
(2007) 12 DEL CK 0226
In the Delhi High Court
Case No : WP (C) No. 9341 of 2007

Doaba Alloys Castings (P) Ltd.	Vs	APPELLANT
Sh. Shivji and Others		RESPONDENT

Date of Decision : 18-12-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 25K, 25O, 25O(6)

Citation : (2007) 12 DEL CK 0226

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : Mohit Madan, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Malik, J.—Vide award dated 06.09.2007 the Labour Court came to the conclusion that workmen/respondents Sh. Shivji, Sh. Katwaru, Sh. Tadpan and Sh. Vinay are entitled to full back wages from 23.11.1998 till the date of the said award. The Labour Court, however, did not allow the claim of another claimant Mahavir because he did not appear for cross-examination.

2. The above said respondents filed the statement of claim to the following effect. In November 1998, the petitioner/management refused to pay wages and instead offered them full and final payment. On 09.12.1998 the management claimed "lay off" though no notice was given either to the workers or labour department and no notice was given/displayed at factory. The above said workers were not given earned wages for November and December 1998. The workmen/respondents claimed that they were unemployed since the termination of their services. Prayer was made that the workers be reinstated with continuity of service, full back wages and earned wages.

3. The petitioner/management listed the following defenses in their written statement. It was alleged that the claim is not maintainable because the management had offered all the employees to take their dues and out of 13

workers, 8 workers had already taken their dues. It was categorically denied that there was termination of services. On the contrary, it was explained that it was "lock out" as there was no production in the unit which was closed. It was explained that the production unit of the factory where workmen were working was stopped due to financial crunch and lock out was declared. The management/petitioner was ready to give the remaining workers their dues.

4. I have heard the counsel for the petitioner. Learned Counsel for the petitioner vehemently argued that in their factory less than 100 workmen worked. He explained that he was not given an opportunity to explain this fact. He also argued that no issue was framed in this respect and the management was deprived of the opportunity to lead evidence in this context. Surprisingly no other arguments were urged before me by the counsel for the petitioner.

5. The counsel for the petitioner partakes more of illusions than reality in assuming that no evidence, worth the name, was led over to show that there were less than 100 workers working in the said factory. His argument is a straw man intended to divert us from real issue. Sh. Vivekanand Sharma, MW1, clerk of the petitioner/management, filed his affidavit. In para 2, he explained,

All the workers which were about 109 and out of 109 all the workers except the present have taken their full and final account and the present workmen were also asked to take full and final account but they refused, the management has been ready to pay their dues and settle their accounts but it was the workers who refused to take the dues/full and final account.

6. In his cross-examination MW1 made the following crucial admissions. The company was closed w.e.f. 23.11.1998. No permission was taken from the appropriate Government prior to closure of the establishment. The factory license was not surrendered to the MCD nor to the factory Inspector.

7. It is, thus, clear that more than 100 workers were working in the above said factory. It is also surprising to note that this fact was noted by the trial court as well. It is well said that truth has the annoying habit of not staying suppressed for too long. What is the use of misleading the Court? The trial court's judgment reveals that the counsel for the petitioner himself admitted that Section 25(K) and Chapter V B of Industrial Dispute Act, 1947 (hereinafter referred as "Act") were applicable to the instant case. This is also admitted fact that procedure laid down in Section 25(O) and Chapter V-B of the Act was not followed. No application for closing down was moved. No copies were supplied to the workmen. The workmen were not given reasonable opportunities. No written permission was sought.

8. In view of Sub-section (6) of Section 25(O) of the Act, the closure of the undertaking is deemed to be illegal and the workmen shall be entitled to all the benefits under any law for the time being as if undertaking had not been closed down. Same is the mandate of recent authority reported in *Oswal Agro Furane Ltd. and Another Vs. Oswal Agro Furane Workers Union and Others*, . It was held

that applying for prior permission from appropriate Government before closure of any industrial establishment is imperative. The petitioner's tilt at windmills fails.

9. The writ petition is lame of strength and is, Therefore, dismissed in liming.

CM No. 17589/2007

No further orders are required to be passed in this application in view of the dismissal of the petition.

Dismissed.