

(2012) 09 DEL CK 0060

In the Delhi High Court

Case No : Writ Petition (C) No. 6336 of 2003

Mangal Prasad

APPELLANT

Vs

MGT. of M/s Modern Food Industries and Another

RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B, 25F, 25G

Citation : (2012) 4 JCC 2566 : (2013) 1 LLJ 103

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : H.K. Chaturvedi, for the Appellant; Sandeep Prabhakar and Mr. Amit Kumar, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Bhasin

1. The present writ petition has been filed by the petitioner-workman questioning the correctness of the Award dated 25.03.2003 passed by the Labour Court whereby his claim of reinstatement in service lodged against his employer, the respondent no. 1 herein, with back wages was rejected after rejecting his case that his services had been terminated illegally and unjustifiably. Briefly stated, the facts that led to the filing of this petition are that the petitioner-workman, as per his case, was employed with the respondent-management in 1986 and on 18.08.1989 his services were terminated illegally. He had then approached the labour authorities for his re-instatement in service but since he could not get that relief the dispute between him and the respondent-management was referred for adjudication to the Labour Court vide Reference dated 7th September, 1990. The following was the term of reference:-

Whether the services of Sh. Mangal Parsad have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?

2. The petitioner-workman filed his statement of claim before the Labour Court and claimed termination of his services to be illegal due to non-compliance of the requirements of Sections 25-F and G of the Industrial Disputes Act, 1947. He pleaded that his signatures were being obtained every year by the respondent no. 1-management on some papers to show fresh employment everytime so that he could not claim permanence in job. The respondent-management filed its written statement denying his claim of illegal termination from the services and stated that he was a casual worker who was employed temporarily to meet the requirements of the seasonal work and he had not worked for 240 days and had worked for 151 days only and was paid as a daily wager and, therefore, he could not claim benefit of Section 25-F of the Industrial Disputes Act. It was further stated that since there was no work in the respondent's-factory the petitioner was not given any work. Violation of Section 25-G of the said Act was also denied.

3. The petitioner-workman filed a rejoinder reaffirming the averments made him in his statement of claim while refuting the averments made by the respondent-management in its written statement and further reiterated that he had worked for 240 days.

4. The Labour Court after examining the evidence produced by both the parties before it and after considering the submissions made by their authorized representatives, answered the reference in favour of the respondent-management. The relevant portion from the Award is re-produced below:-

7. Perusal of the written submission placed on record by the party, the case of the claimant is that claimant worked with the management since 24.04.86 but nothing to that effect has been placed or proved on record by the claimant. In the written submissions also, the claimant case was that management admitted that claimant worked during 1986 but that admission has been explained by the management witness Praman Kumar that claimant worked only for 55 days after joining on 05.05.86 and never worked during the year 1987 and worked only for 89 days during the year 1988. The management witness denied the suggestion that claimant worked continuously till 18.06.89. The onus to prove that claimant worked for 240 days lies on the claimant and mere deposition in the affidavit is not sufficient to prove the factum of working for 240 days continuously in a year preceding the date of his termination as defined u/s 25-B of the I.D. Act. The management witness, on the other hand, has placed and proved on record the muster roll for the year 1989 showing that claimant had worked only for 151 days during 23 February, 1989 to August, 1989 as was consistently pleaded by the management in the reference as well as before conciliation officer admittedly. The muster roll proved on record are Ext.MW2/1 to MW2/7. There is no substance in the submissions by Ld. A.R. for the claimant that management purposely did not produce muster roll for the year, 1986 and 1987 as the claimant was working regularly during the years. It is so because, primarily it is for the claimant to prove continuous working for 240 days in a year and not for the management.....

8. Considering the above discussion, I hold that claimant failed to prove that he served the management for 240 days during the period of twelve months preceding the date with reference to his alleged termination.

9. It being so, the claimant is not entitled to protection of Section 25-F of the I.D. Act, 1947 as laid down in case of India Silk Manufacturing Co. Pvt. Ltd. Vs. Gan Prasad R. Jaiswal & other reported in 1997 LLR 1126.....

