

(2011) 08 DEL CK 0263

In the Delhi High Court

Case No : Writ Petition (C) 2211 of 1998 and CMs 3602/98 and 5429 of 99

Food Craft Institute

APPELLANT

Vs

Rameshwar Sharma and Another

RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5
Food Craft Institute (Delhi) Society (Staff) Regulations, 1983 — Rule 8(b)(i)
Industrial Disputes Act, 1947 — Section 17B, 2, 25F

Citation : (2011) 08 DEL CK 0263

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Arvind Kumar and Vikas Kumar, for the Appellant; Jayant K. Mehta and Sukant Vikaram, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—The Petitioner management is aggrieved by an Award dated 29th January, 1998 passed by the Labour Court in ID No. 3 of 1992 holding the termination of the services of the workman by the management to be illegal and directing his reinstatement in service with continuity and back wages from 4th June 1990 onwards.

2. The Respondent workman was appointed as a lower division clerk ('LDC') in the management Institute by an appointment letter dated 28th January 1983. The letter of appointment stated that the post was a temporary one. The pay of the workman was to be Rs. 260 per month in the scale of pay of Rs. 260-400. It was stated that his case of confirmation to the post shall be considered "as per rules after the post has been converted into permanent." The appointment was to be on probation for a period of two years. It was stated that the probation period could be extended at the discretion of the appointing authority. Clause (vi) of the letter of appointment stated that during the period of probation the appointment can be terminated at any time by one month's notice given by

either side without assigning any reasons. After the appointment was confirmed it could be terminated by a notice of three months. The Petitioner reserved the right of terminating the services forthwith or before the expiry of the stipulated period of notice by making payment of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

3. The Petitioner claims that in terms of the powers vested in it under Para 2 (6) read with Rule 5 of the CCS (Temporary Service) Rules as applicable to the employees of the Petitioner, the services of the Respondent were terminated forthwith by letter dated 15th February 1988. The said letter termed as "notice" enclosed a cheque for Rs. 2400 being the pay and allowances for the period of notice and for the duty period up to 15th February, 1988. However, there is No. indication anywhere, and definitely not in the writ petition that the above notice of termination of service was in fact served on the workman.

4. The Respondent workman filed Civil Suit No. 117 of 1988 in the civil court for an injunction to restrain the Petitioner from preventing the workman from attending duties. Along with the suit an application for interim injunction was also filed. The suit was filed on 18th February, 1988. In its reply, the Petitioner stated that the services of the Respondent workman had already been terminated by the order dated 15th February 1988 and further that the suit was not maintainable. The workman states that it was only then that he came to know that his services had been terminated. Accordingly the said suit became infructuous and was dismissed as withdrawn. Consequently the issue raised in the suit was not decided on merits. Subsequently the workman sought to challenge the order of termination by filing Writ Petition No. 841 of 1988. The said writ petition was dismissed by this Court as withdrawn on 19th May 1988 on the ground that the Petitioner had an efficacious alternative remedy under the Industrial Disputes Act, 1947 ("Industrial Disputes Act, 1947"). Thereafter the Respondent invoked the processes under the Industrial Disputes Act, 1947 and by Notification dated 17th December 1990 the Government of NCT of Delhi ('GNCTD') the dispute arising out of the termination of the workman's services was referred to the Labour Court.

5. Before the Labour Court the management in its written statement did not dispute the relationship of employer and employee between the parties. However, it was pleaded that the workman had accepted the order dated 19th May 1988 passed by this Court dismissing his writ petition and his seeking reference of the dispute to the Labour Court was belated. In his rejoinder the workman pointed out that the dispute had not been decided on merits either in the suit or in the writ petition. Consequently, the reference to the Labour Court was maintainable.

6. The only issue framed by the Labour Court on 19th November 1992 was "to what relief, if any, is the workman entitled in terms of reference?" The reference itself was whether the services of the Respondent workman had been terminated illegally. The Labour Court in the impugned Award first concluded that the earlier

proceedings both in the civil suit as well is the writ petition in this Court did not constitute res judicata and therefore the reference before the Labour Court was maintainable. Turning to the merits of the case the Labour Court observed that in the written statement the management had not pleaded that the services of the workman were terminated after giving notice of either one month or three months. Although the letter of termination had been exhibited as exhibit MW-1/27 there was No. opportunity of cross-examining the management witness. Initially one Shri R.K. Dabral had filed an affidavit on behalf of the management by way of evidence on 20th February 1996. Thereafter a fresh affidavit of Shri N.K. Sharma, Assistant Administrative Officer, was filed. Shri NK Sharma was partly cross-examined on 8th August 1996. The said witness was thereafter present on 18th November 1996 but his further cross-examination could not proceed as the original attendance register, diary and dispatch register for the period 1983 to 1988 were not brought to the Labour Court. Thereafter despite opportunities the management failed to produce the said witness. On 11th August 1997 the management evidence was closed. The management made No. effort to have the evidence reopened by filing any application. In the circumstances, the Labour Court held that since the workman had admittedly completed more than 240 days of continuous service, his case was not covered by any of the excluded categories in Clause (bb) of Section 2(oo) of the Industrial Disputes Act, 1947. The management had admittedly not complied with Section 25F of the Industrial Disputes Act, 1947. The management had failed to prove the letter of termination. Consequently it was held that the workman was entitled to reinstatement. However, since he had raised the demand for reinstatement only on 4th June 1990 he was held entitled to back wages only from that date.

