
(2007) 03 DEL CK 0198

In the Delhi High Court

Case No : Writ Petition (C) No. 3934 of 2003

Ishraul Haque Ansari

APPELLANT

Vs

M.C.D. and Others

RESPONDENT

Date of Decision : 09-03-2007

Acts Referred:

Citation : (2007) 1 ILR Delhi 1075

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : D.N. Vohra, for the Appellant; Shivender Chopra and Reeta Kaul, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—With the consent of the counsels for the parties, the matter is taken up for hearing and disposal at the admission stage itself.

2. The present writ petition has been filed by the petitioner praying inter alias for quashing the order dated 10th May, 2002 passed by the Presiding Officer, Labour Court, whereby the application of the petitioner/workman for setting aside the ex parte award dated 3.12.1993 was dismissed on the ground that no sufficient cause for non-appearance of the Authorized Representative (AR) as well as the workman was made out.

3. In a nutshell, facts of the case are that the petitioner was employed as a Sub-Officer in the Delhi Fire Services on 29.9.1989. While he was still on probation, his services were terminated on 8.11.1990. Aggrieved by the said termination order, the petitioner filed a writ petition in this Court being WP(C) No. 371/1991. The said writ petition was dismissed by a Division Bench of this Court, vide order dated 5.2.1991, holding inter alias that the petitioner was a mere probationer and no stigma was attached to his termination nor was there any suggestion that the probationer had been terminated because of any ulterior motives. Some time thereafter, the petitioner raised a dispute before the Labour Commissioner, as the

Delhi Fire Service was under the administrative control of the respondent No. 1/ MCD at the relevant time. The said dispute was referred for adjudication to the Labour Court, vide I.D. No. 183/1992. Following were the terms of reference:

Whether the termination of services of Shri Ishraul Haque Ansari is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

4. After pleadings were complete, in view of the fact that the respondent/ management raised a preliminary objection to the effect that the present matter had already been decided by the Delhi High Court in WP(C) 371/1991 and hence the jurisdiction of the Labour Court was barred, and accordingly, a preliminary issue was framed. Arguments were addressed by the respondent/management. However, on behalf of the petitioner/claimant, adjournments were sought on various grounds on different dates. Despite the fact that the Labour Court granted sufficient opportunities to the petitioner, it was observed that the matter was not argued on behalf of the petitioner/claimant. Finally, after hearing the counsel for the respondent/management and perusing the records, particularly, the aforementioned order dated 5.2.1991, passed by the Division Bench of this Court, it was held that the Labour Court could not entertain the matter which had already been decided by this Court and the reference was held to be bad in law.

5. On 14.12.1993, the petitioner filed an application for setting aside the ex parte award dated 3.12.1993. It is stated in the counter affidavit filed by the respondent that the said application was dismissed in default on 10.1.1994. Thereafter, the petitioner filed another application on 9.2.1994 for restoration. Both the applications dated 14.12.1993 and 9.2.1994, were dismissed by the Labour Court, vide order dated 16.1.1996. In the said order, it was observed that none of the said applications was moved by the workman, and the authorized representative was not competent to prefer such an application in terms of the relevant rules. Both the applications were, Therefore, held not maintainable as having not been preferred by the workman and they were accordingly dismissed.

6. Subsequent to the above, the petitioner filed another writ petition before this Court being WP(C) No. 344/1996, wherein the petitioner challenged the aforesaid order dated 16.1.1996 passed by the Labour Court. However, as the administrative control of the Delhi Fire Service Department was transferred from MCD to the Government of NCT of Delhi in the meantime, this Court vide order dated 26.2.1996, transferred the aforesaid writ petition of the petitioner to the Central Administrative Tribunal. The Tribunal disposed of the petition of the petitioner, vide order dated 14.8.1996 observing that the Tribunal had no jurisdiction to entertain the petition against an award passed by the Labour Court.

7. Consequently, the petitioner filed a review application in WP(C) No. 344/1996 on the basis of which the writ petition was re-transferred for adjudication to this Court. The learned Single Judge of this Court, vide order dated 13th September, 2000, disposed of the writ petition with directions to the Labour Court to dispose

of the application filed by the petitioner for recalling the award, on merits after giving notice to the management, as expeditiously as possible.

