
(1994) 01 DEL CK 0038

In the Delhi High Court

Case No : Civil Writ Appeal No. 530 of 1976

Management of Baldev Soap Factory

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 16-01-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (1995) 57 DLT 719 : (1995) 2 LLJ 376

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : S.N. Bhandari, Gita Sharma, S. Janani and Meenakshi Vij, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present writ petition impugns the Award dated 24/02/1976, passed by the Presiding Officer, Additional Labour Court, Delhi .

(2) By Notification No. F.24(278)/72-Lab./17751 dated 23/06/1972, the Lt.Governor of Delhi referred under Sections 10(l)(c) and 12(5) of the Industrial Disputes Act, 1947, an industrial dispute existing between the management of the petitioner and its workmen to the Court for adjudication. The terms of reference can be reproduced as follows:

whether the following workmen are entitled to reinstatement with full backwages, and continuity of service; and if so, to what relief are they entitled and what directions are necessary in this respect?"1. Shri Chandip Ram 2. Shri Ram Kumar3. Shri Khairati Ram 4. Shri Murat Ram5. Shri Shankar Ram 6. Shri Sudheshi Ram7. Shri Sobhit Ram 8. Shri Ram9. Shri Ram Narain

(3) One of the workmen Shri Sobhit Ram, who figures at Serial No. 7 above, died on 3/01/1984, as stated in the application moved before this Court (C.M.No.279/86). The legal representatives were brought on record by order dated 6/10/1987. The above said workmen contended in the statement of claim

that they were in the employment of the petitioner management and that the petitioner victimize done of them, namely. Ram Nath and another workman Dudh Nath of its sister concern M/s Shukal Soap Mills. Dudh Nath had gone on leave for 20 days w.e.f. 5/07/1971. He, however, returned earlier on 22/07/1971, but he was not allowed to resume his duties. This treatment given to Dudh Nath created apprehension in the minds of other workmen regarding their future. Accordingly, it is averred, they protested to the management but to no effect. The intervention of the Labour Court also did not bear any fruit. On 28/07/1971, the workmen of the two concerns came with joint notice to take back Dudh Nath and stated that if their demand was not considered they would go on strike. This notice was followed by a strike notice given by the Union on 9/08/1971. The management, however, did not concede to the demand and the strike commenced from the date as specified on August ii, It is further stated that during the period of strike, the management charge-sheeted the concerned workmen for the offence of going on strike. The charges were replied to and the petitioner management held an enquiry through their lawyer representative Shri H.S. Saxena.

(4) The workmen protested against the appointment of Shri H.S. Saxena as an enquiry Officer as it was stated that he was not an impartial person. It is also reiterated by the workmen that no enquiry was held but a notice dated 20/09/1971 was served on them to the effect that they had been dismissed from service on the basis of the findings of alleged enquiry.

(5) The petitioner management in the written statement raised various objections and it was contended that the reference was illegal and unjustified. the workers resorted to strike w.e.f. August 11, 1971 without any reasonable cause and notice .They were duly charge-sheeted and an enquiry was ordered to be held by shri Saxena, who was competent to hold the enquiry. The concerned workmen did not take part in the said proceedings despite repeated notices and the enquiry proceeded against the workmen ex-parte. On the basis of the findings of the enquiry ,the dismissal orders, which were passed as a consequence were perfectly legal and valid.

(6) The following issues were framed:

1. Whether the statement of claim is not rightly signed by a competent person ? Effect? 2. Whether the reference about Ram Nath is incompetent and illegal? Effect? 3. Whether the reference is illegal and unjustified as alleged? Effect?4. Whether the order of dismissal of the workmen is illegal, invalid andmalafide?5. As in the reference?

