

(2006) 09 DEL CK 0170

In the Delhi High Court

Case No : Writ Petition (Civil) No. 5654 of 2000 and CM No. 8713 of 2000 and Writ Petition (Civil) No. 6348 of 2001

Docbel Industries

APPELLANT

Vs

Shri Iskail and Others
 Shri Iskail Vs The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 25-09-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25G

Citation : (2006) 09 DEL CK 0170

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Harminder Singh, Sonia Khurana and Nirdosh, in W.P. Civil No. 5654/2000 and CM No. 8713/2000 and H.K. Chaturvedi and Har Prasad, in Writ Petition Civil No. 6348/200, for the Appellant; H.K. Chaturvedi and Har Prasad, in W.P. (Civil) No. 5654/2000 and CM No. 8713/2000 and Harminder Singh, Sonia Khurana and Nirdosh, in Writ Petition (Civil) No. 6348/2001, for the Respondent

Final Decision : Disposed Off

Judgement

Manju Goel, J.—This judgment is to decide two writ petitions, mentioned above. Both challenge the Award of the Labour Court VIII dated 28.1.2000 in I.D. No. 301/96. WP(C) 5654/2000 was filed prior to the filing of WP(C) 6348/2001. Accordingly, in the judgment to follow the terms "petitioner" and "respondent No. 1" will refer to the "petitioner" and "respondent No. 1" in WP(C) 5654/2000. It is convenient to dispose of both the writ petitions by a common order because the ground to defend the first writ petition is the ground to challenge the impugned Award in the second writ petition.

2. The respondent No. 1, hereinafter referred to as the respondent obtained an award of compensation of Rs. 50,000/- on account of retrenchment which the Labour Court found unjustifiable. The respondent was engaged by the petitioner as a Painter in 1988 on a monthly wages of Rs. 2264/-. He was retrenched on 28.8.1995 on the ground that the petitioner had closed down the painting

section. The respondent's case was that the painting section was not actually closed down but had been shifted to some other premises and was working under the name of M/s. Dockwell Industries. The petitioner, the respondent alleged, was earlier running under the name of M/s Beli Ram & Sons which itself got changed into M/s Dockwell Industries. He alleged that he could have been transferred to M/s Beli Ram & Sons like some other workmen. He claimed reinstatement and back wages. The petitioner alleged that M/s Beli Ram & Sons had nothing to do with the petitioner and reiterated that respondent had become surplus on account of closure of the painting section. The respondent failed to prove the identity between the petitioner and M/s Beli Ram & Sons or M/s Dockwell Industries. It was also proved that when he was retrenched, he was the only Painter with the petitioner. Therefore, it followed that on the painting section being closed, no one other than the respondent became surplus. Further the painting section having employed only one Painter, there was no way any 'junior' could be retrenched. The Labour Court reached the conclusion that it had been proved on record that the claimant was retrenched because the management had closed down the painting section.

3. The respondent then raised an argument that closure of the painting section was not justified. The Labour Court refused to go into the question since the industrial dispute referred was only whether the retrenchment was unjustified and not whether the closure of painting section was not justified.

4. The respondent then pointed out that the retrenchment compensation paid was short by Rs. 7,000/- and hence Section 25F of the Industrial Disputes Act had not been complied with. The petitioner pleaded before the Labour Court that the respondent never took the plea of shortage of compensation paid in his statement of claim and that the petitioner could have made good the short payment and, Therefore, it should be presumed that the respondent had waived the ground. The Labour Court found that there could be no estoppels against statute. He found retrenchment bad on two scores. Firstly, the retrenchment compensation paid was substantially short and secondly the payment was made on 7.9.1995 whereas he was retrenched w.e.f. 1.9.1995. Hence, Labour Court found violation of Section 25F of the Industrial Disputes Act. Instead of reinstatement, compensation of Rs. 50,000/- was awarded.

5. The petitioner's objection is that the respondent did not raise the question of insufficiency or delay in payment of compensation in his statement of claim and thus this did not form any part of the dispute referred for adjudication. Secondly, it is said that had the question been raised earlier, the deficit could have been made good.

6. The petitioner is relying upon the judgment in the case of Regional Manager, S.B.I. Vs. Rakesh Kumar Tewari, . In that case it was held that when the plea of 25-G is not put forward, no amount of evidence can be looked into and the workmen not having raised any plea of violation of Section 25-G or that termination of their services was illegal, it was not open to Tribunal to go off on a

tangent and conclude that termination was invalid.

