

(2019) 11 DEL CK 0274

In the Delhi High Court

Case No : Civil Writ Petition No. 2814 Of 2007

Mangt. Of Birla Textiles

APPELLANT

Vs

Ram Swaroop

RESPONDENT

Date of Decision : 19-11-2019

Acts Referred:

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

Citation : (2019) 11 DEL CK 0274

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Dr. M.Y. Khan, Vinay Sabharwal, Khrunesh Shah

Final Decision : Disposed Of

Judgement

Rekha Palli, J

1. The present writ petition filed by the management assails the order dated 29.01.2007 passed by the Industrial Tribunal No.1, Karkardooma Courts in OP No.94/2005. Under the impugned order, the Tribunal has rejected the petitioner's approval application filed under Section 33(2)(b) of the Industrial Disputes Act, 1947 ('ID Act' for short).

2. The respondent joined the petitioner/Mill in October 1970 and was an active member of Textile Mazdoor Congress (Regd.). On 12.01.1984 the workman was issued a charge sheet alleging that he along with 30 other workmen had, on 10.01.1984 at about 11.30 am, forcibly entered the administrative block and misbehaved with one Mr. Hemant Kumar, the Chief Executive officer of the Mill, because a transfer order was issued in their names upon closure of the petitioner's weaving section. It was also alleged that the errant workmen had continued with their gherao of Mr. Hemant Kumar till 6.30 pm and had also stopped the labour officer from entering the premises. When the respondent/workman denied his presence at the site on the date of incident, a departmental enquiry was initiated against him. Even though the inquiry could not be

completed due to successive change in the Inquiry Officers, the petitioner dismissed the respondent from service, as also the other 30 workmen accused of being involved in the incident, vide its order dated 28.03.1985. In view of the pending industrial dispute between these parties, the petitioner filed an approval application under Section 33(2)(b) of the ID Act before the Tribunal seeking approval of its dismissal order dated 28.03.1985.

3. In his reply to the approval application, the respondent/workman specifically denied the petitioner's allegations and pointed out that the petitioner, being aggrieved by the genuine and legitimate demands being raised by him as an active union member, had fabricated the incident as it was looking for a reason to oust him and the other union members from service. He further claimed that the petitioner had not even remitted one month's salary to him, which was a necessary precondition for filing an approval application under Section 33(2)(b) of the ID Act.

4. Based on the pleadings of the parties, the Tribunal framed the following issues:

1. Did the respondent indulge in violence activities and gheraoed Shri Hemant Kumar, Chief Executive?

2. Is the applicant entitled to approval of dismissal of the respondent?

5. In support of its claim that the respondent had indulged in violent activity by gheraoing its Chief Executive Officer, the petitioner examined two witnesses, viz., Sh. Mahavir Prasad, the Industrial Relations Officer and Sh. Hemant Kumar, and also placed reliance on the police complaint dated 10.01.1984. The respondent, on the other hand, examined himself as his sole witness. Upon consideration of the evidence led before it, the Tribunal came to the conclusion that, prima facie, there was no proof of the respondent's participation in the alleged incident dated 10.01.1984. It was also found that there was no document placed on record to show that the payment of one month's wages had been remitted to the respondent in accordance with Section 33(2)(b) of the ID Act. The Tribunal, therefore, rejected the petitioner's approval application in the impugned order dated 29.01.2007 by holding as under:-

"32. As per the present approval application, AW1- Mahavir Prasad is an eye witness to the incident dated 10.01.84. If the complaint Ex.AW1/1 is looked into, then, the presence of Mahavir Prasad does not find mention on the date of the alleged incident in the said complaint. The statement of AW1-Mahavir Prasad in his affidavit Ex.AW1/A that he has seen the incident by his naked eyes is not believable as his such version is coming before this Court after a gap of about 18 years. There is no document to corroborate his version. Moreover, the management has also failed to bring on record the attendance record of the workman as on the date of the alleged incident dated 10.01.84.