(7) Issue No. 1 was decided against the management and on issue No. 2 it was held that Ram Nath was not a workman of the petitioner management within the meaning of Section 2(s) of the Industrial Disputes Act in relation to the management and reference in respect of Ram Nath was held incompetent and illegal. the question as raised in issue No. 4 as to whether the order of dismissal

of the workman was illegal, invalid and malafide, the Labour Court referred to the evidence of the parties as well as adjudicated upon the respective contentions raised before the Court. It was held that the treatment meted out to Dudh Nath justifiably gave an apprehension in the minds of the concerned workmen about their future fate and they resorted to a strike forcing the management to reinstate Dudh Nath. The strike by the concerned workmen for reinstatement of Dudh Nath, therefore, was not such an unconcerned affair as the management tried to depict and, accordingly, it was held that the participation of the workmen in the strike could not be visited by the termination of their services which was held to be illegal and unjustified and was an act of victimisation. The strike was resorted to after giving notice to the management and there was nothing in the record to indicate that it was illegal. This issue was decided accordingly.

(8) The Labour Court, however, did not consider reinstatement of the workmen in the interest of industrial peace and only awarded six months pay to each workman except Ram Nath in lieu of reinstatement. They were also held entitled to 40 per cent of their wages from the period of dismissal to the date of the award.

(9) Aggrieved by the order of the Labour Court, the petitioner management filed the present writ petition in the year 1976 when rule was issued and by an interim order dated 10/05/1978, the computed amount which was said to be Rs.27,877.96 was directed to be deposited by the petitioner in this Court. Out of the said amount, so deposited, the workmen were held entitled to 50 per cent without furnishing any security and the balance of 50 per cent was permitted to be withdrawn by them subject to furnishing adequate security for restitution to the satisfaction of the Registrar of this Court. The learned Counsel for the respondents states that the workmen could only withdraw a sum of 50 per cent and as they could not furnish any security, the balance of 50 per cent is lying in deposit with the Court.

(10) The learned Counsel for the petitioner has vehemently contended that the requisite notice was given to the workmen and they failed to participate in the proceedings before the Enquiry Officer and they are themselves to be blamed for an ex-parte enquiry, which proceeded against them. They did not avail of the opportunity of presenting themselves and defending their action at the enquiry. Reference is made to the judgment of the Supreme Court as reported in Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup, to reiterate this submission. Mr. Bhandari has then argued that the present trend in law is to declare the strike as unjustified tool in the hands of the workmen and they are not entitled to wages for the strike period even if the strike is only legal but not justified or if the strike is illegal though justified. He has placed reliance on the judgment of the Constitution Bench of the Supreme Court as reported in Syndicate Bank and another v. Shri K. Umesh Nayak, Jt 1994 (5) Sc 647. There is no doubt about the proposition, as raised by the learned Counsel and I am in respectful agreement

with the views expressed by the Supreme Court. The present case, however, depicts different facts. The findings have been given by the Labour Court to the effect that strike was resorted to after giving notice to the management and there was nothing on record to lead to the inference that the strike was illegal. The participation of the workmen in the strike could not, Therefore, be visiting the workmen by termination of their services. The Labour Court has, Therefore not held that the strike was not illegal and unjustified. The judgment of the Supreme Court in *Syndicate Bank and another v. Shri K.Umesh Nayak (supra)* does not debar the claim of wages in this situation .Paragraph 27 of the judgment may be reproduced as follows:

WE, therefore ,hold endorsing the view taken in *T.S. Kelawala* that the workers are not entitled to wages for the strike period even if the strike is legal .To be entitled to the wages for the strike-period, the strike has to be both legal and justified. Whether the strike is legal or justified are questions of fact to be decided on the evidence on record. Under the Act, the question has to be decided by the industrial adjudicator, it being an industrial dispute within the meaning of the Act.

The Labour Court has further awarded only relief to the extent of six months" pay to each workman and held them entitled to 40 per cent of their wages from the period of the dismissal to the date of the award.

(11) The question of upsetting the findings of the Labour Court will have to be considered with regard to the powers of this Court to interfere at this stage in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India. The Labour Court has awarded relief to the extent as indicated above in lieu of re-instatement. There is no miscarriage of justice and no ground is made out for interference in the present writ petition. The same is dismissed with costs.