

(2009) 01 DEL CK 0018

In the Delhi High Court

Case No : Writ Petition (C) No's. 8284 and 9066 of 2007

Jetlite (India) Ltd.

APPELLANT

Vs

Capt. R. Khosla
 Capt. R. Khosla Vs Jetlite Airways Ltd.

RESPONDENT

Date of Decision : 07-01-2009

Acts Referred:

Citation : (2009) 157 DLT 677 : (2010) 3 SLJ 83

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Rajiv Shankar Dvivedi, in WP C No. 9066/2007 and Party in Person in WP C No. 8284/200, for the Appellant; Rajiv Shankar Dvivedi in WP (C) No. 8284/2007, for the Respondent

Judgement

Kailash Gambhir, J.—This order shall dispose of two separate writ petitions one filed by Jetlite (India) Ltd. in WP (C) No. 9066/2007 seeking writ of certiorari or any other writ to quash the Award dated 30th August, 2007 passed by the learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court and the writ petition filed by Captain R. Khosla in CWP 8284/2004 seeking modification of the said order dated 30th August, 2007 seeking interest @ 18% per annum w.e.f. 16.7.1998 till the time of full and final payment on the claimed amount of Rs. 4,38,799/-.

2. Brief facts in nutshell as per WP(C) No. 9066/2007, relevant for deciding the present petitions are as under:

That the respondent Captain R. Khosla was appointed as Pilot in the Sahara Airlines on 1.11.1994. The job of the Pilot in an Airline is one of control and it requires initiative and creativeness and faculty of mind. It is managerial and supervisory in nature. The respondent was getting a very handsome salary of more than Rs. 1 lac per month. As per the management, the respondent was very arrogant, foul mouth and undisciplined person. The job of a pilot by the very nature of its responsibility and risk involved requires regimentary discipline. Any deviation or act of insubordination may not only cause loss of crores of Rupees

but also lives of hundreds of persons. The respondent used to abuse and speak unparliamentary words about his seniors and colleagues in front of every body. He used to act rudely and was insubordinate in his behavior towards his seniors. When his rude behavior and use of abusive language went out of hand, the management was forced to serve him with a show cause notice on 5th June, 98 from G.M. Operation, North, and he was asked to show cause within seven days as to why strict disciplinary action should not be taken against him. That on 25th June, 1998 the respondent submitted his show cause. The very tone and tenure of the show cause smacks of insubordination and rudeness towards the senior officers and management of Airline. That the show cause given by the respondent was found to be insufficient and the Chief Controller Sh U.K. Bose by letter dated 2.7.1998 directed to hold an inquiry to look into the said charges as given in the charge sheet. The inquiry was directed to be completed within 15 days. On the basis of the statements and cross-examination of the witnesses, non-denial of any of the allegations by the respondent, the committee came to the conclusion that the charges against the respondent on all the three counts of using unparliamentarily language were proved. That on the basis of the report of the inquiry, on July 16, 1998, a letter was issued to the respondent intimating him the decision of the management to terminate his services with immediate effect. Against this letter, Captain Khosla went to the Accounts Department and got his accounts settled. However, when he was informed that as per his terms of appointment he has to be given one months salary in lieu of the notice period, he refused to take that amount, thereafter the respondent did nothing in this regard. After almost one year of the termination on 1.7.1999 Mr. Khosla sent an application to the Chief Labour Commissioner (Central), Ministry of Labour, Govt. of India, New Delhi as an application for conciliation/reference to labour Court or Tribunal under Industrial Disputes Act, 1947. He referred to non-payment of one month salary in lieu of non-issue of requisite notice and raised certain demands about his arrears. That on the basis of the jurisdictional question raised by the petitioner a reference was made by the Government vide letter dated 27.1.2000 and letter No. L-11012/119/99-IR. Thereafter the hearing was completed and the award was passed on 13.2.2006.

