
(2011) 09 DEL CK 0191

In the Delhi High Court

Case No : Writ Petition (C) No. 1194 of 2008

Executive Engineer "A" Div., CPWD

APPELLANT

Vs

Radhey Lal

RESPONDENT

Date of Decision : 01-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 11A, 17B

Citation : (2011) 8 AD 243

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Archana Gaur, for the Appellant; Vibha Mahajan Seth, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the award dated 11th January, 2007 of the Industrial Adjudicator on remand vide order dated 26th August, 2002 in Civil Writ No. 4266/1993 preferred by the Respondent workman impugning the original Award dated 23rd June, 1992 of the Industrial Adjudicator.

2. The original Award dated 23rd June, 1992 came to be made on the following reference dated 24th May, 1989:

Whether the action of the management of CPWD "A" Division, New Delhi in terminating the service of Shri Radhey Lal S/o Late Shri Banwari Lal w.e.f. 16.12.79 is justified? If not, to what relief the workman is entitled?

3. The Industrial Adjudicator in the original Award dated 23rd June, 1992 found that the services of the Petitioner as beldar were terminated due to his unauthorized absence from duty; that the departmental inquiry conducted by the Petitioner employer before such termination was valid, legal and complied with principles of natural justice; that the departmental inquiry conducted by Petitioner employer before that there was nothing to suggest that the Management was vindictive against him or that his services were terminated in

an illegal manner; that the Respondent workman had initially filed Civil Writ Petition No. 308/1985 impugning the termination of his service w.e.f. 16th December, 1979 but which had been dismissed; that the claim of the Respondent workman before the Industrial Adjudicator was that the punishment meted out to him was harsh; the Industrial Adjudicator held that since the Writ Petition filed by the Petitioner had been dismissed by this Court, it could not be said that the punishment meted out to the Petitioner was disproportionate.

4. This Court in order dated 26th August, 2002 in CWP. No. 4266/1993 preferred by the Respondent workman against the original Award aforesaid found that the CWP No. 308/1985 preferred by the Respondent workman had been dismissed since disputed questions of fact had been raised. It was thus held that the dismissal of that Writ Petition could not prevent the workman from urging before the Industrial Adjudicator that the punishment meted out to him was disproportionate to the misconduct. This Court further held that the Industrial Adjudicator had erroneously not applied itself to the aspect of the quantum of punishment considering itself bound by the dismissal of CWP No. 308/1985. Accordingly, the matter was remanded to the Industrial Adjudicator for adjudication only on the question of quantum of punishment.

5. The Industrial Adjudicator has in the Award dated 11th January, 2007 impugned in this petition observed that the main allegation against the Respondent workman was of remaining unauthorizedly absent from the duty from April, 1975 to April, 1976; that though remaining absent was a serious matter but the penalty imposed of dismissal from service was harsh and disproportionate particularly when the Respondent workman claimed that he could not join the duty due to illness and was thereafter not allowed to join duty and had filed photocopy of medical certificates. The Industrial Adjudicator accordingly deemed it appropriate that a lesser punishment is inflicted on the Respondent workman and held that ends of justice would be met if the penalty of stoppage of two increments only is awarded to the Respondent workman. The Industrial Adjudicator accordingly directed that the workman be reinstated in service with 20% of backwages from the date of termination till the date of reinstatement; that two increments from the last pay drawn at the time of termination be withheld. It was further clarified that the workman would be reinstated only if had not attained the age of superannuation and if had attained the age of superannuation, shall stand superannuated with benefit of pension as per rules with arrears of back wages at 20%.

6. Notice of the present petition was issued and subject to deposit by the Petitioner of Rs. 50,000/- in this Court, the operation of the Award stayed. On application u/s 17B of the Industrial Disputes Act being preferred by the Respondent workman, vide order dated 6th November, 2009 payment u/s 17B was directed and which is stated to have been paid.

7. The Writ Petition was dismissed in default on 6th January, 2011. CMs. No. 7997/2011, 7998/2011 and 7999/2011 have been filed for restoration, for

condonation of 60 days delay in filing the restoration application and 42 days delay in refiling the application.

8. The counsel for the Respondent workman has been heard in opposition to the applications for restoration. For the reasons stated, the delay in filing and refiling the applications for restoration is condoned and the Writ Petition is restored to its original position.

9. The counsels have also been heard on the merits of the Writ Petition.

10. Finding that the initial employment of the Respondent workman with the Petitioner is of the year 1973, it was enquired whether the Respondent workman has not attained the age of superannuation. It is informed that he has so attained the age of superannuation in September, 2010.

