
(2012) 07 DEL CK 0493
In the Delhi High Court
Case No : LPA 349 of 2012

Delhi Transport Corporation

APPELLANT

Vs

Ram Kishan Yadav

RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227

Citation : (2012) 7 AD 478

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Anand Nandan, for the Appellant; Sunil Mund, for the Respondent

Final Decision : Disposed Off

Judgement

A.K. Sikri, Acting Chief Justice

1. The respondent-workman was employed with the appellant Delhi Transport Corporation on 28.3.1979 as Retainer Crew Driver. He was brought on monthly rates of pay with effect from 28.12.1979. It appears that in the year 1986, he started remaining unauthorizedly absent. A charge-sheet dated 19.11.1986 was served upon him to which he replied. Thereafter inquiry was conducted. As per the inquiry officer's report dated 11.5.1987, charges of unauthorized absence stood proved. Show cause notice dated 12.5.1987 was given on that basis proposing to impose the punishment of removal from service. It is the case of the appellant that no reply thereto was given even after reminder dated 12.6.1987 also served upon him and thereafter vide order dated 23.7.1987, the respondent-workman was removed from service. Admittedly, the workman did not challenge the said termination by filing any proceedings. According to him, he kept on making representations as he had no knowledge of the termination of his services since he was not served with any such order of removal from service. Further, according to the workman, though he kept making so many representations but was not given any reply. Be as it may, inspite thereof, the workman never raised any industrial dispute immediately thereafter. However, he

sent demand notice only on 2.8.2004 making a demand that he should be taken back in service. When the demand of the workman was not accepted, he raised industrial dispute in the year 2005 which was referred to the Labour Court for adjudication with the following terms of reference:

Whether services of Sh. Ram Kishan Yadav, S/o Sh. Sukh Ram w.e.f. 23.07.1987 have been terminated illegally and/or unjustifiably by the management, and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect?

The appellant appeared and took a preliminary objection that there could not have been a valid reference at this stage, that is, after a lapse of 17 years. Various issues were framed by the Labour Court. We are, for time being, concerned with issue No. 1 which was to the following effect:

1. Whether the present dispute raised by the workman is liable to be dismissed on the ground of laches and delay?

2. After recording the evidence and hearing the counsel for the parties, the Labour Court passed its award dated 17.2.2011. In so far as issue No. 1 is concerned, after detailed discussion, the Labour Court came to the conclusion that reference could not be set aside or quashed simply on the ground of delay and the discretion was with the Labour Court, in case of belated reference, to mould the relief. The Labour Court gave these findings referring to the judgment of the Supreme Court in *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, . On merit, the termination was held to be bad in law. Under these circumstances, the Labour Court granted reinstatement of service and 60% back wages with continuity of service and consequential benefits. For giving a relief of 60% back wages, Labour Court again relied upon the judgment of *Ajaib Singh (supra)* where 60% back wages were given. The appellant filed writ petition challenging this award which has been dismissed in limine by the learned Single Judge vide order dated 19.3.2012. The learned Single Judge has again referred to the judgment of *Ajaib Singh (supra)* holding that there was no merit in the writ petition. In the present appeal preferred against the aforesaid judgment dated 19.3.2012, learned counsel for the appellant argues that neither the Labour Court nor the learned Single Judge truly appreciated the ratio of *Ajaib Singh (supra)*. He submits that this very judgment has been explained by the Supreme Court in subsequent case entitled *Balbir Singh Vs. Punjab Roadways and Another*, . In that case, the Supreme Court categorically observed that in *Ajaib Singh (supra)*, the management had not taken the plea of delay before the Labour Court. The Court further held that even if the plea of delay has not been taken, it would have been gone into by the Tribunal.

3. In *Balbir Singh (supra)*, the Supreme Court had considered the plea of delay and findings were arrived at that since dispute was raised by the workman at a

belated stage, the workman was not entitled to reinstatement. The Tribunal was of the view that in case of delay, it was up to the Tribunal to exercise the discretion and mould the relief and to pass the order keeping in view the facts and circumstances of the case. In that case, the Tribunal found it appropriate not to grant the relief of reinstatement which view of the Tribunal was upheld by the High Court also and it was in these circumstances the Supreme Court held that the award of the Tribunal or the judgment of the High Court does not suffer from any serious illegality warranting interference under Article 136 of the Constitution. Be as it may, we find that though the Labour Court in the instant case as well as the learned Single Judge has referred to and relied upon the judgment in Ajaib Singh (supra), but while granting relief of back wages, failed to appreciate the principle laid down in that case. For better appreciation, we reproduce para 12 of the said judgment in Ajaib Singh (supra):

12. In the instant case, the respondent-management is not shown to have taken any plea regarding delay as is evident from the issues framed by the labour court. The only plea raised in defence was that the labour court had not jurisdiction to adjudicate the reference and the termination of the services of the workman was justified. Had this plea been raised, the workman would have been in a position to show the circumstances preventing him in approaching the Court at an earlier stage or even to satisfy the court that such a plea was not sustainable after the reference was made by the government. The learned Judges of the High Court, therefore, were not justified in holding that the workman had not given any explanation as to why the demand notice had been issued after a long period. The findings of facts returned by High Court in writ proceedings, even without pleadings were, therefore, unjustified. The high Court was also not justified in holding that the courts were bound to render an even handed justice by keeping balance between the two different parties. Such an approach totally ignores the aims and object and the social object sought to be achieved by the Act. Even after noticing that "It is true that a fight between the workman and the management is not a just fight between equals," the court was not justified to make them equals while returning the findings, which if allowed to prevail, would result in frustration of the purpose of the enactment. The workman appears to be justified in complaining that in the absence of any plea on behalf of the management and any evidence, regarding delay, he could not be deprived of the benefits under the Act merely on technicalities of law. The High Court appears to have substituted its opinion for the opinion of the labour court which was not permissible in proceedings under Articles 226 / 227 of the Constitution.

4. It is categorically held that when the dispute is raised belatedly by the workman, the Labour Court is empowered to appropriately mould the relief by denying the workman some part of back wages. While doing so, the award of the Labour Court was modified by the Apex Court by granting 60% of the back wages w.e.f. 8.12.1981 when the workman in that case had raised the demand and not from the date of termination which occurred in 1974. It is this part which

is missed by the Labour Court as well as the learned Single Judge in the instant case, namely, the back wages should have been allowed from the date of demand and not from the date of termination. We accordingly modify the Labour Court award and hold that in the present case, the respondent-workman shall be entitled to back wages @ 60% from 2.8.2004 when he sent notice of demand upon the appellant. The amount shall be paid within four weeks from the date of receipt of the copy of the order.

5. We may make it clear that we have not gone into the question of validity of the reference which was made after a lapse of 17 years. We would only record that there are certain judgments where it is held that belated reference may be inappropriate and can be set aside/quashed. This view is taken by the Division Bench of this Court in All India Institute of Medical Sciences Vs. Sanjay Kumar and Another, . However, before us since the limited issue of back wages is concerned and that too from which date it should be given, we have dealt with the matter from this limited angle only. The appeal is partly allowed and disposed of accordingly.