

(2002) 05 DEL CK 0192

In the Delhi High Court

Case No : CW No. 3159/93

Delhi Printing and Publishing Co. Ltd.

APPELLANT

Vs

Labour Court-VII and Another

RESPONDENT

Date of Decision : 27-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2, 25F, 25G, 25H

Citation : (2003) 1 LLJ 1025

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Rajendra Dhawan, for the Appellant; Nemo, for the Respondent

Judgement

Mukul Mudgal, J.—This petitions challenges the Award dated 16th December, 1992, passed by the Labour Court-VII, directing the reinstatement of the petitioner/workman, respondent No. 2 herein with continuity in service and full backwages from the date of the termination of his services till 4th May, 1988 when the respondent refused to join the duty without payment of backwages to him. He was also held entitled to 50% per cent of the backwages with effect from 4th May, 1988 till the implementation of the Award.

2. In so far as the merits of the disputes are concerned, the facts as averred by the workman/respondent No. 2 herein, before the Labour Court are as follows:

(a) The respondent/workman (petitioner before the Labour Court) had been in employment of the respondent/Management, i.e., the petitioner in this Court since 1st of July, 1974 and his last drawn wages were Rs. 614.50p. per month. However, the petitioner/Management was in the habit of issuing periodical letters of appointment to respondent No. 2-workman and last such appointment letter was issued on 1st July, 1986 for a period of six months. On 31st of December, 1986, the respondent No. 2/workman's services were terminated vide letter of even date on the ground that no work was available for him and he was handed over a sum of Rs. 863/- on account of wages for the month of december, 1986

and notice pay which was sent to respondent No. 2/workman was in violation of Section 25-F, 25G and 25H of the Industrial Disputes Act as well as of the provisions of Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. The respondent No. 2-workman's services were terminated because he was a Member of Delhi Press Karamchari Sangh and asking for the implementation of Palekar Award which matter was already subjudice in the Labour Court, Delhi. The termination of the respondent No. 2's services was said to be illegal, unjustified and arbitrary and as an act of victimisation and unfair labour practice. The respondent No. 2-workman was unemployed since the date of his termination and entitled to be reinstated with full backwages.

(b) The respondent-Management (before the Labour Court), the petitioner herein denied the claim of the respondent No. 2-workman that he was in continuous employment of the petitioner with effect from 1st of July, 1984. It was stated that the petitioner was appointed for a period of six months with effect from 1st of July, 1986 and his employment came to an end automatically on 31st of December, 1986 in terms of his appointment.

(c) It was not specifically denied that the periodical appointment letters were issued to the petitioner/workman, i.e., the respondent No. 2 herein from time to time. the respondent No. 2-workman appeared and proved all the appointment letter starting from 1st of July, 1974 onwards as Ex.WW 1/2 to Ext.WW 1/8. In cross-examination, it was the petitioner management's witness, MW-1, Shri Mukesh Sharma, who had admitted that the workman might be in the employment of the petitioner-Management continuously with effect from 1st of July, 1974 up to 31st of December, 1986.

3. The Labour Court recorded the following findings:

(a) The petitioner-Management had not justified the retrenchment except taking the plea that the respondent No. 2's appointment was for a specific period of six months and came to an end on expiry of the said period of six months. The respondent No. 2-workman was in the employment for more than 240 days and was required to be paid retrenchment compensation under the provisions of Section 25-F of Industrial Disputes Act. The retrenchment compensation having not been paid, the termination of the workman's services is illegal.

(b) The respondent No. 2-workman was to retire on completion of 55 years of age or 30 years of service whichever was earlier. The petitioner-Management wanted to evade the provisions of Industrial Disputes Act by issuing appointment letters of short durations and the retrenchment of the services of the respondent No. 2-workman was, Therefore, illegal. No justification has been shown by the petitioner-Management for retrenchment of the services of the workman. Since the retrenchment of the workman's services was not justified, the workman would have been entitled to full back wages Along with reinstatement since the workman was not gainfully employed.

1(c) On 16th of December, 1987 an application was moved by the petitioner-management stating that it was willing to take back the workman/respondent No. 2 on duty without prejudice to the rights of the petitioner-Management. By an Order dated 4th May, 1988, the Labour Court had ordered that the workman/respondent No. 2 was not ready to joint the duty without payment of backwages and consequently the workman was entitled to full backwages from the date of his termination till 4th May, 1988 and was entitled to 55% per cent of the backwages with effect from 4th May, 1988 till the implementation of the Award dated 16th December, 1992.

4. The learned counsel for the petitioner Management who has challenged the said Award dated 16.12.1992 by the present writ petition has urged that the present case is filed u/s 2(oo)(bb) of the Industrial Disputes Act and there was no work in the Department in which the respondent N. 2-workman was working. It is specifically denied that there is any practice of employing of re-employing the workmen on the basis of periodical contracts. It was also contended by the petitioner that in so far as the periodical letters of appointment are concerned, the appointment in terms thereof came to an end as the management's printing press has been closed.

