

(2011) 05 DEL CK 0191

In the Delhi High Court

Case No : Writ Petition (C) 4738 of 2005

Delhi Transport Corporation

APPELLANT

Vs

Raj Kumar

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 173
Industrial Disputes Act, 1947 — Section 11A, 25F
Penal Code, 1860 (IPC) — Section 34, 406, 498A

Citation : (2011) 05 DEL CK 0191

Hon'ble Judges : Veena Birbal, J

Bench : Single Bench

Advocate : Saroj Bidawat, for the Appellant; Ajay Paul, for the Respondent

Final Decision : Allowed

Judgement

Veena Birbal, J.—By way of this petition under Article 226 of the Constitution of India, Petitioner has challenged the impugned award dated 10th December, 2003 passed in ID No. 50/1997 by the learned Presiding Officer, Labour Court No. VII, Delhi wherein Petitioner has been directed to reinstate the Respondent with continuity of service and 30% of the back wages.

2. Briefly the facts relevant for the disposal of the present petition are as under:

Respondent was offered appointment as Retainer-cum-Driver as per terms and conditions of memo dated 30th June, 1988 by Petitioner/management on purely temporary basis. Respondent accepted the same and was appointed as a Retainer-cum-Driver w.e.f 5th July, 1988. On 16th December, 1988, Respondent had filled Character Verification Form (in short referred to as "CVF") wherein he left column No. 12 of the said form blank and concealed about his involvement in a criminal case registered against him vide FIR No. 201 dated 3.7.1988 u/s 498A/406/34 IPC PS Janak Puri, New Delhi. It is alleged that Respondent deliberately concealed the said information in order to get the appointment. It is

stated that Petitioner came to know about the alleged concealment from the report of DCP dated 28th February, 1989 wherein it was brought to the notice of Petitioner that the case arising out of aforesaid FIR was pending trial against Respondent in the court of Shri Nand Kumar Goyal, MM and the next date of hearing was 7th June, 1989. On the basis of said information, Petitioner had dispensed the services of Respondent w.e.f 31st January, 1990 under para (xiv) vide memo dated 30th January, 1990 after following due procedure of law. Respondent preferred an appeal on 20.2.1996 against the order of dispensation of service which was dismissed.

Thereafter, Respondent raised an industrial dispute challenging his dispensation from service which was referred for adjudication to the Labour Court with the following terms of reference:

Whether the action of the management to dispense with the service of Sh. Raj Kumar Chopra is illegal and/or unjustified and if so to what relief is he entitled and what direction are necessary to this respect.

Respondent in statement of claim had alleged that his service was dispensed with w.e.f. 30.1.1990 by the Petitioner illegally and without following due process of law. Respondent further alleged that there was no concealment on his part as is alleged and that he was acquitted by the criminal court on 14th September, 1994 in the aforesaid FIR. Thereafter he had made several representations but the Petitioner did not take him on duty. Respondent had prayed that he be reinstated with full back wages.

Petitioner opposed the statement of claim by filing written statement wherein it was alleged that the Respondent had deliberately concealed the facts about the registration of aforesaid FIR against him while filling up column No. 12 of CVF in order to secure the appointment. It was further alleged that on coming to know of the same the services of Respondent were dispensed with after conducting proper enquiry as per rules as such action of the Petitioner was just and fair.

On the pleadings of the parties, following issues were framed:

1. Whether the domestic enquiry was not conducted according to principles of natural justice and if so, its effect
2. As per terms of reference.
3. On 19.11.2003, the Labour Court passed the following order:

Pr.: Workman in person.

AR for the management.

It is admitted by the AR for the DTC that no enquiry in the present case was conducted and the workman was removed on the basis of not disclosing of a criminal case u/s 498-A/406 IPC vide FIR No. 201/88 PS Janak Puri which fact came to knowledge on police verification on the information furnished by the

workman. The workman has submitted that it was a matrimonial case against his brother and that case has been quashed by the Hon"ble Delhi High Court on 19.8.94. In support of which he has filed certified copy of the order dated 14.9.94 passed by the Metropolitan Magistrate. In view of these facts, to come up for appropriate order u/s 11A of the I.D. Act on 29.11.2003.

POLC-VII/19.11.2003.

4. On 10.2.2003, impugned award is passed by the Labour Court wherein Petitioner/management has been directed to reinstate the Respondent with continuity of service and 30% of back wages.

5. Aggrieved with the same, the present petition is filed.

6. Learned Counsel for the Petitioner has contended that CVF was filled by Respondent on 16th December, 1988 and the criminal case was registered against the Respondent vide the aforesaid FIR on 3rd July, 1988, as such, Respondent had the knowledge of registration of case against him and the Respondent had deliberately concealed the said fact as such it was a justified ground to dispense with the services of Respondent. It is contended that Section 25F of Industrial Disputes Act (in short referred to as the "Act") was not attracted in the present case as such finding of lower court that the same ought to have been complied with by Petitioner is illegal. It is further contended that the Respondent was only a temporary employee and had worked only for 11/2 years, under these circumstances, the order of reinstatement with continuity of service and 30% back wages is erroneous.

