

(2003) 11 DEL CK 0070

In the Delhi High Court

Case No : C.W. No"s. 7535 of 2002 and C.M. No"s. 7535 of 2002, 5603, 11226 of 2003

Hindustan Prefab Ltd.

APPELLANT

Vs

Labour Commissioner and Others

RESPONDENT

Date of Decision : 19-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 108 DLT 585 : (2004) 3 SLJ 457

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Madan Gera, for the Appellant; Sanjay Ghose and Pragnya, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—Rule.

2. With the consent of the Counsel for the parties, the writ petition is taken up today for final hearing.

3. This writ petition challenges the Award dated 27th August, 2002, passed by the Industrial Tribunal in ID. No. 906/1990, directing the reinstatement with full back wages till the workman attaining the age of 58 years as well as the other retiral benefits in favor of the workman.

4. There are two pleas raised by the petitioner's Counsel. Firstly considering the fact that the petitioner was a Public Sector Undertaking, fully owned by the Ministry of Urban Development, Government of India, the appropriate Government ought to have been the Central Government and the reference having been made by the Government of NCT of Delhi and the award consequent thereto are both without jurisdiction.

5. The following observations have been made in the aforesaid judgment in

Municipal Corporation of Delhi v. Mahavir, reported as 2002 VII AD (Delhi) 593:

"Thus even if in a case where Central Government is the appropriate Government in relation to the disputes arising within the jurisdiction of NCT the later can also take action in terms of Rule 2(f) of the Rules. We may also consider the merit of the matter. The services of the concerned workman had been terminated without complying with provisions of Section 25-F of the Industrial Disputes Act.

6. In so far as this plea is concerned, it is covered by a judgment of the Division Bench of this Hon''ble Court in Mahavir's case (supra), wherein it has been held as follows:

"27. Furthermore the writ petition was filed two years after making the award and on this ground also the writ petition shall not be entertained as the writ petitioners were guilty of serious delay and laches on their part.

28. The appellant also never raised any contention with regard to lack of jurisdiction on the part of the Government of NCT. Although in a given case the Court may entertain such a plea although raised for the first time in a case of this nature, the Court may not intervene in the event it is found that substantial justice has been done to the parties. In Sohan Singh and Others Vs. General Manager, Ordnance Factory, Khamaria, Jabalpur and Others, , such a question of jurisdiction was not permitted to be raised."

Thus applying the above position of law, there is no merit in the above plea as even if the appropriate Government was the Central Government the reference made by the Delhi Government was not incompetent.

7. In so far as the merits of the matter is concerned, learned Counsel has sought to rely upon the fact that the petitioner's services have been terminated on the ground that he was a habitual absentee.

8. The following findings were recorded by the Tribunal:

"On the other hand the workman Chand Krishan entered into the witness box as WW-I and filed his affidavit Ex. WW/1B dated 7.8.2001 as his examination in-chief. In his affidavit's para No. 4 he deposed that management duly sanctioned from 22.12.1987 to 27.12.1987, 19.10.1987 to 19.11.1987, 23.7.1987 to 28.8.1987 and 24.3.1988 to 26.4.1988. He further deposed that he attended his duty on 2.4.1987, 4.2.1988 and 6.2.1988 but the period has been shown as absent in the charge-sheet. He further deposed that ho was on casual leave on 4.7.1987, 9.7.1987 and on Earned Leave on 14.10.1987 and half day leave on 17.8.1987 but the period has been shown as absence. It is evident from the statement of MW-1 Shadi Ram itself that leave record has not been produced in the Court and on the number of days the workman has been shown as absent in Ex. MW 1/4 when he was on leave. Similarly the claim of the workman that he attended the office on 2.4.1987, 4.2.1988 and 6.2.1988 but which has been shown as absence in charge-sheet, has not been denied or rebut which leads to the inference that the alleged period of absence is contrary to the actual position

and the leave record has not been produced before the Court and there is no rebuttal to the claim made by the workman. Consequently it is held that the management has failed to prove the misconduct of the workman and the issue is decided against the management and in favor of the workman."

Insofar as this plea is concerned, the Tribunal has recorded a finding by relying on the petitioner's witness, MW 1, Shadi Ram that the leave record was not produced by the petitioner/management before the Labour Court and on number of days the respondent No. 3/workman though shown absent was actually on leave. The Tribunal also relied on the fact that the claim of the workman that he attended the office on 2nd April, 1987, 4th February, 1988 and 6th February, 1988 which was wrongly shown as absent in charge-sheet, has not been denied or rebutted by the petitioner/management. In this view of the matter, there is no interference called for under Article 226 with the aforesaid finding of the fact recorded by the Tribunal particularly when the leave record was not produced before the Labour Court. The only answer given by the learned Counsel for the petitioner is that the leave records have been destroyed routinely. In my view this is not a sufficient answer because it was the petitioner's duty to preserve and produce the leave record before the Labour Court when the dispute was pending. In any case even assuming that the charge levied was correct, the punishment of dismissal is shockingly disproportionate for the alleged absence of only 43 days.

9. Accordingly, the writ petition is dismissed with no order as to costs. Consequently the interim orders dated 2nd April, 2003 and 15th May, 2003 stand vacated.