3. Mr. Rajiv Shankar Dwivedi counsel appearing for the Jetlite (India) Limited at the outset has stated that the order passed by the learned Tribunal is without jurisdiction as the respondent Caption R. Khosla was appointed in Sahara Airlines on the post of Pilot and as per the definition of workman envisaged u/s 2(s) of the Industrial Disputes Act, the respondent cannot be held to be a workman. Counsel has further drawn attention of this Court to order dated 9.9.2008 passed by this Court in CWP No. 9135/2006 filed by M/s Sahara Airlines Ltd. against Captain R. Khosla wherein Sahara Airlines Ltd. has raised a controversy about the jurisdictional error committed by the Tribunal in considering the respondent as a workman. The Court after hearing the parties came to the conclusion that the Tribunal had wrongly considered the respondent as a workman based on some earlier adjudication between the parties on the same issue while in fact no

such earlier adjudication was brought to the notice of the High Court. The Court thus remitted the matter back to the Tribunal to decide the issue as to whether the respondent is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. It would be relevant to reproduce para 7 to 9 of the said order as under:

7. In the present case the Court below has proceeded on a wrong premise for holding that the respondent comes within the definition of workman as provided in Section 2(s) of the Industrial Disputes Act, 1947. The findings to that effect have been given by the Court below on the basis of some earlier adjudication inter parties which were treated as respondent-judicata/constructive respondent-judiciata. Ms. Raavi Birbal, learned Counsel appearing on behalf of the petitioner has vehemently argued that there was absolutely no earlier adjudication inter parties on the point as to whether the respondent was a workman or not and according to her, the learned tribunal who has passed the impugned award has committed a jurisdictional error by not deciding the preliminary objection taken by the petitioner that the respondent is not a workman because he was performing supervisory duties during his employment with the petitioner. The petitioner contends that the respondent is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, whereas the respondent has strongly refuted the said contention. The respondent has argued his case personally. He has contended that he was employed as a co-pilot with the petitioner and according to him he was not performing any duty which may be termed as duties of supervisory nature. The contentions raised by the parties on this point relate to disputed question of fact and thus Court in exercise of its writ jurisdiction under Article 226 of the Constitution would not go into the disputed questions of fact. Despite opportunity given to the respondent, the respondent could not show any earlier adjudication inter-parties wherein it might have been held that he is a workman which alone could have conferred jurisdiction on the court below to decide the reference pertaining to his impugned termination. Unless the Court below records an independent finding that the respondent is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, the Court below would have no jurisdiction to proceed further in the matter. Hence, this Court is of the view that the impugned award passed by the Court below cannot be sustained in law because it is based on erroneous assumption of some earlier adjudication, which in fact is not there.

8. Before parting with this order, I would like to note the other submission made by the counsel for the parties before me. Ms. Raavi Birbal, learned Counsel appearing on behalf of the petitioner has contended that in case the court below arrives at a conclusion that the respondent is a workman and maintain its conclusion that the inquiry proceedings are vitiated for perversity then opportunity should be given to the petitioner/management to adduce evidence to prove the misconduct of the petitioner. The respondent says that no such opportunity can be given to the petitioner to prove his misconduct in the event inquiry proceedings are held to be vitiated for perversity. I do not agree with this

contention of the respondent. In case the Court below reaches to a conclusion at the time of fresh decision that the inquiry proceedings are vitiated for perversity then the Court below shall consider the request of the petitioner/management for adducing evidence to prove the misconduct of the respondent in accordance with the law on this point and should pass necessary speaking order with regard to the same after giving hearing to both the parties.

9. In view of the above and having regard to the facts and circumstances of the case the impugned award dated 13.02.2006 passed by CGIT is hereby set aside. The case is remanded back to the Court below for fresh decision in accordance with law after affording an opportunity of hearing to both the parties. The Court below is directed to decide the case afresh as expeditiously as possible, preferably within six months from today. The parties are directed to appear before the Court below/successor Court for further directions at 2.00 p.m. on 17.09.2008. A copy of this order be sent to the concerned Court below for information and necessary compliance forthwith. This writ petition is disposed of according with no order as to costs.