8. In compliance with the aforesaid directions issued by this Court, the Labour Court disposed of the application filed by the petitioner dated 14.12.1993, by passing the impugned order dated 10.5.2002 wherein after hearing both the parties, it was observed that no Explanation has been placed on record by the petitioner/workman with regard to non-appearance before the Court on 3.12.1993, when the award was pronounced. It was further observed that the application in question was not supported by any affidavit, nor were the details of the case in which the authorized representative of the petitioner/workman appeared in the trial, furnished. Thus, it was held that the petitioner had failed to make out sufficient cause for non-appearance of the authorized representative as well as for himself and hence, the application was dismissed as being devoid of merits.

9. Learned Counsel for the petitioner submitted that the aforesaid order is illegal and contrary to law as it has been held in a number of cases that party should not be made to suffer for the non-appearance of his counsel. Reliance has been placed on the judgment of the Supreme court in the case of Rafiq and Another Vs. Munshilal and Another, . Reliance has also been placed on a judgment of the Division Bench of this Court in WP(C) 1056/1994 entitled Sudershan Kanta v. R. Muthaln and Ors.

10. On merits, it was stated that the termination of the probationer is also retrenchment and admittedly no compensation was paid to the petitioner on his termination and thus his termination was bad.

11. On the other hand, counsel for the respondent vehemently opposed the arguments of the counsel for the petitioner and stated that there is no justification whatsoever for quashing the order dated 10.5.2002 as the same is a valid and legal order. It was also submitted that the petitioner does not deserve any relief for the reason that he was not diligent in prosecuting the matter before the Labour Court, which is apparent from a perusal of the ex parte award dated 3.12.1993.

12. I have heard the counsels for the parties and have also perused the records as have been placed on the file. A perusal of the award dated 3.12.1993, which was sought to be recalled by the petitioner by filing an application, clearly shows that the default on the part of the petitioner and his counsel was not confined to one day. The impugned order makes it manifest that the Presiding Officer, Labour Court had perused the order sheets of the case and found that the authorized representative of the claimant was not ready to argue the case on various dates. Even on the day when the award was passed i.e. on 3.12.1993, the authorized representative of the petitioner failed to appear. A proxy counsel appeared and requested that an opportunity for addressing arguments be given to the authorized representative of the petitioner. It is recorded in the award that the

authorized representative of the petitioner was not ready to argue the matter at any time before the order was pronounced. In fact, he did not turn up to argue the matter. Thus, there was no option left for the Presiding Officer, Labour Court but to pronounce the award.

13. In view of the aforesaid conduct of the petitioner and his authorized representative, the Labour Court cannot be faulted in having passed the ex parte award, nor can it be said that the order dated 10.5.2002 is illegal, arbitrary or liable to be set aside. The said order has been passed after examining the conduct of the petitioner and his authorized representative on the record. Even on merits, as already noted above, the Labour Court has rightly held the reference to be bad on the ground that in view of the order of the Division Bench of this Court by which the writ petition preferred by the petitioner was dismissed, the Labour Court ought not to entertain the matter.

14. While it is not denied that the workman should not suffer for the non-appearance of his counsel, it can also not be overlooked that while recalling the order for setting aside an ex parte award, the conduct of both, the petitioner as also his counsel, has to be seen. Merely because the petitioner engaged a counsel to conduct his matter is not a sufficient ground for him to sit back complacently without following up his case diligently. To simply blame the counsel and claim that it was only on account of his negligence that the petitioner could not prosecute his matter properly, is not a sufficient ground to seek any relief, as claimed in the present petition. A party is expected to pursue the case diligently once it has been filed in the Court.

15. In the present case, the counsel for the workman had himself stated before the Labour Court that the workman had not been contacting him. Thus apart from negligent conduct of the counsel for the workman, even the petitioner was not diligent or sufficiently vigilant in the matter. Even on merits, the petitioner has failed to make out sufficient cause for interfering in the impugned order.

16. In view of the facts and circumstances of the case, this Court is not inclined to exercise its power of judicial review in the present matter, in favor of the petitioner. The writ petition is, Therefore, dismissed as being devoid of merits.

17. The parties are left to bear their own costs.