7. On the other hand, the stand of Respondent is that the Petitioner has admitted before the Labour Court that no inquiry was conducted before dispensing the service of Respondent, as such, action of Petitioner in terminating his services was illegal and the Labour Court has rightly granted relief to him. It is contended that action of Petitioner in dispensing with the service of Respondent is punitive, as such Petitioner ought to have held enquiry against him before taking any action against him. It is contended that there is no concealment by Respondent as is alleged. Respondent was never aware of registration of aforesaid FIR against him nor was he ever arrested in the said case, as such there is no concealment on his part. It is contended that impugned award is legal and valid and calls for no interference.

8. I have considered the submissions and perused the record.

9. The main allegation against the Respondent/workman is that he had concealed about registration of a criminal case vide FIR No. 201 dated 3.7.1988 u/s 498A/406/34 IPC PS Janak Puri, New Delhi while filling up the CVF on 16.12.1988. The FIR was registered on the complaint of sister-in-law of Respondent i.e. his brother's wife against her husband, mother-in-law, Petitioner and his wife. The stand of Respondent is that he was not aware of FIR when he filled up the CVF on 16th December, 1988. It is admitted position that the

Petitioner never charge sheeted the Respondent in respect of allegations levelled against him by Petitioner. Though Petitioner had taken a stand in the written statement before the Labour Court that proper inquiry was conducted as per rules wherein Respondent had admitted the charges against him. However, during the pendency of the case before the Labour Court, as noted above, the Petitioner on 19.11.2003 had admitted that no inquiry was conducted. Had the inquiry being conducted, the truth would have been revealed. The Labour Court has returned the finding that the column 12 of "CVF"" refers to the cases where a person had been tried or any trial is pending in the court of law or has been fined or punished or released on bail after conviction. It calls for information as to whether he had been tried for any offence or any case is pending against him or has been fined or detained in jail. The pendency of FIR is not mentioned therein. It may also be mentioned that no material has been brought by the Petitioner to substantiate its stand that the Respondent was aware of registration of aforesaid FIR against him when he filled up the CVF either before Labour Court or before this Court. It is also not the case of Petitioner that Respondent was called by the police for interrogation prior to 16.12.1988. A report u/s 173 Cr.P.C./ challan was sent by the police to court on 22.8.1989 which was after submission of CVF by the Respondent. Under these circumstances, it can't be said that there was any concealment on the part of Respondent as is alleged.

It has also come on record that it was a matrimonial case which was registered on the complaint of sister-in-law of Respondent and the main allegations were against Petitioner's elder brother i.e husband and mother-in-law of complainant. The FIR was finally quashed by this Court vide order dated 19.8.1984.

The relevant finding of the Labour Court in this regard is as under:

Without proving on the merits of his case, it may be noted that column No. 12 of verification form calls information of a case pending in court of law or a case in which punishment has been meted out to him by being fined or detained in jail. Till the police takes the matter to the court by filing a charge sheet after investigation u/s 173 Cr.P.C and court binds the accused by summoning, the investigation by police on the basis of any FIR or complaint does not debar any person from his employment from the job. Column No. 12 of the verification form refers only to those cases where a person has already been tried in a court of law where he has been fined or punished or released on bail after conviction for further trial etc. It is common knowledge that in matrimonial offence u/s 498A/406 IPC, there is tendency to implicate every family members. In this case, it is seen that challan was sent by police to court on 22.8.89, so knowledge of pending case in court can be attributed only subsequently and not in 1988 when the form was filled. Copy of attestation form and copy of challan have been filed by the DTC in this Court.

In view of above discussion, I find no illegality in the finding of the Labour Court that there was concealment on the part of Respondent while filling up CVF as is alleged.

10. Keeping in view the facts and circumstances of the case, the finding of the Labour Court about non-compliance of Section 25F of the Act also does not call for any interference of this Court.

11. In view of above discussion, finding of the Labour Court that dispensation of service of Respondent/workman by the Petitioner was illegal and unjustified does not call for any interference.

12. By the impugned award, the Labour Court has granted relief of reinstatement with continuity of service and 30% of back wages to the Respondent. The status of Respondent was that of a temporary employee and he had worked only for 11/2 year, the said aspect of the matter has not been considered by the Labour Court. The Apex Court in catena of judgments has clearly laid down that if termination of a person is held illegal, the Labour Court is not supposed to direct reinstatement with back wages and compensation instead of reinstatement has been held to meet the ends of justice. Reference in this regard is made to judgment of Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, . The relevant para of which is as under:

7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

It has been further held in the above referred case that while awarding the compensation various factors like manner and method of appointment, nature of appointment, length of service are relevant.

13. The Labour Court has ignored the material facts like length of service and his temporary status while granting relief to Respondent. Under these circumstances, the grant of relief of reinstatement vide impugned award is erroneous and accordingly the same is set aside.

14. Considering the totality of facts and circumstances, the award of compensation of Rs. 75,000/- to the Respondent shall meet the ends of justice. The Petitioner is, therefore, directed to make the payment of Rs. 75,000/- within 6 weeks from today failing which the same will carry the interest @ 9% per annum.

15. The writ petition stands partly allowed to the aforementioned extent with no order as to costs.