4. The Respondent/petitioner who is present in person states that the said order is under challenge in LPA before the Hon?ble Division Bench, but no particulars of such LPA or any direction given by the Division Bench has been brought to the notice of this Court. In any event of the matter even in the impugned Award the Tribunal has not gone into the said contentious issue of whether the respondent is a workman or not. The Tribunal has proceeded on the premise that the plea regarding jurisdiction appears to be misconceived as a workman being otherwise entitled to claim his legal dues for which no adjudication is required. The Tribunal perhaps glossed over the fact that the application u/s 33(C)(2) can only be moved by a person who is a workman covered within the meaning and definition of Section 2(s) of the Industrial Disputes Act and therefore, unless the person setting the machinery under the Industrial Disputes Act in motion satisfies the Court that he is a workman as envisaged u/s 2(s) of the Industrial Disputes Act no relief could have been granted by the Court in his favour. It would be appropriate to reproduce Section 2(s) and Section 33(C)(2) of the Industrial Disputes Act as under:

2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

33C. Recovery of Money Due From an Employer. (1) xx xxx

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

5. A cursory glance of the said provisions would show that it is a workman alone who could have approached the Tribunal for claiming any money or any other benefit from his employer and it is not that any person holding any post not covered within the definition of workman is entitled to approach the Tribunal to claim the monetary benefits by way of filing an application u/s 33(C)(2) of the Industrial Disputes Act. In this regard, while explaining the scope of Section 33(C)(2) of the Industrial Disputes Act, the Hon^{ble} Apex Court in Chief Superintendent, Government Livestock Farm Hissar v. Ramesh Kumar, (1997) 11 SCC 363 observed as under:

2. We are unable to appreciate how the application of the respondent could be entertained u/s 33-C(2) of the Act. The remedy of Section 33-C(2) is available only in those cases where there is no dispute about entitlement of the workman. The remedy of Section 33-C(2) cannot be invoked in a case where the entitlement is disputed. In the instant case, the entitlement of the respondent to regular scale was disputed by the appellant and, therefore, it was not a case in which the remedy of Section 33-C(2) could be invoked. The proper course for the respondent was to have his entitlement to regular scale determined by a competent court or tribunal and in the event of non-payment of the amount payable to him as per his entitlement under such determination he could invoke the remedy u/s 33-C(2).

6. As the impugned order came to be passed by the Tribunal pursuant to the matter being referred by the Tribunal while passing the final Award dated 13.2.2006 and since the said Award dated 13.2.2006 has already been remitted

back by the High Court in CWP No. 9135/2006 dated 9.9.2008 for the Tribunal to decide the matter afresh with regard to determination of the issue as to whether the petitioner is a workman or not as envisaged u/s 27 of the Industrial Disputes Act, therefore, once the said issue has yet to be finally decided by the Tribunal, the impugned order challenged herein cannot sustain and attain finality.

7. As already stated above in an earlier petition filed by M/s Sahara Airlines the matter has been already remitted back for fresh adjudication for deciding the issue as to whether the respondent Mr. R. Khosla is a workman or not and even in the present case the Tribunal has not gone into this issue and has straightway granted the relief of giving directions to the management to pay his backwages to the tune of Rs. 4,38,799/-.

8. Since in the award dated 13.2.2006, passed by the Tribunal in the matter between Captain R.K. Khosla & M/s Sahara Airlines Ltd. the Ld. Tribunal advised the applicant to move an application u/s 33-C(2) of the I.D. Act, 1947 and the said award has already been remitted back by the High Court vide order dated 9.9.2008 in W.P. (C) No. 9135/2006 for fresh decision to decide the issue about the status of Capt. R.K. Khosla whether of workman or not, therefore, unless the tribunal finally accept him as a workman the Tribunal Order passed u/s 33(C)(2) cannot sustain in the eyes of law.

9. In view of the foregoing discussion and considering the legal position that the proceedings u/s 33(C)(2) are in the nature of execution proceedings and since the primary issue as to whether Capt. R.K. Khosla is a workman as defined u/s 2(s) of I.D. Act which is pre-requisite for exercise of power by the Ld. Presiding Officer u/s 33-C(2) I.D. Act is yet to be decided, therefore, the matter is remitted back to the CGIT. The CGIT shall await the decision in the matter remanded vide order dated 9.9.2008 in WP (C) No. 9135/2006 and thereafter pass necessary directions in application, dated 5.12.2006 filed u/s 33-C I.D. Act by Capt. R. Khosla. Parties are directed to appear before CGIT on 17.2.2009.

10. Both the petitions are accordingly disposed of.