In fact, the submissions before the Court was that it was for the management to prove that claimant was junior most and not for the claimant to substantiate the submissions. Reference is made to the case of Central Bank of India Vs. S. Satyam and others, , Samistha Dube Vs. City Board Etawah & others reported in 1999 (81) FLR 766, Balbir Singh Vs. Kurukshetra Central Co. Op Bank Ltd. & others reported in 1990 (61) FLR 438, Govt. of N.C.T. of Delhi Vs. Balbir Singh and others reported in 1997 (76) FLR 569 , Madho Shanker Dave Vs. The State of Rajasthan reported in 1990 FLR 683, Ram Chandra Vs. Union of India and Others, , The Kurukshetra Central Co. Op Bank Ltd. Vs. State of Haryana & others reported in 1993 (66) FLR 297, Dilip Hanumantrao Shirke & others Vs. Zila Parishad, Yavathal & other.

The submissions are misconceived and the reference made to the case of Samistha Dube Vs. S. Satyam & others is of no help to the claimant as it was not the case of the management that claimant was junior most or that his services were retrenched by the management being the claimant a junior most employee of the management

10. In fact, a vague plea was taken, for the first time, before the Court by adding a para in the statement of claim that juniors to the claimant are working with the management. That was not the case of the claimant in his statement of claim which was filed before conciliation officer of which copy is placed on record and proved as Ext.WW1/1 in the affidavit filed in evidence by the claimant. Not only a vague plea is of no consequence but also claimant failed to prove that his services were terminated by the management on 18.08.89. On the face of statement of Executive Administration, Shri Praman Kumar that claimant left the job in August 1989 and his services were never terminated by them, no question of even retrenchment arises what to talk of retrenchment of the claimant as junior most employee of the management. Nothing has been placed or proved on record by the claimant so as to say that claimant was the junior most employee, even if, it is assumed that services of the claimant were terminated/retrenched by the management as on date as alleged by the claimant.

11. In view of the above, the claimant has no case either of non compliance of Section 25-F of the I.D. Act or violation of Section 25-G by the management. The claimant, as such is not entitled to any relief or directions in the matter under reference.

5. The Learned Counsel appearing on behalf of the petitioner-workman argued

that the impugned award has been passed by the Labour Court without applying its mind and without considering the evidence produced before it as the claim of the workman of joining the respondent in 1986 has not been denied by the management which shows that the management agrees with that statement of the workman to be true and the same has been ignored by the Labour Court. It was also argued that the petitioner had been working continuously since 1986 with his ESI No. 11-7720-03 and that the junior to him have not been terminated though his services have been terminated being violative of provisions of Industrial Disputes Act and to support this submission the Learned Counsel has submitted judgments of various Courts. The Learned Counsel for the petitioner-workman also argued that the petitioner had completed 240 days and that the management has deliberately now shown the muster rolls for the years 1986 and 1987 which would show that the petitioner was continuously working with the respondent-management.

6. The Learned Counsel for the respondent while supporting the impugned award reiterated the submissions made before the Labour Court and argued that the petitioner-workman was a casual worker employed temporarily for seasonal work and wasn't working continuously and also that he did not complete 240 days with the respondent and it is for the petitioner-workman to establish that he had completed 240 days with the respondent-management. It was further argued that the respondent has not violated any provisions of the Industrial Disputes Act.

7. Considering the submissions made on behalf of both the parties and after having gone through the impugned award and particularly the portion already extracted I have come to the conclusion that the impugned award does not suffer from any perversity or illegality in appreciation of evidence by the Labour Court justifying interference by this Court which cannot re-appreciate the evidence as an Appellate Court. The labour Court has rightly concluded that the petitioner-workman had failed to prove that he had worked for 240 days with the respondent-management and that anyone junior to him had been retained in service. This writ petition is, accordingly, dismissed.