5. The petitioner Management is not entitled to invoke the above provisions because a clear finding of fact has been arrived at that the petitioner has been resorting to such a practice of issuing periodical letters to the workman and the respondent No. 2-workman had been in the employment of the petitioner Management since 1974 onwards. There may have been some substance in the plea of the petitioner that the respondent No. 2's services had come to an end pursuant to the letter of appointment if it was the first and only letter of appointment. In the present case, the respondent No. 2-workman has been in continuous services since 1974 and on the facts found by the Labour Court which have affirmed the mala fide conduct of the petitioner, the petitioner is not entitled to avail of the benefit of Section 2(oo)(bb) of the Industrial Disputes Act in the present case. The prevarication in the stand of the petitioner Company about the one time employment of the respondent No. 2, workman stood contradicted by the deposition of its own witness, MW-1, Mukesh Sharma, noted above an the appointment letter issued by the petitioner itself i.e., Ext.WW.1/2 to Ext.WW.1/8 starting form 1st of July, 1974 itself up to the last letter issued on 1st July, 1986. In my view of the petitioner has taken a demonstrably false plea of the petitioner's one time employment, it is not entitled to invoke the discretionary writ jurisdiction under Article 226 of the Constitution of India. Even in this Court, faced with an unassailable finding of fact of the Labour Court, based on the petitioner's own appointment letters which started from July 1974, the petitioner's pleas have been vague and misleading and conceal more than they reveal. The relevant plea in para 3(b) read as follows:-

"That Shri Balu Ram, respondent No. 2 was an employee working in the press. He was taken in employment for a fixed period and the last letter of appointment

which was issued to him was dated 1st July, 1986 wherein he was taken in employment on contract for a period of six months. A true copy of the said appointment letter is enclosed and marked as Annexure "B"....."

At no other place in its writ petition has the petitioner referred to or given any Explanation for its own letters starting from July 1974, except referring to the letter of 1st July, 1986 (Ext. WW.1/2 to Ext.WW 1/8). Thus even in this Court the petitioner's pleadings lack the requisite probity which indicate clearly that the petitioner's conduct disentitles it for consideration of the relief, claimed in this petition under Article 226 of the Constitution. In any event, I am satisfied that in so far as the findings recorded by the Labour Court are concerned, they are based on appreciation of the impact of successive appointment letters and are pure findings of fact and not amenable to interference under the writ jurisdiction of this Court.

6. The learned counsel for the petitioner further submitted that the Award in so far as it granted 50% per cent of the backwages with effect from 4th May, 1988 is not justified. He stated that the petitioner had offered to employ the respondent No. 2-workman without prejudice to its pleas on 4th May, 1988, but it was found that the workman was not willing to join the duty without being paid full backwages.

7. In my view, the Labour Court has imposed sufficient sanctions on the workman for this refund to go back to duty from 4th May, 1988 on the respondent No. 2 by granting only 50% back wages and thus no interference with this portion of the award is also warranted.

8. Accordingly, the respondent No. 2-workman is entitled to be reinstated with continuity in service and is entitled to full backwages from the date of the termination of his services with effect from 31st of December, 1986 till 4th May, 1988. He, however, will only be entitled to 50% of backwages from 4th May, 1988 up to date.

9. Mr. Dhawan, learned counsel, appearing on behalf of the petitioner finally submitted that this is a case where instead of granting reinstatement this Court may grant adequate compensation in lieu of reinstatement. He has particularly relied upon the fact that on 21st of October, 1995 when the workman/respondent No. 2 on his own showing as per the Affidavit dated 21st of October, 1995 was about 53 years old and Therefore, according to the Contract of Appointment he would have been retired at the age of 55 or thirty years of service whichever earlier. According to him, the respondent No. 2-workman has been retired at the age of 55 years.

10. The conduct of the petitioner Company and in particular the fact that the respondent No. 2 had even according to the petitioner's own stand had attained the age of superannuation some time in 1995 would make this prayer of the petitioner otiose. however, I agree with the plea of the learned counsel for the petitioner-Management that the respondent No. 2 was entitled to wages only up

to attaining the age of 55 years.

11. On 22nd July, 1993 the impugned Award was stayed only in respect of grant of 50% per cent of the backwages of respondent No. 2-workman with effect from 4.5.1988. However, on 17th of November, 1995 the following order was passed by this Court:

"The interim order passed on 22nd July, 1993 is confirmed with the clarification that the workman will be entitled to 50% of the wages awarded by the Labour Court w.e.f. 4th May, 1988. Mr. Dhawan states that the amount has already been deposited. If it is not, the same be deposited now within two weeks."

12. The aforesaid order in my view would effectively meet the ends of justice. According, the writ petition is dismissed. The petitioner is directed to deposit in the registry of this Court within 4 weeks from today the balance amount of 50% of the back wages from 5th May, 1988 to the date the petitioner attained the age of 55 years apart from paying full back wages from 31.12.1986 to 4th May, 1988. The amount to be deposited within 4 weeks shall take into account the amount already deposited in this Court and the petitioner shall be given adjustment for such deposit. The petitioner, however, while depositing the amount due as per the award as partly modified above shall Along with the deposit in this Court file an affidavit disclosing the basis for computation of the amount so deposited. In case the amount is not deposited within 4 weeks from today, it shall carry interest at the rate of 18% per annum from the date of this judgment up to the date of payment. Since the petitioner's stand in these proceedings has been misleading, the respondent No. 2-workman is entitled to costs, quantified at Rs. 10,000/- which is also payable within 4 weeks from today. In case the amount directed to be deposited pursuant to the orders of this Court including the Order dated 17.11.1995 has been deposited in this Court the respondent No. 2-workman is entitled to withdraw the said amount. If any amount is still lying in deposit in this Court the Registry is directed to release the said amount to the respondent No. 2-workman Along with any other amount pursuant to this judgment on or before 31st July, 2002 and the withdrawal will be subject to adjustment of the eventual dues payable to the respondent No. 2 workman upon the upholding of the award by this judgment.

13. List for reporting filing of the affidavit as aforesaid on 17th July, 2002.