

(2011) 12 DEL CK 0274

In the Delhi High Court

Case No : Writ Petition (C) 18943 of 2006

Horticulture Department, Delhi

APPELLANT

Vs

Rajinder Prasad and Others

RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:

Citation : (2012) 132 FLR 926

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

Bench : Single Bench

Advocate : Sujata Kashyap and Mr. A.K. Singh, for the Appellant; Rajiv Agarwal, for the Respondent

Final Decision : Disposed Off

Judgement

P.K. Bhasin, J.—The petitioner (hereinafter to be referred to as "the management") challenges the award dated 8th August, 2006 passed by the Industrial Tribunal in ID No. 138/2005 directing the management to treat the respondent no.1 (hereinafter to be referred as "the workman") as its regular employee from 1987-88 when, as per the conclusion arrived at by the learned Tribunal, other employees who were admittedly junior to the workman had been regularized.

2. The undisputed facts are that the workman was employed with the management in the year 1985 as a mali/beldar on daily wages basis. After a couple of years his services came to be terminated w.e.f. 1st March, 1987. The workman challenged the termination of his services by raising an industrial dispute and he succeeded in that challenge on 5th December, 1996 when his reinstatement in service was ordered along with 50 per cent back wages by the Industrial Tribunal in I.D. No. 51/1990. The management challenged that award but failed in its writ petition (being W.P. (C) No. 1121/1999) filed before this Court and the workman was reinstated w.e.f. 7th August, 2002. While reinstating the workman the management regularized him also with effect from 7th August, 2002. The workman, however, felt that he should have been regularized from the

date of his initial appointment, and, therefore, he raised another industrial which was also referred to the Industrial Tribunal and this writ petition arises out of that reference.

3. One of the grievances of the workman was that his co-employees who were junior to him had been regularized w.e.f. 1st April, 1991. This part of his case was admitted on behalf of the management in its written statement filed before the Industrial Tribunal. However, the reason given for not regularizing him in 1991 was that at that time he was not in service as his services were terminated in the year 1987 though it was admitted that the industrial dispute in that regard was pending adjudication. Learned Industrial Tribunal decided the reference by granting the relief of regularization to the workman with effect from 1987-88 relying upon the cross-examination of the management's witness (MW-1) to the effect that employees who were junior to the workman were regularized in the year 1987. Learned Industrial Tribunal gave him the same relief ignoring the fact that he himself had claimed in his claim statement that he had been discriminated against by the management by not giving him the relief of regularization from April, 1991 when his juniors were regularized.

4. Feeling aggrieved, the management had filed the writ petition. It was contended by the learned counsel for the management that the management's decision not to regularize him from the date when his juniors were regularized was for the reason that before 7th August, 2002 he was not in service and, therefore, he was not entitled to be regularized from any date prior to that. In any event, counsel further submitted, the workman having raised the industrial dispute about three years from the date of the dismissal of the management's writ petition whereby it had challenged the earlier award for reinstatement the impugned award cannot be sustained for this reason also as the workman's claim should have been rejected on the ground of unexplained delay in the raising of the dispute.

5. Counsel for the workman on the other hand submitted that the fact that his services stood terminated at the time when his juniors were regularized could not be made the basis for denying him the relief of regularization from the date his juniors were regularized since the effect of the Industrial Tribunal's award directing his reinstatement, which had attained finality also with the dismissal of the management's writ petition filed against that award, was that he was deemed to be in continuous service right from the date when his services were terminated. It was also contended that in case the management's stand that the period when the dispute about termination of his services was pending adjudication is to be excluded then that would nullify the award passed by the Industrial Tribunal particularly when reinstatement order was passed with the benefit of continuity of service.

6. After having heard the rival submissions of the counsel for the parties I am of the view that as far as the grant of relief of regularization to the workman by the Industrial Tribunal from 1987-88 is concerned the same cannot be sustained in

view of the categorical stand taken by the workman himself in his claim statement that he had been discriminated against by the management by not regularizing him with effect from 1st April, 1991. Just because the management's witness had stated during his cross-examination that some workers had been given the relief of regularization from 1987 the workman could not get any relief on the basis of that statement. What relief the workman was to get had to be decided on the basis of his own claim statement since the management had been called upon to meet the case of the workman as was pleaded by him and not what emerged during evidence of the management.

7. However, as far as the management's case that the workman was entitled to be regularized with effect from 7th August, 2002 from which date he was reinstated in service cannot be accepted. I am in full agreement with the submission of the learned counsel for the workman that the effect of setting aside of the termination of his service by the Industrial Tribunal would be that he would be deemed to have been in continuous employment of the management from the date of termination order and, therefore, he had to get all the benefits which his co-employees had got and he could not be denied that benefit on the ground that in the year 1991 he was not in service. 8. Thus, this writ petition is disposed of by modifying the award of the Industrial Tribunal to the extent that now the workman is granted the relief of regularization with effect from 1st April, 1991 and not from 1987-88. However, the workman would only be entitled to financial benefits with effect from 1st April, 1991 and no seniority over those who were regularized already.