

(2010) 09 DEL CK 0059

In the Delhi High Court

Case No : Writ Petition (C) No. 716 of 2007

Indira Kali

APPELLANT

Vs

Director, Social Welfare

RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 09 DEL CK 0059

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Sonali Malhotra, for the Appellant; Somdutt Kaushik and Saket Kumar Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.—The present writ petition has been filed by the petitioner under Article 226 of the Constitution of India praying for a writ of Mandamus setting aside the award dated 29.11.2005 and directing the respondent to reinstate the petitioner w.e.f. 06.05.1996.

2. According to the petitioner she had been working with the respondent/ management from June 1980 to 03.05.1996 and with prior permission of the supervisor concerned she went on leave from 3.05.2006 to 05.05.2006 to attend a marriage of her relative. Three days later when she reported back on duty on 06.05.2006, the supervisor did not take her back on the job and verbally charged her for stealing some biscuits. The petitioner was illegally terminated without any inquiry, any notice, notice pay or compensation. The petitioner made various representations to the respondent but did not receive any response. Therefore she raised a dispute before the conciliation officer on 09.10.1996 but the conciliation proceedings failed and the Secretary Labour referred the matter to the Labour Court on 14.07.1997 for adjudication with following terms of reference:

Whether the services of Smt. Indira kali have been terminated illegally and/or unjustifiably by the management and if so to what relief is she entitled and what directions are necessary in this respect?

3. The Presiding Officer passed the award dated 29.11.2005 against the petitioner. The said award was published On 01.05.06 and became enforceable w.e.f. 31.05.2006. Being aggrieved by this award the petitioner filed the present writ petition.

4. As per respondent, the services of the petitioner were not terminated and in fact she herself stopped coming to Anganwari Centre because she was caught red handed by the Supervisor on 6.5.1996 stealing 10 kg biscuits. It is not in dispute that the petitioner had marked her presence in the attendance register on 6.5.1996. The attendance roll was filed as Annexure 1. The report of the Supervisor regarding the theft was placed as Annexure-2.

5. It is contended by the respondent that as per manual functionaries of the department of Social Welfare she was devoting about 4 hours each day and only assisting the Anganwari worker.

6. As per the facts of the case, the petitioner was deputed as honorary helper on 1.8.1882 in Anganwari Centre No. 87 but later on she was shifted to Centre No. 120 at Old Seelampur, Delhi. The Anganwari helpers performed their duties as per instructions contained in hand book of ICDS scheme.

7. Further contention of the respondent is that in view of the fact that the petitioner left the job on her own, the provision of the Industrial Disputes Act, 1947 does not apply in the present case and even otherwise, Department of Social Welfare does not come under the category of industry being sponsored scheme.

8. It is submitted that ready to eat food items are distributed by the Anganwari worker and the Anganwari helper only assists in this process and helpers are responsible for maintaining the cleanliness of the Centre and bring the children to Centre and they do not collect the nutrition from the CDPO office. Therefore, their duty cannot be equated with the workman of the Health Department of MCD, Hospitals etc. wherein the main objective is treatment and medical care of the patients.

9. ICDS scheme is centrally sponsored scheme and the guidelines for the implantation of the scheme are being laid down by the Department of Women and Child Development, Ministry of HRD, Govt. of India.

10. In her examination as WW1, the petitioner has specifically denied about the stealing of 10 kg biscuits on 6.5.1996 as alleged by the respondent.

11. On the other hand, the respondent has examined two witnesses MW1 Smt. Dayawati Gaur and MW2 Sh. V.K. Sharma. Both the witnesses have deposed that her services were not terminated on 6.5.1996 and she actually stopped coming

for the job when she was caught red handed while committing theft. It is a matter of fact that the petitioner has not placed any evidence to the effect that she had been terminated and to prove any evidence contrary to that produced by the respondent.

12. The respondent has placed on record document vide Ex.MW1/1 for showing the misconduct of the petitioner. It might be possible that the petitioner herself stopped coming to the work. As far as issuance of notice for joining her duties by the respondent is concerned, the same was not required because her services were of regular nature as she was working as a helper in Anganwari Centre and was devoting about 4 hours each day in order to assist the Anganwari Centre worker. Admittedly, no selection was done in the present case.

13. As per practice, the Anganwari helpers only assist the worker in the Centre and their duty cannot be matched with the workman of the Health Department of MCD and Hospital etc. The petitioner has failed to prove otherwise and therefore she is not entitled for any relief claimed.

14. Upon consideration of the matter, I am of the view that the finding of fact arrived at by the Labour Court cannot be interfered with by exercising the discretion under Article 226 of the Constitution of India. There is no merit in the petition, hence the same is hereby dismissed. No orders as to cost.