
(2015) 01 DEL CK 0354

In the Delhi High Court

Case No : Writ Petition (C) No. 790 of 2015

Geeta Devi

APPELLANT

Vs

Updater Services (P) Ltd. and Others

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10(1)(d), 2(ra), 25-F, 25-H, 2-A

Citation : (2015) 145 FLR 1062

Hon'ble Judges : Deepa Sharma, J

Bench : Single Bench

Advocate : R.P. Sharma, for the Appellant

Final Decision : Dismissed

Judgement

Deepa Sharma, J.—By way of present writ petition, the workman has assailed the award dated 5.2.2014 on the ground that the Central Government Industrial Tribunal (CGIT) has not considered the evidence of the petitioner and had reached a wrong conclusion that the services of the petitioner were terminated. It is submitted that the award is bad in law and is liable to be set aside.

The brief facts of the case are that the petitioner had joined the services of the respondent No. 1-M/s Updater Services (P) Ltd. Respondent No. 2 had outsourced the services to respondent No. 1, who was the contractor for providing housekeeping personnel at Terminal-3, Indira Gandhi International Airport in Delhi. Respondent No. 1 posted the petitioner at Terminal 3, Indira Gandhi International Airport. Due to certain complaints received from respondent No. 2, her services from Indira Gandhi International Airport were withdrawn by respondent No. 1. The dispute thereafter arose between the parties. According to the petitioner, her services were terminated by respondent No. 1, while the contention of respondent No. 1 before the Tribunal was that she was simply transferred to other place and she still continues on the roll of respondent No. 1 and her services were never terminated.

The petitioner filed her claim before CGIT under section 2-A of Industrial Disputes Act (hereinafter referred to as "the ID Act"). Vide its award dated 5.2.2014, the learned CGIT, after taking into consideration all the evidences led by the parties, reached to the conclusion that the services of the petitioner were never terminated. The finding of the CGIT is reproduced as under:--

"17. Claimant project that her services were abruptly dispensed with on 1.3.2012. Contrary to it, Shri Rakesh Kumar deposed in bold words that the services of the claimant were transferred to some other site where she opted not to join her duties. He declared that as on date claimant is on the rolls of the contractor. Out of facts unfolded by Shri Rakesh Kumar, it emerged that services of the claimant has neither been discharged, dismissed, terminated nor otherwise retrenched. When she still remains on rolls of her employer it is not a case relating to discharge, dismissal, retrenchment or otherwise termination of her services by her employer. As emerged out of records dispute relates to transfer of the claimant from one station to another. Her employer wants her to comply transfer order but she is adamant in joining her duties at Terminal 3 Indira Gandhi International Airport, New Delhi. Whether this dispute will fall within the ambit of section 2-A of the Act, or that the claimant may avail provision of sub-section (2) of the said section and seek adjudication of the dispute from the Tribunal, without it being referred for adjudication Dy. appropriate Government under section 10(1)(d) of the Act. Answer is plain and simple. Her dispute does not fall within the purview of section 2-A of the Act, since she continues to be on the rolls of her employer. Machinery, provided under section 2-A of the Act for resolution of disputes, relating to discharge, dismissal, retrenchment or otherwise termination of service of an employee will not come to his rescue".

2. This order has been assailed by the petitioner by way of the present writ petition on the ground that no transfer order has been produced by the Management and the vague submission of respondent No. 1 to this effect has been accepted by CGIT, therefore, the order is bad in law. It is submitted that the termination was illegal as it was violative of statutory provisions of sections 25-F and 25-H of the ID Act. It had also amounted to unfair labour practices as per section 2(ra) read with Vth Schedule of ID Act. Reliance is placed on Hercules Mechanical Works and Others Vs. Wire Ropes Engineering Workers Union, (2009) 123 FLR 619 : (2009) 9 JT 281 : (2009) 9 SCALE 337 : (2009) 15 SCC 81 : (2010) 1 SCC(L&S) 490 : (2010) 3 SLR 782 wherein the Court had dealt with the question of unfair labour practices. Reliance has also been placed on Gujarat State Construction Corporation Ltd. Vs. Indravadan Ambalal Soni wherein the Court had held that non-production of letter of appointment will not enable the management to justify the point that the workman was appointed for the project work. Another judgment on which the petitioner has related is Nicks (India) Tools Vs. Ram Surat and Another, AIR 2004 SC 4348 : (2004) 7 JT 320 : (2004) 3 LLJ 764 : (2004) 7 SCALE 241 : (2004) 8 SCC 222 : (2005) 1 SLJ 128 : (2004) AIRSCW 5095 : (2004) 6 Supreme 317 : (2004) 6 Supreme 320 wherein the

