

(2007) 01 DEL CK 0061
In the Delhi High Court
Case No : WP (C) No. 3642 of 2002

J.B. Kumar

APPELLANT

Vs

Brijesh Sethi and Another

RESPONDENT

Date of Decision : 19-01-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 2
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47

Citation : (2007) 136 DLT 665 : (2007) 113 FLR 405 : (2007) 2 LLJ 882

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Party-in-Person, for the Appellant; S.K. Jain and R.R. Sahay, for the Respondent

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the validity of award dated 26.4.2001 passed by Labour Court whereby the reference was answered against the workman/petitioner.

2. Briefly, the facts are that the petitioner was working as an Assistant Steward with the respondent No. 2 i.e. M/s The Oberoi, on monthly emoluments of Rs. 3108/-. On 28.2.1995, he met with a road side accident and started absenting. The management was informed about the accident and the injuries suffered by the workman. The management waited for the petitioner for about one year and four month so that the petitioner may recover from the accident injuries and join the duty. However, the petitioner failed to inform the management about this state of health and progress of recovery till the management asked him vide letter dated 2.7.1996 as to when he would resume his duties. The workman vide letter dated 6.7.1996, asked the management to wait for another six months which was the period likely to take in his recovery. He enclosed a medical certificate dated 6.7.1996 of one Dr. Anil Malik of MCKR Hospital to this effect. In order to assess the physical condition of the workman and possibility of his recovery from the injuries, the management deputed one Dr. H.S. Dhupia to visit

his residence and informed the workman that Dr. Dhupia shall visit him on 27th September, 1996. Dr. Dhupia examined the workman and submitted a detailed report on 1.10.1996. Dr. Dhupia opined that the workman will not be able to perform the duties as an Assistant Steward at all even after recovery and the services of the workman were terminated vide letter dated 2.11.1996 on the ground of his continued illness and medical unfitness to perform duties. The petitioner/workman challenged his termination, making allegations against the management of victimization due to his involvement in the union activities. Following dispute was referred to the Labour Court for adjudication: ?Whether the termination of services of Shri J.B. Kumar is illegal and/or unjustified and if so, what relief is he entitled and what directions are necessary in this respect.

3. The Labour Court, after recording evidence of the both sides, came to conclusion that the management had waited for sufficient period for the workman to recover. The termination of the workman by the management due to his continued illness was not illegal. Hence this writ petition.

4. It is undisputed fact that the petitioner had suffered physical disability due to the accident. He himself has attached medical certificate showing 50% disability. It is not disputed by the petitioner that due to this disability, he had become incapable of doing the job of an Assistant Steward since that requires an immense physical movement inside the restaurant/hotel and also physical work. The petitioner stated that he should have been given some alternate job. This Court explored the possibility of a settlement between the parties and the petitioner was interviewed by the management on 19.3.2004 to ascertain his suitability for alternate employment. The respondent reiterated to the Court that it was not possible to give any alternate employment to the petitioner because he was not educationally qualified for the alternate job and he was not qualified for the physical job. Therefore, no settlement could be arrived at in this respect.

5. It is submitted by the petitioner that his physical disability could not be a reason for his termination in view of Section 47 of the Persons with Disability(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short the Act). Section 47 of the said Act reads as under: ? Non-discrimination in Government employments. (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he maybe kept on supernumerary post until a suitable post is available or her attains the age of superannuation, which ever is earlier.

6. A bare perusal of the above provision would show that this provision is applicable only in case of Government employment and it is not applicable in case of private establishments. It is not the case of the petitioner that the

respondent is a Government establishment or government aided establishment. Respondent is a private establishment. The provisions of Section 47 of the Act would, Therefore, not be applicable in case of the respondent. I am fortified in my view by judgment of Punjab and Haryana High Court in Hem Chand v. Union of India Punjab Law Reporter Vol. Cxxxv-(2003-3) wherein a Division Bench of Punjab and Haryana High Court had held that Section 47 is not applicable in case of non government establishments.

7. In Hindalco Industries Ltd. v. Labour Court, Varanasi reported as, (2001) 9 SCC 178 Supreme Court had held that termination of service of workman on account of continued ill-health does not amount to retrenchment. I consider medical unfitness of a person for the post or continued ill health of a person are valid grounds for termination of his services in view of Section 2(oo) of the Industrial Disputes Act and such termination does not amount to retrenchment.

8. During the final arguments on persuasion, the management had offered an amount of Rs. 50,000/- to the petitioner irrespective of the fact that the termination of the petitioner was valid. The petitioner refused to accept this amount. I consider that although the termination of the petitioner is not bad, but keeping in view the facts and circumstances of the case, it would be appropriate that the management pays a reasonable amount to the petitioner as a welfare measure.

9. I, Therefore, direct that the management should pay a sum of Rs. 75,000/- to the petitioner within six weeks from passing of this order as a welfare measure in order to help the petitioner. With these directions, the writ petition is disposed of. No orders as to costs.