7. The situation in the present case is somewhat different. The objections to late payment and insufficient payment are based on admitted facts. The petitioner is only saying that had the objection been taken earlier, the payment would have been promptly made. The delay aspect, however, could not have been overcome. The dispute referred, in my opinion, should be broadly interpreted. It will not be proper to say that question of late payment and short payment cannot be looked into because of absence of a specific reference. Nor will it be proper to ignore the question for want of a specific plea because the plea depends entirely on admitted facts.

8. The next question that remains to be determined is whether the relief given by the Labour Court is proper. The Labour Court has granted compensation of Rs. 50,000/-. The premise on which the compensation of Rs. 50,000/- has been awarded is as under:

In these circumstances when the management has closed down the painting section and the services of the claimant were no more required, to my mind that was justifiable ground for retrenchment of his services. However, ends of justice will be met he will be paid a lump sum compensation in lieu of reinstatement. In this case the reference was made in the year 1996. The claimant completed his evidence only on 18.11.1998 Therefore I am of the view that delay is totally attributable to the claimant. To my mind and keeping all the facts and circumstances of the case in view ends of justice will be met if the management is directed to pay a sum of Rs. 50,000/- to the claimant as compensation for retrenchment. The claimant is not entitled to any other relief. Reference is answered accordingly.

9. The premise for grant of compensation is "in lieu of reinstatement". In the present case since the Painting section was closed down, the respondent became surplus and, Therefore, his retrenchment was justified except that the retrenchment was bad on account of delayed payment and insufficient payment of retrenchment compensation. The respondent could not have been reinstated even on the very day the retrenchment took place or thereafter when the dispute was raised. Accordingly, there is absolutely no question of reinstatement or of any amount to be paid in lieu of the reinstatement.

10. The Labour Court has taken delay into consideration. Delay will be relevant in order to see to what extent it has caused prejudice to the respondent. Labour Court taking into consideration the fact that both sides were responsible for delay in the adjudication has awarded Rs. 50,000/- as compensation. The reference of industrial dispute was made on 17.2.1996 and the Award was announced on 28.1.2000.

11. The respondent's counsel suggested that compensation in such cases has to be assessed on the basis of back wages. This concept will be equally wrong inasmuch as concept of back wages is related to the concept of reinstatement.

For reasons mentioned above, the question of compensation based on back wages cannot be given. The compensation in this case, Therefore, has only to relate to the deficiency and delay in payment of the retrenchment compensation. The premise on which compensation has been awarded by the Labour Court is entirely faulty and cannot be sustained. However, I do not think it will be appropriate to remit the case back only for determining the amount of compensation for that will very adversely prejudice both the parties.

12. In the case of State of M.P. and Others Vs. Arjunlal Rajak, a similar question arose where the retrenchment was bad on account of non-compliance with Section 25-F. The project or scheme in which the workman was engaged as a Chowkidar had been abolished and, Therefore, there was no occasion for reinstatement. The termination of the employment of the workman was caused by the closure of the production unit in which he was working. The Supreme Court awarded compensation of Rs. 10,000/-. The retrenchment in that case took place in 1992 and the compensation of Rs. 10,000/- was ordered in 2006.

13. In the present case, the retrenchment has taken place in the year 1995 and compensation is, Therefore, being given after a gap of 11 years whereas in the matter before the Supreme Court the compensation was being given after a gap of 14 years.

14. According to the respondents, the deficiency in payment of retrenchment compensation was of Rs. 7,000/- and the delay in payment was of 7 days. Applying the example of the Supreme Court in the case of State of M.P. and Ors. v. Arjunlal Rajak (supra) and keeping in view the further facts that the respondent was a skilled worker and that there was delay in the relief coming to him, it would have been sufficient to award compensation of Rs. 20,000/-. It is ordered accordingly.

15. I hasten to add that this Court would not have interfered with the compensation awarded by the Labour Court unless the premises on the basis of which the compensation was awarded were themselves incorrect and called for correction. This Court is not an appellate Court and cannot arrive at fresh findings of re-appreciation of facts. Neither the delay in disposal of the reference nor the concept of back wages can be the basis for assessment of compensation. This required re-examining the basis as well as the quantum of compensation to be awarded to the respondent.

16. Writ petitions No. 5654/2000 & 6348/2001 and CM 8713/2000 are disposed of.