

(2009) 02 DEL CK 0308

In the Delhi High Court

Case No : Writ Petition (C) No. 8216 of 2006

Delhi Transport Corporation

APPELLANT

Vs

Bishan Swaroop

RESPONDENT

Date of Decision : 24-02-2009

Acts Referred:

Evidence Act, 1872 — Section 58
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2009) 02 DEL CK 0308

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Ravi Kant, for the Appellant; S.L. Kashyap, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—The present writ petition has challenged the award dated 8th July, 2005 passed by Sh. D. C. Anand, Presiding Officer, Labour Court-I in new LCA No. 51/2005 and old LCA No. 719/1991 in the case titled Workman/claimant Bishan Swaroop v. DTC.

2. By the impugned award dated 8th July, 2005 the claim petition of the respondent/workman u/s 33(C)(2) of the Industrial Disputes Act, 1947 was partially allowed by directing the petitioner/management to pay an amount of Rs. 19,782.70 to the respondent/workman within a period of one month on account of the overtime of the respondent/workman with the petitioner/management.

3. The brief facts leading to the filing of the petition are that the respondent/workman had filed the petition u/s 33(C)(2) of the Industrial Disputes Act, 1947 against the petitioner/management claiming various amounts which was on account of the overtime having been rendered by him for 2320 hours and 35 minutes between the period 1st February, 1986 to 25th April, 1988. It was stated that the respondent/workman has worked as Conductor, and accordingly, he was

entitled to overtime calculated @ 8.50/- per hour which came to roughly Rs. 19782.70/-.

4. The petitioner/management in their written statement of the statement of claim in para 3 sub para 3 stated as under:

That the contents of Para III are incorrect, misconceived, wrong and hence denied. The workman work 2320 hours of overtime work from 1.2.1986 to 25.4.1988. The workman was paid Rs. 19,782.70 for overtime wages. No amount is payable in regard to overtime work.

5. After filing of the written statement the parties have adduced their evidence in support of their respective claims. The petitioner/management filed an affidavit of one Raj Kumar in which it was stated that the respondent/workman has actually worked for 7 hours 20 minutes overtime for which he was actually paid his wages. It was also denied that the respondent/workman had actually worked for 2320 hours and 35 minutes.

6. The learned Labour Court arrived at a finding of fact and directed the payment of Rs. 19782.70/- to the respondent/workman by the petitioner/management on the ground that such a huge amount would not have been paid by the petitioner/management to the respondent/workman without obtaining his signatures on some documents or without any documentary evidence in their record. The petitioner/management had failed to adduce the evidence to show that this payment has actually been made by the petitioner/management to the respondent/workman, and accordingly, arrived at the said conclusion.

7. I have heard the learned Counsel for the petitioner/management, however, as the respondent/workman has not appeared either in person or through his counsel consequently there is no assistance rendered from their side.

8. I have perused the record carefully and given the careful consideration to the submissions made before me.

9. I feel that there is nothing wrong with the finding of fact arrived by the learned Labour Court No.-I in granting a sum of Rs. 19782.70/- to the respondent/workman for 2320 hours and 35 minutes overtime, which has been calculated @ Rs. 8.50/-. The contention of the learned Counsel for the petitioner/management that the respondent/workman had not worked for these many hours and further that he had only worked for 7 hours and 20 minutes for which he was paid the wages does not seem convincing on account of the fact that the petitioner/management in its written statement has made a categorical admission that the respondent/workman had worked for 2320 hours and 35 minutes from 1st February, 1986 to 25th April, 1988 for which he had been actually paid a sum of Rs. 19782.70/-, therefore, the factum of the respondent/workman having worked for these many hours has been admitted by the petitioner/management although in the same paragraph they have made a contrary averment also denying the averment made in the corresponding para 3

of the statement of claim being incorrect, misconceived, wrong and denied. The petitioner/management has failed to adduced any evidence on record, despite an opportunity having been given to show that this payment of Rs. 19782.70/- has been actually made to the respondent/workman.

10. Section 58 of the Evidence Act, 1872 though strictly may not be applicable to the proceedings before the learned Labour Court but the principle under the said section is very well governing the adjudication of any dispute before any forum including the learned Labour Court. The said section lays that a fact which is admitted need not be proved by the opposite side. In their written statement, para 3, the petitioner/management have admitted that the respondent/workman had actually worked for 2320 hours and 35 minutes. Plea of the petitioner/management is that he has been paid a sum of Rs. 19782.70/- which was due and payable to the respondent/workman for the aforesaid period. This was a fact which was specially within the knowledge of the petitioner/management, and accordingly, the onus to prove the payment of the aforesaid amount was squarely on the petitioner/management which it has miserably failed to discharge.

11. On the contrary, the petitioner/management has taken a contradictory stand in the affidavit which has been filed in which it has been stated that the respondent/workman has actually worked only for 7 hours and 20 minutes for which the overtime charges have been paid to him. This time is totally incomprehensible in view of the admission having been made by the petitioner/management in the written statement. I, therefore, feel that there is no perversity and illegality in the order passed by the learned Labour Court. And accordingly, the challenge to the said order by the petitioner/management must fail against the impugned award dated 8th July, 2005 and the writ petition is dismissed. The parties are left to bear the cost. The stay order dated 16th April, 2007 which was granted against the operation of the impugned award dated 8th July, 2005 also stand vacated.