7. During the pendency of this writ petition the workman filed an application u/s 17B of the Industrial Disputes Act, 1947 which came to be allowed by this Court by an order dated 28th April, 2006. LPA No. 265 of 2007 filed by the management against the said order was dismissed by the Division Bench of this Court on 13th July, 2007. The Section 17B order was further affirmed by the Supreme Court by dismissal of the Petitioner's SLP (C) No. 7251 of 2008 on 7th September, 2009.

8. This Court has heard the submissions of Mr. Vikas Kumar, counsel for the Petitioner and Mr. Jayant Mehta, learned Counsel for the Respondent workman.

9. Before this Court it is contended on behalf of the Petitioner that at the time of withdrawal of the suit No. liberty was reserved by the workman to institute fresh proceedings. The Institute was not an industry within the meaning of Section 2(g) Industrial Disputes Act, 1947. The Labour Court fell in error in exercising jurisdiction and entertaining the reference. Neither Section 2(oo) nor Section 25F of the Industrial Disputes Act, 1947 applied. On merits it is submitted that since the Respondent workman was holding a temporary post his service could be terminated in terms of Rule 8 (b) (i) of the Food Craft Institute (Delhi) Society

(Staff) Regulations 1983 read with Rule 5 of the CCS (Temporary Service) Rules. It is further submitted that proper opportunity was not given to the Petitioner to adduce its evidence. The Respondent workman had not pleaded that he was not gainfully employed. Therefore the Award of back wages from 4th June, 1990 onwards was not justified.

10. The plea of *res judicata* raised by the Petitioner is entirely without merit. The suit filed by the workman came to be dismissed as withdrawn after the Petitioner in its written statement disclosed that it had terminated the services of the Respondent workman by an order dated 15th February 1988. That the workman did not reserve liberty to file a fresh suit would not by itself preclude the workman from invoking the statutory remedy available to him under the Industrial Disputes Act, 1947. In any event there was No. determination of the merits of the dispute by the civil court. Likewise, the dismissal by this Court of the workman's writ petition as withdrawn did not come in the way of his seeking a reference of the dispute under the Industrial Disputes Act, 1947 to the Labour Court. In fact that was the reason why the writ petition was not entertained. Further, at No. stage did the Petitioner raise the plea that it was not an industry within the meaning of Section 2(g) of the Industrial Disputes Act, 1947. The reference made to the Labour Court by the GNCTD was by a Notification dated 17th December 1990. No. such issue was framed by the Labour Court. The Petitioner did not challenge the said Notification. Consequently the Petitioner cannot be heard to say either that the reference was belated or that No. such reference could have been made under the Industrial Disputes Act, 1947.

11. There is No. merit in the plea of the Petitioner that it was not given sufficient opportunity to lead evidence. The Award of the Labour Court makes it clear that several opportunities were given to the Petitioner to produce its witness for cross-examination together with the records of the case. After appearing on two occasions the management witness failed to appear. The originals of the relevant registers were not produced. The management evidence was closed on 11th August 1997. The Petitioner appears to have made No. effort either to challenge that order or to get its evidence reopened.

12. The Petitioner management failed to prove that the order dated 15th February 1988 terminating the services of the workman was in fact served on the workman. The conclusion drawn by the Labour Court that the management failed also to prove that it had complied with the terms and conditions of the letter of appointment of the workman cannot also be faulted. Indeed it was not clear if the management had given the workman either one month's notice or three months' notice. The admitted position was that the termination took place five years after the appointment of the workman. The management is completely silent on whether the workman's services were confirmed after probation which was to be only for a period of two years or whether it was extended from time to time. No. evidence was led on this aspect. If indeed the workman was appointed on probation then none of the exceptions listed in Clause (bb) of Section 2(oo) of

the Industrial Disputes Act, 1947 would be attracted. Viewed from any angle therefore it was incumbent on the Petitioner to have complied with the requirements of Section 25F of the Industrial Disputes Act, 1947. Admittedly the management failed to do so. In the circumstances this Court is unable to find any legal infirmity in the reasoning or the conclusion of the Labour Court that the termination of the services of Respondent No. 1 workman amounted to retrenchment and in light of the failure of the management to comply with Section 25F of the Industrial Disputes Act, 1947 such retrenchment was illegal.

13. As regards the consequential relief, considering that the Respondent workman had been appointed in accordance with the Rules and had worked for five years with the management, the relief of reinstatement in service could not be held to be improper. Considering the age of the workman, and the number of years for which he had already worked with the management, denying the workman the relief of reinstatement is not justified. Also, the Labour Court has accounted for the delay in the workman invoking the remedy under the Industrial Disputes Act, 1947, and has allowed back wages only from 4th June 1990. No grounds are made out for interference with the Award.

14. For the aforementioned reasons, the writ petition is dismissed. The interim order stands vacated. The Petitioner management will pay the Respondent workman costs of Rs. 5000/- within a period of four weeks. All the pending applications stand disposed of.