

(2009) 04 DEL CK 0455

In the Delhi High Court

Case No : Writ Petition (Civil) No. 18086 of 2005

Devika Estate Management Pvt. Ltd.

APPELLANT

Vs

Devika Estate

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0455

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

Bench : Single Bench

Advocate : Gajendra Giri, for the Appellant; Mukul Sharma, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—The petitioner in the instant writ petition has challenged the award dated 21st December, 2004 passed by the Industrial Tribunal-II in ID No. 11/2003 in case titled Devika Estate Mangement Pvt. Ltd. v. Its Workman represented by All India General Mazdoor Trade Union. By virtue of the aforesaid award the four points of references which were made by the appropriate government to the learned Industrial Tribunal have been answered in negative.

2. The learned Industrial Tribunal has grossly erred by not granting the benefit of HRA, annual increment, conveyance allowance and the uniform allowance despite the fact the respondent admitted that similar benefits are given to the other employees. It was also contended that in a similar matter bearing ID No. 3/2001 in case titled New Tech Electro System v. Its workmen represented by All India General Mazdoor Trade Union, the workmen of the said case were granted the benefit of HRA of Rs. 1000/- travelling allowance of Rs. 600/-, washing allowance of Rs. 150/- and tea allowance of Rs. 150/- per month by the same Industrial Tribunal, and therefore, this resulted indiscrimination.

3. Per contra, the respondent in its counter affidavit denied the claim of the petitioner. It was essentially urged that all the four claims referred by the petitioner are general non specific and without any merit. In addition to this, that

the learned Labour Court has appreciated the evidence adduced by the respective parties and arrived at a finding that the petitioner is not able to prima facie establish any such benefit is entitled to be given to the petitioners.

4. I have considered the submissions made by the respective sides and perused the record. The following four points of references were made to the learned Labour Court are as under:

(i) Whether the demand of the workmen for payment of house rent allowance is justified and if so, to what directions are necessary in this respect?

(ii) Whether the demand of the workmen for Annual Increment is justified and if so, to what directions are necessary in this respect?

(iii) Whether the demand of the workmen for Conveyance allowance is justified and if so, to what directions are necessary in this respect?

(iv) Whether the demand of the workmen for uniform is justified and if so, to what directions are necessary in this respect?

5. After the reference was made the parties are also directed to adduce evidence. It will be pertinent here to mention that as to how the learned Industrial Tribunal has dealt with each of the claim raised by the petitioner. Instead of dealing with the same here it will be pertinent to reproduce the exact language of the learned Industrial Tribunal which read as under:

(4) The first claim of workmen is with regard to house rent allowance. To prove its entitlement WW-1 Sh. Sri Narain filed his affidavit dated 16.10.2003 and relied upon the documents Ex.WW1/1 to Ex.WW1/15. In his affidavit he deposed that he was working with the management. In his affidavit he claimed house rent allowance at the rate of Rs. 1000/- per month. Similar type of statement has been made by all the other witnesses. I have also gone through the documents relied upon by the workmen. In Ex.WW1/1 house rent allowance of Rs. 1000/- has been shown. In demand letter Ex.WW1/2 also the demand of house rent allowance of Rs. 1000/- per month has been shown. The workmen have not shown any basis for their demand of house rent allowance @ Rs. 1000/- per month. The workmen have also not shown that nay other industry is providing similar facility to their employees. Consequently, it is held that the workmen have failed to show their entitlement for house rent allowance.

(5) The next claim of workmen is with regard to annual increment. To prove its entitlement WW-1 Sh. Narian in his affidavit claimed annual increment 20%. Similar type of statement has been made by all the other witnesses. I have also gone through the documents relied upon by the workmen. In Ex.WW1/1 rate of annual increment has not been mentioned. In demand letter Ex.WW1/2 annual increment @ 20% has been mentioned. The workmen have not shown any basis for their demand of annual increment @ 20%. The workmen have also not shown that nay other industry is providing similar facility to their employees. Consequently, it is held that the workmen have failed to show their entitlement

for annual increment.

(6) The next claim of workmen is with regard to conveyance allowance. To prove its entitlement WW-1 Sh. Sri Narian in his affidavit claimed conveyance allowance @ Rs. 700/- per month. Similar type of statement has been made by all the other witnesses. I have also gone through the documents relied upon by the workmen. In Ex. WW1/1, the conveyance allowance @ Rs. 700/- has been mentioned. In demand letter Ex.WW1/2 conveyance allowance @Rs.700/- has been mentioned. But the workmen have not shown any basis for their demand of conveyance allowance @ Rs. 700/- per month. The workmen have also not shown that nay other industry is providing similar facility to their employees. Consequently, it is held that the workmen have failed to show their entitlement for conveyance allowance.

(7) The other claim of workmen is with regard to uniform. To prove its entitlement WW-! Sh. Sri Narian in his affidavit claimed two tricot uniform, shoes and socks every year. Similar type of statement has been made by all the other witnesses. I have also gone thought he documents relied upon by the workmen. In Ex.WW1/1, only the uniform, shoes and socks have been mentioned. In demand letter Ex.WW1/2 also the uniform, shoes and socks have been mentioned, but no justification has been given. The workmen have not shown any basis for their demand of uniforms. The workmen have also not shown that any other industry is providing similar facility to their employees. Consequently, it is held that the workmen have failed to show their entitlement for uniforms.

6. An analysis of the evidence adduced by the petitioner hereinabove by the Tribunal would clearly show that the petitioner or its members of the Union could not have granted any benefit. They ought to prima facie establish such a benefit is to be given to them. This is consistent with the fundamental principle that one who assert must prove. The learned Tribunal has come to a finding that the petitioner as a union has failed to establish its claim or the rate at which the HRA, travelling allowance and uniform allowance is to be given so much so even the petitioner has not been able to establish that in the similar industry such a benefit were given to the workers. Therefore, if the petitioner has not been able to establish his claim before the learned Tribunal, the High Court could not sit as a court of appeal and re-appreciate the evidence and grant the said benefit to the petitioner only by taking cognizance of any award decided by the same Tribunal where similar benefits have been given. The said award in which the benefits have been given may not lacking of evidence as petitioner in that case may have been able to prove that they are entitled to such a benefit.

7. For the foregoing reasons mentioned above, I am of the considered opinion that there is no perversity, illegality and violation of any rule or regulation in the instant case, and accordingly, the writ petition is without any merit and the same is dismissed.