribunal is legal and valid. The order of reinstatement passed by the Tribunal is upheld which was also given effect to by the petitioner/ Management by reinstating the workman in service where from he has also retired, However, so far payment of full back wages is concerned, in view of the opinion expressed hereinabove and in the light of the peculiar facts and circumstances of the, case, I direct that payment of 65% of back wages to the workman by the Management shall meet the ends of justice which I hereby order. 100% of back wages stand deposited with the Registry of this, Court Therefore, the respondent /workman shall be paid 65% of the back wages against receipt from the amount which stands deposited with the Registrar of this Court. The award is upheld subject to the aforesaid modification. The Registrar (General) of this Court is requested to assess the amount payable to the workman in terms of this order and the said amount of 65% back wages shall be paid to the workman from the amount which stands deposited in this Court along with interest at the rate of 12% on the said amount from the date of the award till the date of payment. The balance amount, if any, shall be returned to the Management by the Registrar (General) of this Court. While making the aforesaid assessment, it shall be open to the Registrar (General) to take the assistance of the Labour Commissioner who, if requested, shall assist the Registrar (General) of this Court in making the assessment in terms of this order.

16. So far the payment of retiral benefits are concerned, the same shall also be paid by the petitioner/Management, if not already paid, in accordance with law and if in case the respondent/workman is still aggrieved, he may resort to appropriate remedy in accordance with law.

17. In terms of the aforesaid order, the writ petition stands disposed of. Pending application stand disposed of accordingly.