Supreme Court has held that failure of the respondent-Management to produce the document on which stand point is based will not enable the management to justify its stand that the workman had himself left the services and gainfully employed somewhere else.

On these contentions, it is stated that the findings of CGIT-cum-Labour Court, Karkardooma, is liable to be set aside and the matter be remitted back for fresh adjudication. It is also prayed that the writ of Mandamus be issued, thereby setting aside the action of the respondent of terminating the workman and direction be issued to respondent No. 1 to reinstate the petitioner/workman with full back wages and continuity in service.

3. I have heard the learned Counsel for the petitioner. The petitioner has sought vide this writ petition setting aside of the award with the prayer that the same be remitted to the CGIT for fresh trial and has also prayed for issuance of writ of Mandamus, whereby directing respondent No. 1 to reinstate her with full back wages and continuity in service. It is apparent that the workman had invoked the jurisdiction of CGIT under section 2-A of the ID Act. Section 2-A of the said Act reads as under:--

"2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute:--

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

4. From the bare perusal of this section, it is apparent that workman can file a claim directly before a Court under section 2-A only when her services had been terminated. In the present case, the contention of the respondent has been that the services of the petitioner had not been terminated at any stage and on complaint from respondent No. 2, her services were withdrawn and she was transferred to other place, but she did not report for duty. From the award of the CGIT, it is apparent that CGIT has followed the due procedure. It recorded the evidences of the parties and heard the learned counsels and on the basis of evidences on record, it reached to the conclusion that services of the petitioner were never terminated. This finding of fact of the CGIT has, in fact, been challenged by the petitioner by way of this writ petition.

5. The jurisdiction of this Court under Article 226 of the Constitution has been discussed in several cases. Settled principle of law is that the Court can correct a judgment of the Lower Court when it is clear that the said judgment suffers from an error of law. It is apparent that this Court does not sit as a Court of Appeal over the judgment of a Subordinate Court. It is also not the function of the High Court to review the evidence and to arrive at an independent finding on the basis

of evidences. Only when it is shown that procedure adopted is inconsistent with the Statute or with the rules of natural justice, or where it is shown that the decision is not a fair decision, but is based on some extraneous consideration or where on the face of it, it is shown that the order is wholly arbitrary or capricious that no reasonable person could have arrived at that conclusion, the Court can interfere with the order.

6. In the present case, as is apparent from the order of the CGIT, that CGIT has arrived at its conclusion after taking into consideration all the evidences on record and the petitioner has not been able to show that there is any error apparent on the face of the order or it is violative of any substantive law. The Court in exercise of its writ jurisdiction cannot set aside an award only on the premise that the Tribunal has reached to a conclusion which is not acceptable to the petitioner. The Court certainly in the writ jurisdiction is not sitting in the appellate jurisdiction.

7. Since the impugned order apparently shows that it is based on cogent evidences on record, once the CGIT reached to the conclusion that services of the petitioner were never terminated by respondent No. 1, it certainly had no jurisdiction to deal with the issue under section 2-A of the ID Act. There is no error apparent on the face of the award and no ground has been made out for setting aside the impugned award. Moreover, it is strange that when the Management says that it had never terminated the services of the petitioner, why the petitioner is not interested in joining her duties at the transferred place. A workman cannot insist upon its employer to assign a particular duty to him. He is required to work wherever he is asked to work. The petitioner has claimed the relief of reinstatement by raising a dispute and when her Management has said that her services were never terminated, it was always open for the petitioner to join her duties. The reason of not doing so has only been known to the petitioner herself.

The writ petition is dismissed with no order as to costs.