

(2012) 09 DEL CK 0573
In the Delhi High Court
Case No : Writ Petition (C) 1929 of 2006

Gail (India) Ltd.

APPELLANT

Vs

Tarkeshwar Prasad Kharawar

RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2012) 09 DEL CK 0573

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Aman Lekhi, with Mr. Sanjeev Sagar, Ms. Priti Goswami and Ms. Srishti Saxena, for the Appellant; Anuj Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

P.K. Bhasin, J.—The petitioner has assailed the correctness of the Award dated 22nd November, 2005 passed by the Central Government Industrial Tribunal("CGIT" in short) granting the relief of reinstatement in service without back wages to the respondent despite it having been held that he had obtained employment with the petitioner in the year 1989 as a reserved category candidate by producing a forged caste certificate. The respondent joined the services of the petitioner with effect from 27th November, 1989 as Attendant Grade-III against the post reserved for "Scheduled Tribes". The appointment of the respondent was provisional subject to the verification of the caste certificate dated 11.09.1979 submitted by him. When his said caste certificate, which purported to have been issued by the Office of District Magistrate, Siwan(Bihar), was sent to that office by the petitioner for verification of its authenticity the same was reported to be not genuine. On being informed so, the respondent requested for an opportunity to produce a fresh caste certificate and thereafter he submitted another caste certificate dated 30.08.1994 which also on enquiry from the office of the issuing authority was found to be not a genuine document. Then a letter dated 8th March, 1995 purporting to have been issued by the Sub

Divisional Magistrate, Siwan certifying that the second caste certificate dated 30th August, 1994 was a genuine document was also submitted by the respondent to the petitioner but that letter was also found to be a forged document.

2. Then the management decided to initiate disciplinary proceedings against the respondent for his having submitted forged documents to continue in the employment of the petitioner Company which acts of his were considered to be acts of serious misconduct. The respondent was accordingly charge-sheeted. His defence was that he never had any bad intentions and since he actually belonged to a scheduled tribe he could not be said to have gained anything by getting the job as a scheduled caste. Thereafter a regular domestic enquiry was conducted against the respondent. The respondent participated in that enquiry and the enquiry officer came to the conclusion that the charges levelled against the respondent that he had produced forged caste certificates and forged letter dated 8th March, 1995 had been duly established. The Disciplinary Authority accepted the enquiry officer's findings and ordered respondent's removal from service. The respondent filed a departmental appeal but that was rejected.

3. Aggrieved by the punishment of removal from service awarded to him by his employer the respondent raised an industrial dispute which in due course came to be referred to the CGIT for adjudication. The CGIT after trial did not find any infirmity in the conduct of the enquiry as well as in the findings of the enquiry officer and it concurred with those findings that the caste certificates submitted by the respondent were forged. However, even after coming to that conclusion the CGIT ordered his reinstatement in service by observing as under in its Award:-

The certificates which have been supplied by the workman have been found forged but Kharwar caste is a Schedule Tribe, so it casts doubt on the entire case. The workman has not been able to prove that the certificate filed at the time of his appointment was genuine one. The management has verified it from several sources. The fact cannot be denied that Kharwar caste is a Schedule Tribe. My attention was drawn to (The Constitution(ST) Order 1950). According to this notification Kharwar caste is a Schedule Tribe in Andhra Pradesh State. According to the notification of 1991 Bihar Gazette extraordinary dated 20th September, 1991 Kharwar caste is a Schedule Tribe for Siwan and Rohtas District of Bihar. According to the notification of the Government of India, Ministry of Home Affairs SCs and STs List modification order 1956 Kharwar caste is a Schedule Tribe throughout the state. So according to the notification of 1956 Kharwar caste throughout Bihar is a Schedule Tribe. It is correct that the workman has not filed correct caste certificate and the certificates filed by him were found not genuine after proper inquiry by the management but none the less the workman is a Schedule Tribe candidate in view of the notification of 1956 by Government of India, Ministry of Home Affairs. The workman did not produce these papers before the management so the management has held the

certificates filed by him forged and fabricated. The workman in view of order of 1956 belongs to Schedule Tribe. The workman was negligent in not placing before the respondents these notifications of the Government of India so it is held that the workman belongs to Schedule Tribe. Since there is negligence on the part of the workman so he is not entitled to get any wages but he is entitled to be reinstated in service with continuity of service but without back wages.

4. The petitioner challenged the said Award of the CGIT by filing the present writ petition.

5. Learned Senior Counsel Mr. Aman Lekhi, appearing on behalf of the petitioner, contended that the impugned Award is totally unsustainable and no relief whatsoever could have been given to the respondent after it had been held by the CGIT that the respondent was ordered to be removed from service after holding a proper enquiry and that it had been rightly held by the enquiry officer that the caste certificate submitted by him at the time of getting job was forged certificate as also the certificate which subsequently he had supplied to the management after he had been informed that the certificate furnished by him at the time of his appointment was found to be not genuine.

6. Learned Counsel for the respondent, on the other hand, while not raising any grievance against the findings of the CGIT that in the enquiry held against the respondent it had been established that the caste certificates submitted by him were forged, contended that despite that conclusion of the CGIT there was no perversity in the final Award passed by the CGIT giving the relief of reinstatement to the respondent after holding that the respondent, in fact, belonged to a scheduled tribe which was duly notified by the Government. Learned counsel also contended that it was not a case where a non-reserved category candidate had succeeded in getting job meant for reserved category people. It was also argued that the CGIT had the discretion to set aside the extreme punishment of removal from service awarded to the respondent by the petitioner even after accepting that he had committed the alleged misconduct and to substitute the same with the lesser penalty of denial of back wages to him and the CGIT having exercised that discretion in ordering reinstatement of the respondent no illegality could be said to have been committed by it justifying interference by this Court in exercise of the writ jurisdiction which even otherwise is quite limited and the High Court does not act as an appellate Court when the Awards of industrial adjudicators are under challenge before it.

7. After having considered the rival submissions and going through the record of the CGIT I have unhesitatingly come to the conclusion that the impugned Award of the CGIT is unreasonable and totally unsustainable. It having been held by CGIT, and which finding has remained unchallenged, that the respondent had submitted forged caste certificates, the CGIT could not have held that the respondent belonged to a scheduled tribe. That was precisely the question which had to be gone into the domestic enquiry and established by the respondent during the enquiry held against him and since the CGIT had concluded that that

could not be established in the enquiry and it had been established that the caste certificates submitted by the respondent were forged it was not for it(CGIT) to say that he belonged to a scheduled tribe known as "Kharwar". Whether or not someone belongs to a scheduled caste or tribe has to be determined by the competent bodies constituted in every State and that is not the job of the Courts. And in any event, the respondent was charge-sheeted for his having produced forged caste certificates and that charge having been found in the enquiry to be duly established and then by the CGIT also that was the end of the matter and thereafter there was no occasion for the CGIT to proceed to examine whether in fact the respondent belonged to a schedule tribe or not. This Court is of the firm view that the discretion vested in the CGIT u/s 11A of the Industrial Disputes Act has been exercised arbitrarily and so this is a fit case where this Court should interfere with the Award of the CGIT. In the light of the above conclusion this petition has to be allowed and accordingly it is allowed. The Award of the CGIT is directing reinstatement of the respondent in service is set aside and the decision of the petitioner to remove the respondent from service is held to be absolutely legal and justified.