
(2008) 01 DEL CK 0201
In the Delhi High Court
Case No : LPA No. 24 of 2008

D.T.C.

APPELLANT

Vs

Ranbir Singh

RESPONDENT

Date of Decision : 18-01-2008

Acts Referred:

Citation : (2008) 2 ILR Delhi 465

Hon'ble Judges : Dr. M.K. Sharma, C.J;Reva Khetrapal, J

Bench : Division Bench

Advocate : Mini Pushkarna, for the Appellant;

Judgement

Dr. Mukundakam Sharma, C.J.

CM No. 782/2008 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

LPA 24/2008 & CM Nos. 781/2008 (stay)

1. This appeal is directed against the order dated 1.11.2007 passed by the learned Single Judge dismissing the writ petition filed by the appellant herein. The service of the respondent workman was terminated by the appellant on the ground of his unauthorised absence. Consequent to the aforesaid order of termination an approval application u/s 33(2)(b) of the industrial Disputes Act, 1949 was filed by the appellant before the Labour Court. The Labour Court went into the issue and on completion of the proceedings held that no approval as sought for could be granted and the approval application was dismissed in default. The said order came to be challenged in a writ petition filed by the management being WP(C) No. 646/2006 which was again dismissed on the ground of delay and laches by judgment/order dated 7th July, 2004. Consequently, no approval was granted as required under the law to the order of termination issued against the workman. Aggrieved by the order of the learned

Single Judge, the petitioner filed an intra court appeal, being LPA No. 2671/2005 which was also dismissed by a Division Bench vide order dated 13 December, 2005 wherein it was observed that there was no reason for condoning the delay on the part of the management in filing the writ petition.

2. The Supreme Court and this Court in catena of judgments has held that if the approval is not granted to an order of termination in that event the workman would be deemed to be continued in service, (see in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, When the aforesaid settled position of law is applied to the facts of this writ petition, it may be held that the respondent continued in service, since no approval to the order of termination was granted by the competent Court. Therefore, the respondent would be entitled to get his wages as he was working and continued to work with the appellant. In this connection we may refer to the decision of the Supreme Court in M.D., Tamil Nadu State Transport Corporation Vs. Neethivilangan Kumbakonam, wherein the aforesaid principle is enunciated. The Supreme Court in the said judgment observed as under :

16. From the conspectus of the views taken in the decisions referred to above the position is manifest that while the employer has the discretion to initiate a departmental enquiry and pass an order of dismissal or discharge against the workman the order remains in an inchoate state till the employer obtains order of approval from the Tribunal. By passing the order of discharge or dismissal de facto the relationship of employer and employee may be ended but not the de jure relationship for that could happen only when the Tribunal accords its approval. The relationship of employer and employee is not legally terminated till approval of discharge or dismissal is given by the Tribunal. In a case where the Tribunal refuses to accord approval to the action taken by the employer and rejects the petition filed u/s 33(2)(b) of the Act on merits the employer is bound to treat the employee as continuing in service and give him all the consequential benefits. If the employer refuses to grant the benefits to the employee the later is entitled to have his right enforced by filing a petition under Article 226 of the Constitution. There is no rational basis for holding that even after the order of dismissal or discharge has been rendered invalid on the tribunal's rejection of the prayer for approval the workman should suffer the consequences of such invalid order of dismissal or discharge till the matter is decided by the Tribunal again in an industrial dispute.

3. Therefore, the liability to pay the arrears of back wages to the extent the workman was entitled, should not have been denied by the appellant. On going through the records also, we find that knowing the aforesaid position the appellant also got computed the arrears of back wages payable to the respondent and the same was worked out to an amount of Rs. 6,93,650/-. It is submitted before us by the counsel appearing for the appellant that the management did not execute any document of compromise with the respondent workman for arriving at the aforesaid figure of Rs. 6,93,650/- as held by the

learned Single Judge.

4. We are of the considered opinion that the said issue may not be very relevant when we are considering the facts and circumstances of the present case, the respondent would be entitled to receive his arrears of back wages as the order passed by the Tribunal refusing approval to the order passed by the appellant in respect of the services of the workman has become final and binding. The said amount, therefore, was calculated as payable to the respondent woman.

5. Considering the facts and circumstances of the case, we find no reason to interfere with the final order passed by the learned Single Judge that an amount of Rs. 6,93,650/- shall be payable to the respondent-workman for the period in question as per the calculations made by the appellant themselves. The appeal stands disposed of in terms of the aforesaid order.