11. The findings of fact which are not in dispute are that the Respondent workman joined the Petitioner as a temporary beldar on 19th April, 1973; that he was on unauthorized leave of 28 days between August and September 1973, of 47 days between September and November 1973, of 15 days in November 1973, of 65 days between May and July, 1974, of 80 days between December, 1974 and February, 1975, of 103 days between July to October, 1975; that the disciplinary proceedings were initiated against him on 16th February, 1977 and he was dismissed from service on 26th November, 1977; however, the Departmental Appellate Authority set aside the order of dismissal from service and directed departmental inquiry for major penalty; it was not as if the Respondent workman from 1975 till 1978 was working for the Petitioner; while it is the case of the Petitioner employer that he remained unauthorizedly absent, it is the case of the Respondent workman that he was not allowed to join duty; that in the fresh inquiry proceedings also the Respondent workman was held guilty and vide order dated 7th December, 1983 the Disciplinary Authority dismissed him from service; the Respondent workman raised an industrial dispute but the same was dismissed for non prosecution on 2nd June, 1984; the application of the Respondent workman for restoration of the industrial dispute was dismissed on 28th December, 1984; thereafter the Respondent workman filed CWP 308/1985 (supra) which was dismissed on 3rd May, 1985; that the Respondent workman after remaining quiet for nearly four years raised the industrial dispute on which the reference aforesaid came to be made.

12. It is thus found that the Respondent workman has barely worked for the Petitioner employer. The effect of the Award under challenge would be to burden the Petitioner employer with the retiral benefits of the Respondent workman, to earn which one has to work for the full length of service. It has as such been put to the counsel for the Respondent workman whether it is not inequitable to hold the Respondent workman to be entitled to pension and other retiral benefits without having worked and/or having worked for barely one and a half year. No. reply could be given. No. reply on the said aspect can be found in the counter affidavit of the Respondent workman also.

13. With the dismissal of CWP 4266/1993 earlier preferred by the Respondent workman, the guilt of the workman of unauthorized absence stands established. The only question is of proportionality of punishment. Though the Industrial Adjudicator on remand was conscious of the possibility of the workman having attained the age of superannuation, he does not appear to have considered the inequity of burdening an employer with the liability for retiral benefits of a workman who has barely worked. As aforesaid it cannot be said that the long time for which the dispute remained pending is also attributable to the Petitioner employer. Rather the Respondent workman is found to be responsible therefor; it is he who first raised an industrial dispute, failed to prosecute the same, thereafter unsuccessfully filed a Writ Petition and after keeping quiet for four years again raised the industrial dispute.

14. The Petitioner in this regard relies on Government of India and Anr Vs. George Philip, laying down that the Tribunal or the High Court exercising jurisdiction under Article 226 of the Constitution does not sit in appeal against the decision of the disciplinary authority imposing punishment upon the delinquent employee and the jurisdiction exercised by the Tribunal or the High Court while exercising the power of judicial review is limited and they cannot set aside the punishment altogether or impose some other penalty unless they find that there has been a substantial non-compliance of the rules of procedure or a gross violation of rules of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice or the punishment is shockingly disproportionate to the gravamen of the charge. However, the Supreme Court in the judgment aforesaid was concerned with the Administrative Tribunals Act, 1985. The Industrial Disputes Act in Section 11A thereof expressly empowers the Industrial Adjudicator to go into the question of proportionality of punishment. The judgment aforesaid thus cannot be said to be strictly applicable.

15. Notwithstanding the same, I am still of the opinion that the punishment which the Industrial Adjudicator has substituted for the punishment meted out by the Disciplinary Authority, in the facts aforesaid results in miscarriage of justice. It cannot be lost sight of that the Respondent has not worked at all for the Petitioner since 1983 and not regularly since 1975. Even prior thereto he was highly irregular.

16. In the entirety of the aforesaid circumstances, this Court is constrained to interfere with the Award of the Industrial Adjudicator. It is inconceivable that the Respondent workman has not worked elsewhere in this long span of time. Though it is felt that No. interference was called for in the punishment meted out by the Disciplinary Authority to the Respondent workman but it is deemed appropriate to nevertheless direct release of the amount of Rs. 50,000/- deposited by the Petitioner employer in this Court which was directed to be kept in fixed deposit and which had a maturity value of Rs. 58,010/- as on 19th March, 2010 together with up-to-date interest accrued thereon to the Respondent workman.

17. The Award dated 11th January, 2007 of the Industrial Adjudicator is thus set aside/quashed. The punishment of dismissal from service imposed on the Respondent workman is found to be appropriate, with the rider of course of the Respondent workman being entitled to the amount of Rs. 50,000/- deposited by the Petitioner in this Court together with interest thereon. It is further clarified that for the reason of the petition being allowed, the Respondent workman shall not be liable to refund any part of the amount received under orders in exercise of powers u/s 17B of the Industrial Disputes Act or for refund of any excess amount over and above the last drawn wages received under the said order.

18. The petition is disposed of. Costs of litigation have already been paid to the Respondent workman.