
(2006) 08 DEL CK 0252

In the Delhi High Court

Case No : Writ Petition (C) 436 of 1995

Kailash Chand Saigal

APPELLANT

Vs

Om Parkash and Others

RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2006) 132 DLT 192 : (2006) 111 FLR 540 : (2007) 1 LLJ 144

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

Bench : Single Bench

Advocate : Kailash Vasdev and Sanjay Kumar Shandilya, for the Appellant;
NEMO, for the Respondent

Final Decision : Disposed Off

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, petitioner has challenged the award dated 16.9.1994 passed by the Labour Court.

2. The relevant facts for the purposes of deciding this writ petition are that respondent No. 1, Om Parkash, alleged that his services were terminated by the petitioner illegally and a reference was made to Industrial Tribunal to adjudicate the legality/illegality of termination of his service. In the claim respondent-workman alleged that he was employed with the petitioner since 1976 as a Sweeper on a monthly salary of Rs. 130/-. He asked management for wages according to minimum wages notification which annoyed the management and his services were terminated with effect from 16.6.1978 without any reason and without issuing any charge sheet or show notice or without holding any enquiry. He served a demand notice on 2.7.1978 on the management claiming reinstatement. In the written statement, it was stated by the management that reference was bad as before Conciliation Officer a consent order was passed on 17.8.1978 which was duly signed by both parties and payment was to be made in terms of that order on 24.8.1978, but it could not be made on that date due to non-availability of Conciliation Officer. Finally on 18.11.1978 when AR of the

employer attended the office of Conciliation Officer, he was told to come on 17.12.1978. On that date, claimant-workman refused to accept the compromise amount from the employer.

3. On merits, it was submitted that respondent was doing the work of cleaning the office of the petitioner only for about half an hour in the morning and similarly he was cleaning & sweeping some other offices in the same building. He was being paid Rs. 60/- for this cleaning work. In February 1978 he offered to the petitioner that he would do additional work of dusting the office in the morning and petitioner agreed to pay him a sum of Rs. 130/- per month for cleaning and dusting. Respondent used to do this work only in the morning and evening. Respondent-workman was providing similar service to other offices and he was self employed in this manner. Respondent-workman was not working under the directions or control of petitioner nor he was an employee of the petitioner, so there was no question of termination of his services. Labour Court framed the following issues:

(1) Whether the termination of services of Sh.Om Prakash is illegal and/or unjustified and if so to what relief is he entitled and what directions are necessary in this respect?

(2) Whether any settlement was arrived at between the parties as alleged in para 1 of the preliminary objections?

(3) Whether the reference is bad as alleged in para 2 of preliminary objections?

(4) Whether the petitioner is a workman within the definition of Section 2(s) of the I.D. Act?

4. The Labour Court held that a part time employee was covered by the definition of workman as given in Section 2(s) of Industrial Disputes Act. The emphasis of petitioner has been that a part time employee of the nature of a Sweeper who only used to sweep the office in the morning say for half an hour and half an hour in the evening, could not be covered by Section 2(s).

5. The issue of a part time Sweeper had come before this Court in Coal India Ltd. v. P.O. (Labour Court) and Ors. 2001 3 AD (DELHI) 742 where the services of a part time Sweeper who used to get Rs. 10/- per day for the part time work were terminated in the same fashion without assigning any reason. This Court observed as under:

The Labour Court has relied upon the definition of Section 2(s) of the Industrial Disputes Act, defining the workman and found that according to the said definition a part-time employee ;will also be a workman as per Section 2(s) of the Act.

The Labour Court has also relied upon the judgments reported as State of Workman and Ors. 1967 5. K.C. Dutt; K. Ramachandran v. State of Kerala; Gurudarshan Singh v. State of Punjab (1983) (1) SLJ 399; Kanubhai Maru v. N.K.

Desai 1988 I LLN 1004 and Yashwant Singh Yadav v. State of Rajasthan and Ors. 1987 LLR 96 to come to a conclusion that the definition of the workman is comprehensive and wide enough to include a part-time employee. The Labour Court further found that the part-time employee is covered by the definition ;as per Section 2(s) of the Industrial Disputes Act. I am satisfied that the aforesaid finding of the Labour Court regarding the availability of the protection of Section 2(s) and other cognate sections is legally sustainable and does not call for any interference. In particular I am in respectful agreement with the law laid down in Kanubhai Maru v. N.K. Desai 1988 (1) LLN 1004 by the Gujarat High Court where a part-time servant doing the work of a sweeper has hold to be a workman and the law laid down in Yashwant Singh v. State of Rajasthan and Ors. 1987 LLR 96 by Rajasthan High Court which held that Section 2(s) of the Industrial Disputes Act covers a part-time employee also. It was admitted that the workman was employed since 21st of February, 1983 and worked till 31st of October, 1984 and there was no gap or absence in his duty and he had been continuously employed during the said period. The Labour Court held that having thus worked for more than a year, his services could not be terminated without complying with the mandatory provisions of Section 25(F) of the Industrial Disputes Act.

6. I consider that looking into the definition of Section 2(s) and catena of judgments, a part time workman is equally a workman and is entitled for protection available to a full time workman.

7. The other arguments raised by the petitioner is that Labour Court has awarded reinstatement with full back wages to the respondent. Considering the law laid down by the Supreme Court in several recent judgments, the award was bad in law. It is submitted that relief of reinstatement was not necessarily to be granted in cases specially when faith was lost in employee.

8. In State of M.P. and Others Vs. Arjunlal Rajak, , Supreme Court as opined

No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of . 6 N of the U.P. Industrial Disputes Act.

9. In the above case, a daily wager whose services were terminated, could not be reinstated as the production unit in which he was working itself had been closed. Supreme Court opined that interest of justice would be served if monetary compensation of Rs. 10,000/- was granted to him.

11. In Allahabad Jal Sansthan Vs. Daya Shankar Rai and Another, , Supreme Court has held as under:

We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement will full back wages

was the usual result. But now with the passage of time, it has come to be realised that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at.

In view of the fact that the respondent had been reinstated in serving and keeping in view the fact that he had not raised any plea or adduced any evidence to the effect that he remained unemployed throughout from 24.1.1987 to 27.2.2001, we are of the opinion that the interest of justice would be subserved if the respondent is directed to be paid 50% of the back wages.

12. In the present case respondent claimed that he was working at a salary of Rs. 130/-p.m. from 7 a.m. to 6 p.m. His claim has not been believed by Tribunal and he was considered working as part-time Sweeper with the petitioner doing some sweeping and dusting work. He was also working as part time Sweeper with the other establishments. The testimony of the management about this fact has gone unchallenged. He was terminated from part-time job in 1978 i.e. about 28 years ago. A person who does sweeping and dusting in the office has to be a person of trust & faith of management since such a person will have access to every nook and corner of office, and if disgranted can cause severe damage to the employer. It would not be appropriate to thrust him on the management nor it would be just to reinstate him at wages of Rs. 130/- per month.

13. In my opinion, the interest of justice will be served if he is paid a compensation of Rs. 25000/-. The award of the Industrial Tribunal is modified and the respondent/workman be paid compensation of Rs. 25,000/- in lieu of reinstatement and back wages.

The writ petition is disposed of accordingly.