

(2009) 04 DEL CK 0263

In the Delhi High Court

Case No : Writ Petition (C) No. 7186 of 2006

Haryana Minerals Limited

APPELLANT

Vs

Rajinder Kumar

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 25(F)

Citation : (2009) 04 DEL CK 0263

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Arvind Nayar, for the Appellant; None, for the Respondent

Judgement

V.K. Shali, J.—The petitioner has challenged the award dated 11th February, 2005 in ID No. 36/1995 passed by the, Central Government Industrial Tribunal-cum-Labour Court-II, Rajendra Bhawan, Rajindra Place, New Delhi in case titled Rajinder Kumar v. The Secretary, Haryana Minerals Ltd., Nizampur Road, Narnuli, District Mahendargarh, Haryana. By the impugned award the termination of services of the respondent/workman Rajinder Kumar who was a daily rated worker w.e.f. 1st November, 1991 with the petitioner/management was held neither to be legal nor justified. But instead of directing the reinstatement of the workman the Ld. Presiding Officer of the Tribunal directed the payment of compensation of Rs. 50,000/- to the respondent/workman within a period of one month of the publication of award failing which it was directed that he shall be further entitled to get 12% interest per annum on the entire back wages.

2. Briefly stated the facts of the case are that the respondent/workman is stated to have been employed by the petitioner/management as a daily rated worker w.e.f. 1st July, 1989 in the branch office of Haryana Minerals Ltd. District Bhiwani, Haryana. The respondent/workman has stated that his conduct during the service tenure was satisfactory yet no formal letter was ever issued to him in respect of terminating his services. It is alleged by him that he reported for duty till 11th November, 1991 on which date he was told verbally that his services

were no longer required. By that date he had rendered service of more than 240 days in a year, and accordingly, he was entitled to protection under the Industrial Disputes Act, 1947. He challenged the termination of his services as being illegal and unjustified because of which the Ministry of Labour, Central Government vide letter dated 2nd March, 1995 referred the following dispute to the Central Government, Industrial Tribunal-cum-Labour Court in the following terms where:

Whether the action of the management of M/s Haryana Minerals Limited in terminating the services of Shri Rajinder Kumar, Ex. Daily paid labour w.e.f. 01.11.1991 is legal and justified? If not to what relief the workman is entitled and from which date?

3. The petitioner/management took a plea that the respondent/workman was working with the petitioner/management in the mines, but he of his own stopped reporting for duty w.e.f. 31st October, 1991. On account of this unauthorized and continuous desertion from the workplace his name was removed from the rolls of the miners.

4. Both the sides adduced their respective evidence whereupon the Tribunal instead of accepting the version given by the petitioner/management that the respondent/workman had not reported for duty from 31st October, 1991 came to the conclusion that the services of the respondent/workman were illegally and unjustifiably terminated from the service in gross violation of Section 25(F) of the Industrial Disputes Act, 1947. However, as the petitioner/management had filed an affidavit that the Haryana Minerals Ltd. has been closed, therefore, the Ld. Tribunal instead of granting the reinstatement and payment of back wages in its wisdom directed the petitioner/management to be paid compensation of Rs. 50,000/-.

5. I have heard the learned Counsel for the petitioner/management. After the judgment was reserved, and accordingly, the respondent/workman had also appeared and sought permission to place on record the written submissions. I have considered the record and gone through the written submission filed on behalf of the respondent/workman.

6. The first contention which has been raised by the learned Counsel for the petitioner/management is to the effect that the Central Government Tribunal at Delhi did not have the jurisdiction. Though this point was raised, however, the learned Counsel for the petitioner/management did not strenuously urged this point.

7. I do not find any force in this submission of the learned Counsel for the petitioner/management that since the petitioner/management was having its area of operation in District Mahendargarh, Haryana, and therefore, this Tribunal did not have the jurisdiction. A perusal of the petition filed by the petitioner/management itself shows that appropriate Government in the case of the respondent/workman was the Central Government. The conciliation proceedings were started before Labour-cum-Conciliation Officer at Bhiwani, Haryana. The

demand note cum representation was made by the respondent/workman to Assistant Labour Commissioner (Central), Sonipat Road, Rohtak who had referred the matter to the Secretary, Government of India, Ministry of Labour, New Delhi. As the conciliation proceedings had failed, therefore, the Central Government being the appropriate government referred the matter to the Central Government Industrial Tribunal cum Labour Court-II which obviously was sitting in Delhi, therefore, I feel that there is no merit in this submission of the learned Counsel for the petitioner/management.

8. The next point which has been urged by the learned Counsel for the petitioner/management is that the learned Labour Court has come to a finding that the respondent/workman had served the petitioner/management for a period of 240 days between the period 8th July 1989 to 30th October, 1991 and since his services were not dispensed with in accordance with the Industrial Disputes Act, 1947 therefore, he was granted compensation. It was also contended that the petitioner unit where the services of the respondent/workman were being availed were in the mining activity as a unskilled labourer. The mining activity having been banned, the services of the respondent/workman could not be gainfully utilized, therefore, even if the compensation was to be awarded to the respondent/workman in lieu of the reinstatement there ought to have been some formula followed by the learned Labour Court. However, the learned Labour Court has randomly given a sum of Rs. 50,000/- as compensation in lieu of the reinstatement of the non regularization of the services of the respondent/workman on account of closure of the unit.

9. So far as the written submissions filed by the respondent/workman are concerned they have justified the grant of quantum of compensation to the respondent/workman. Reliance was sought to be placed on case titled Ghaziabad Development Authority v. Vikram Choudhary and Ors. 1995 (71) FLR 463. I have gone through the said authority cited by the respondent/workman, however, the same is not applicable to the facts of the present case. The principle enunciated in the said authority is the principle of last come first go and the payment of same wages to the temporary daily wage employees as are being paid under the Minimum Wages Act or prevailing wages in the locality. None of these issues is involved in the present writ petition. It is also not in dispute that the unit where the services of the respondent/workman were availed has since been closed. The only question which arises for consideration is whether the learned Labour Court was justified in granting a compensation of Rs. 50,000/- and if so what was the formula or the yardstick followed by it.

10. A perusal of the judgment shows that no such formula has been followed by the learned Labour Court in arriving at the figure of Rs. 50,000/-. It seems to have been given randomly, therefore, in my considered opinion the said amount of Rs. 50,000/- seems to be suffering from the vice of arbitrariness.

11. Admittedly in the instant case the respondent/workman was employed as an unskilled worker and his services even if we hold to be terminated illegally, he

had rendered only 240 days service in a calendar year prior to that. The quantum of wages which he was getting per day or per month has not been specified either in the statement of claim or any other document filed by the petitioner. The present minimum wages for an unskilled labourer is about Rs. 200/- or so per day in Delhi. Taking that as a base, in the year 1991 and that too in the area of Bhiwani, Haryana the minimum wages in 1991 in the month of October would be have been somewhere around Rs. 100/-. The respondent/workman at best would have been earning Rs. 3000/-per month or so which would come to Rs. 36,000/- per annum and for 240 days around Rs. 24,000/-. Therefore, I am of the considered opinion that a sum of Rs. 25,000/- would be sufficient compensation in lieu of the reinstatement as has been observed by the learned Labour Court. For the reasons mentioned above, I accordingly, modify the award dated 11th February, 2005 partially on the question of quantum of compensation and reduce the same from Rs. 50,000/- to Rs. 25,000/as being just, fair and reasonable to be given to the respondent/workman.

12. With these observations the writ petition stands disposed of. No order as to costs.