
(1998) 05 DEL CK 0093
In the Delhi High Court
Case No : Civil Writ No. 4042 of 1994

Komal Kumar

APPELLANT

Vs

J.P.S. Malik and Others

RESPONDENT

Date of Decision : 01-05-1998

Acts Referred:

Citation : (1998) 73 DLT 812

Hon'ble Judges : R.C. Lahoti, J;Mukul Mudgal, J

Bench : Division Bench

Advocate : K.K. Sabharwal, for the Appellant; Urmila Narang, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—The petitioner, Komal Kumar, before this Hon"ble Court is the proprietor of M/s. Inder Gears and has challenged the recovery pursuant to the award dated 15th May, 1993 passed in I.D. No. 29 of 1992 by the Labour Court. The main case of the petitioner is that he is connected with M/s. Inder Gears and had no connection with the management of M/s. Inder Wills. The impugned award on finding the termination of the workmen of the concern M/s. Inder Wills to be illegal directed the reinstatement of the workmen Along with consequential benefits.

2. The reference was sought impugning the illegal termination of the services of 15 workmen with M/s. Inder Wills. The Labour Court record a finding that the notice to the management of M/s. Inder Wills was served but no one appeared on behalf of the management. The sum and substance of the dispute before the Labour Court according to the workmen was that upon claiming the dues including the minimum wages in the month of February, 1991, the management become annoyed and the workmen"s services were terminated from April, 1991. The Tribunal found that all the workmen were in continuous service of the management since 1984-85 till 26th April, 1991 and consequently found that the workmen were entitled to a judgment in their favor and the Labour Court held

that the workmen were deemed to be in service of the management with continuity of service and full back wages.

3. The aforesaid award has been challenged in the present petition by Shri Komal Kumar who is the proprietor of M/s. Inder Gears. He claimed in his writ petition not to have any knowledge or connection with the management of Inder Wills against whom the award had been passed by the Labour Court. He further stated that the workmen had not been in the employment of the petitioner or his firm M/s. Inder Gears. It was also pleaded that the award had been passed against a certain unknown firm with which the petitioner never had any connection and the recovery of the award is sought to be made wrongly against the petitioner. The writ petition also averred that at no stage the notices were served on the petitioner. The petitioner on the above pleadings persuaded this Court to issue notice and got a stay of the recovery proceedings from this Court on 22nd September, 1994 which order has continued to remain in operation up-to-date.

4. A counter affidavit was filed by the respondent-workmen bringing on record some disturbing facts. The workmen stated that Mr. Komal Kumar, the petitioner was common proprietor of the firm M/s. Inder Wills (Wheels) and only with a view to avoid the award he closed down the firm M/s. Inder Wheels and opened a new firm under the name and style of M/s. Inder Gears. It was further stated that the address of the both the firms i.e. M/s. Inder Gears and M/s. Inder Wheels are common, the telephone number is common, the proprietor, Shri Komal Kumar, is common and Shri Komal Kumar had signed the appointment letters issued to them. They also stated that the claim statement was filed by the petitioner in Hindi before the Labour Commissioner and in the process of transcribing, the name Inder Wheels came to be written as Inder Wills and this was merely a spelling mistake due to phonetic similarity. The workmen annexed letters of appointments signed by Komal Kumar and the attendance register in his handwriting.

5. Faced with this counter affidavit a rejoinder was filed in which the petitioner changed his stand and set up a case that there was no firm known as Inder Wills and there was only a firm by the name of Inder Wheels which the management closed down after proper notice and payment of terminal dues. It was not denied in the counter affidavit that the petitioner was common proprietor both in Inder Wheels and Inder Gears, the firm presently having the same address under him. It was claimed that all dues/benefits were paid by the petitioner to the workmen whose services were dispensed with. In the rejoinder affidavit a letter dated 21st May, 1991 purported to be addressed by the Rubber Plastic Nikal Polish General Workers Union (Regd.), was annexed in support of the petitioner's plea that all the workmen had been paid their dues in accordance with the Union's said letter. The petitioner in the meanwhile also obtained adjournments during the hearing of the writ petition stating that the petitioner had settled all the dues with the workmen which upon inquiry was found not to be a correct statement. He was however unable to file any proof of the settlement of claim with the workmen.

6. We summoned the original record from the Labour Court and have examined the same and clearly found that the petitioner had set up a patently false case before this Court and upon being confronted with the counter he has changed his stand and has sought to suggest that as proprietor of M/s. Inder Wheels all the workmen had been paid their terminal dues.

7. We are satisfied that the amount claimed to have been paid by cheques were paid by the petitioner himself into the account of the workmen and was accepted by them because they were under the impression that this was a payment towards bonus. The Counsel for the workmen brought to our notice certain pestings made over the letter of Union dated 21st May, 1991 annexed to the rejoinder affidavit which purported to be an acknowledgement by these workmen Union for all the terminal dues received by three workmen from the petitioner and was addressed to the Labour Commissioner. We asked the Counsel for the petitioner to produce the original letter which has since been made a part of the record and we find that in the original letter three relevant lines have been scored out. It is clear that the petitioner has not come to the Court with clean hands and has attempted to mislead the Court by filing a tampered document. We also find that the petitioner was the proprietor of M/s. Inder Wheels and due to the fact that the original application was made in Hindi and due to phonetic similarity the concern came to be described as Inder Wills. However, the petitioner was in no way prejudiced by the slight deviation in the nomenclature because the address of the concern was the same and the Trial Court had found that the notice had been served. It is clear that the petitioner deliberately choose to avoid the hearing before the Labour Court and took a chance and thereafter purported to plead that he was not heard and an ex parte award was passed. Obviously this was a ploy, so as to seek the setting aside of the exparte award and further delay the proceeding. He has also not given any Explanation whatsoever why he closed down Inder Wheels and started Inder Gears. It is obvious that this was done to evade the workmen's claim.)

8. Further more, the petitioner's conduct itself disentitles him from any discretionary relief. In the writ petition the petitioner pleaded that he had no connection or any connection whatsoever with M/s. Inder Wills without disclosing that he was the proprietor of M/s. Inder Wheels and when he was confronted with the counter affidavit with this position, he changed his stance and claimed that the employees of M/s. Inder Wheels of which he was the proprietor had been paid all their terminal benefits.

9. We accordingly find no merit in this petition and dismiss it with costs.

10. We find due to the attitude of the petitioner and his tampering with crucial document the petitioner has enjoyed an interim order of stay of recovery proceedings from this Court from 22nd September, 1994. We are, Therefore, of the view that this petition deserves to be dismissed with exemplary costs quantified to be Rs. 10,000/-, to be paid half and half to the Union and the Workmen. Costs will be paid within 8 weeks from the date of communication of

this order. We also direct that recovery should proceed immediately and is to be completed within 4 weeks. We are also of the view that since November, 1994 the petitioner is liable to pay interest at the rate of 12 percent per annum on the quantified amount of Rs. 3,59,556/- sought to be recovered through the recovery proceedings against the petitioner till the date of payment.

11. The writ petition is dismissed and the award of the Labour Court is maintained accordingly.