

(2006) 10 DEL CK 0132
In the Delhi High Court
Case No : WP (C) No. 7789 of 2003

Management of Executive Engineer	Vs	APPELLANT
Ram Sewak		RESPONDENT

Date of Decision : 18-10-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2006) 10 DEL CK 0132

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

Bench : Single Bench

Advocate : Suman Malhotra, for the Appellant; Varun Prasad Advocate, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the validity of award dated 4.4.2003 passed by Industrial Tribunal No. II, Delhi, whereby the Tribunal held that the workman was entitled for full wages for the period of non employment with effect from 8th March, 1991 till 14th September, 1999.

2. Briefly, the facts are that the respondent Ram Sewak was employed as muster roll employee for maintenance of Arunachal Bhawan, Kautalya Marg, Chankaya Puri, New Delhi by Executive Engineer, Capital Project, Civil Division- I, Doimukh, P-I, Lalukas, Arunachal Pradesh on 10.4.1981. He alleged that his services were terminated on 4th November, 1983 and he raised an industrial dispute about the termination of his services. Vide an award dated 17th March, 1986, the Industrial Tribunal-II, Delhi in ID No. 117/85, directed reinstatement of the respondent with back wages. The respondent alleged that the petitioner did not reinstate the workman after 17th March, 1986, however, paid back wages from 3rd November, 1983 to 30th June, 1986. The management directed the workman vide order dated 8.3.1991 to resume duty at Doimukh. The workman, on 6th April, 1991, sent a reply that he would not join at Doimukh since he was to be reinstated at

Delhi. The management replied to him that no vacancy was there at Arunachal Bhawan so he should resume duties at Doimukh, where he would be provided work. The plea of the management was that in the year 1990, Sub Division, which was earlier functioning in New Delhi, under which respondent was employed had closed down its office after the construction of Arunachal Bhawan was over. The construction, Sub Division was under Doimukh Division and the entire staff was transferred to Doimukh Negarlaqun Division. The petitioner, Therefore, told the respondent to join at Doimukh. The respondent did not join at Doimukh Division where the establishment had moved after completion of the work. The respondent raised an industrial dispute regarding not posting him at Delhi. The appropriate government on 2nd September, 1999, made the following reference for adjudication to the Industrial Tribunal:

Whether the non-employment of Sh. Ram Sewak at Delhi is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

3. The respondent had also filed an application u/s 33-C(2) of the Industrial Disputes Act 1947 being LC No. 338/1994 claiming wages from 1.7.1986 to 31.3.1994 and it appears he was granted wages from 1.7.1986 to 7.3.1991 amounting to Rs. 34,019/-. The Labour Court No. VII vide its order dated 8.7.1996 held that the respondent had been reinstated vide letter dated 8th March, 1991 but did not join, so he was not entitled for wages after 8.3.1991.

4. It appears from the record that the management terminated services of the respondent on 4.4.1996 because the respondent failed to join duties at Doimukh despite offering him reinstatement vide letter dated 8th March, 1991. No dispute in respect of termination of respondent was referred to the Tribunal. However, when the fact of termination of service of respondent came on record the Tribunal itself assumed jurisdiction to decide the dispute of termination and framed following issue:

Whether the termination done by Ex.WW1/10 is illegal and workman is entitled for wages from the period of non employment.

5. After framing this issue, the Tribunal went on to decide this issue and observed that since during the pendency of industrial dispute, respondent was allowed to join as casual mali under Assistant Engineer, Construction Division, Arunachal Bhawan on 1.6.2000, the claim of the reinstatement does not survive. The Tribunal awarded back wages to the respondent for the period from 8th March, 1991 till 14.9.1999, holding that termination of the respondent by the management vide order dated 4.4.1997 was bad.

6. The order of the Tribunal was challenged on the ground that the Tribunal exceeded its jurisdiction and the Tribunal could not go beyond the terms of reference and assume jurisdiction to adjudicate a dispute which was not referred to it. The relief granted by the Tribunal was beyond the relief sought by the workman and beyond the scope of reference. The termination order dated

4.3.1997 was not an incidental matter to the terms of reference.

7. The counsel for the respondent argued that the writ petition has become infructuous since the respondent has been reinstated and only back wages are to be given to the respondent. On the other hand, counsel for the petitioner submits that the respondent was employed as casual labour afresh by different Division. He was not given continuity of service and the petition very much survives because re-employment of the respondent is not in compliance of any award.

8. It is settled law that a Tribunal/Labour Court gets jurisdiction only from the reference and must confine its decision only to the question which has been referred to it. The Tribunal is a creature of the reference and the Tribunal cannot expand its scope of jurisdiction. In *Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others*, the Supreme Court held that where the terms of reference raise issues about the legality or justification of the strike and lock out, the Tribunal could not have gone into the question whether there was no strike or lock out at all. In *Mukand Ltd. Vs. Mukand Staff and Officers' Association*, Supreme Court held that the jurisdiction of the Tribunal is related to the dispute which is referred by the Appropriate Government. The Tribunal is a creature of reference and the Tribunal cannot adjudicate matters that are out of the purview of dispute actually referred to it by the order of reference.

9. It is apparent from the order of the Tribunal that the Tribunal, in this case, transgressed its jurisdiction and decided the dispute which was not referred to it. The Tribunal was only to decide whether the respondent could not have been asked to join at Doimukh and could only be posted at Arunachal Bhavan Delhi keeping in view his appointment and service conditions or his service was transferable. The Tribunal instead of deciding the issue referred, decided of the termination of the respondent was bad in law and directed for payment of back wages.

10. I find that the order of the Tribunal is bad in law being beyond jurisdiction and is liable to be set aside. I, Therefore, set aside the award of the Tribunal dated 4.4.2003. The writ petition is allowed. No orders as to cost.