

(2008) 02 DEL CK 0140

In the Delhi High Court

Case No : LPA 23 of 2008

J.B. Kumar

APPELLANT

Vs

Secretary Labour and Another

RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:

Citation : (2008) 02 DEL CK 0140

Hon'ble Judges : Dr. M.K. Sharma, C.J;Reva Khetrapal, J

Bench : Division Bench

Advocate : Atul T.N, for the Appellant; Nemo, for the Respondent

Judgement

Mukundakam Sharma, C.J.—This appeal is directed against the judgment and order dated 19th January, 2007 passed by the learned Single Judge whereby a direction was issued to the management - respondent to pay a sum of Rs. 75,000/- to the appellant as a welfare measure in order to help the appellant - workman. The said order was passed in the writ petition which was filed by the appellant challenging the legality of the award dated 26th April, 2001 passed by the Labour Court. By the said award, reference, which was made by the appropriate Government, was answered against the workman.

2. The appellant was working as an Assistant Steward on monthly salary of Rs. 3,108/- with the respondent No. 2 i.e. M/s The Oberoi. On 28th February, 1995, the appellant met with a road accident and thereafter he absented from duty. After waiting for about a year and four months to enable the workman to recover from the accident injury, the management directed the appellant to report on duty. The workman, however, failed to inform the management about his state of health. Consequently, the management sent a letter to him on 2nd July, 1996 as to when he would resume his duties. As against the said letter, the workman vide letter dated 6th July, 1996 asked the management to wait for another six months. The management deputed its doctor to visit the residence of the appellant. The said doctor examined the appellant and submitted a detailed report on 1st October, 1996 giving his opinion that the workman would not be

able to perform the duties as an Assistant Steward at all even after recovery. Consequently, the services of the workman were terminated vide letter dated 2nd November, 1996 on the ground of his continued illness and medical unfitness to perform duties. The aforesaid action on the part of the management was challenged by the workman on the ground that it was an unjustified and illegal termination. On the basis of the request of the appellant a reference was also made to the Labour Court in the following terms:

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 the conclusion that the management had waited for sufficient period for the workman to recover and join his duty and, Therefore, the said action cannot be said to be illegal or unjustified.

4. Being aggrieved by the said award passed by the Labour Court, the same was challenged by filing a writ petition. The learned Single Judge considered the nature of action taken by the management. It was held by the learned Single Judge that it could not be disputed that due to the disability, the appellant has become incapable of doing the job of an Assistant Steward since that requires an immense physical movement inside the restaurant / hotel, which the appellant would not be able to perform. The issue with regard to alternate job was also explored by the Court. After looking into the matter, the learned Single Judge came to the conclusion that it was not possible to give any alternate employment to the appellant because he was not educationally qualified for the alternate job and he was not qualified for the physical job.

5. Considering the nature of the injury suffered by the appellant and his economic condition, the learned Single Judge directed that an amount of Rs. 75,000/- be paid to the appellant as a welfare measure in order to help the workman. The learned Single Judge also held that It cannot be disputed that the provisions of Section 47 of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 on which reliance was placed by the appellant before the learned Single Judge are not applicable to the respondent the respondent not being a Government establishment and this being a fact not disputed by the appellant. The learned Single Judge also considered the ratio of the decision of the Supreme Court in Hindalco Industries Ltd. v. Labour Court, Varanasi reported as, (2001) 9 SCC 178 wherein it was held that termination of service of workman on account of continued ill health does not amount to retrenchment.

6. The above being the legal position and it being established from the records that the appellant is unable to perform and discharge the duties as an Assistant Steward, as the job of Assistant Steward involves immense physical movement inside the hotel/restaurant, we find no reason to interfere with the order passed

by the learned Single Judge. An amount of Rs. 75,000/- is directed to be paid to the appellant, which is already received by the appellant. It is also pointed out before us by the counsel for the appellant that he has already filed a petition under the Workmen Compensation Act and the same is pending. We make it clear that the amount, which is directed to be paid under this proceeding, is independent of any liability and is without reference to any liability that may accrue under the provisions of the said Act or any other statute. It is also made clear that the observations made by the Labour Court, which are upheld by the learned Single Judge, will be considered as views and opinions for the purpose of deciding the reference alone and not for any other purpose.

7. The appeal stands disposed of in terms of the aforesaid order.