33. If the complaint Ex.AW1/A is looked into, the SHO Sh. Kalla Roshanara Police Station was already present in his room who let Mr. Hemant Kumar to go for

natural call at about 5.00 PM, then, the question is, that, if the police was already there, how he was confined in the room thereafter till 6.30.PM. If the police was there why the investigation of the police is not relied upon by the management. The answer is obvious that the management does not want to bring true facts before this Court.

34. There is no explanation on the record why the management has not examined the security personnels who were deputed on the said date of incident who tried their best to prevent the workman along with the co-workmen who entered into the administrative block without permission. The name of Sh. R.L. Goyal and Sh. Mahavir Prasad who are stated to be eye witnesses to the incident in question, as per the approval application are not mentioned in the complaint Ex.AW1/1 which ipso-facto shows that they were not present at the time of the alleged incident and they were got prepared by the management thereafter as there is no document, proved on record by the management to show that Sh. R.L. Goyal and Mahavir Prasad were present on the date of the alleged incident in the office.

35. There is also no explanation on the record that why the police or the management has not taken photographs of the broken doors and the broken pots on the date of the alleged incident, as narrated in the approval application itself.

36. The date of the incident was 10.01.84 and without completing the enquiry into the charges against the workman, the management filed the present approval application on 28.03.1985 without supporting it with any affidavit of the management's witnesses. The management has filed the affidavits of AW1-Mahavir Prasad and AW2-Hemant Kumar after a gap of more than 18 years with improved versions, as discussed above which clearly shows that the management has not approached to this Court with clean hands to show their bonafide that in fact such incident took place and the workman did participate in the alleged incident. Since, the relations between the management and the workman were not in good terms at the relevant time, it can be said that the management was trying to get rid off the workers, employed in the Weaving and Allied Department and created the present scene in question. Thus, I hold that there is no prima facie evidence on record that the workman infact did participate in the alleged incident dated 10.01.84 and therefore, this issue is decided against the management and in favour of the workman.

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37. The management in the approval application in para-16 has stated that the management has sent the dismissal letter by registered AD post and simultaneously one month's pay in lieu of notice was also sent by money order. In reply to the approval application, the workman has denied of having received the same. The management has not examined any official from postal authorities that infact the said dismissal letter and the said amount were delivered to the

workman concerned. Therefore, the management has failed to prove the compliance of Section 33 (2) (b), in view of the judgment in 2002 LAB IC 605 Anil Kumar Joshi Vs. Air India Limited.

38. Keeping in view the discussions, made above on issue no.1, the management/applicant failed to prove on record the prima facie evidence to show that the workman did participate in the alleged incident dated 10.01.84 and the management further failed to prove on record that the management in fact delivered the dismissal letter along with one month's wages by money order to the workman concerned. Therefore, I accordingly, reject the approval application, moved on behalf of the management. The workman is deemed to be in the employment of the management. It is ordered, accordingly.

6. Assailing the Tribunal's order rejecting its approval application, the present writ petition has been filed by the management. Learned counsel for the petitioner Dr. M.Y. Khan submits that the finding of the Tribunal that no misconduct was proved is perverse and liable to be set aside. He submits that the charges against the respondent were serious and grave in nature warranting his dismissal from service and that there was sufficient evidence on record to show that he was guilty of illegally confining and abusing his superior officer. Without prejudice to his plea that there was enough evidence to prove the respondent's misconduct, he submits that in any event since the petitioner/mill was closed on 30.11.1996, the respondent is neither entitled to reinstatement nor to any back wages after 30.11.1996. He further submits that even otherwise grant of full back wages to the respondent is wholly unwarranted once similarly placed workmen, namely, Sh. Chunni Lal, Sh. Santosh Kumar and Sh. Nathu Singh have been awarded 50% back wages by the Tribunal in an industrial dispute arising out of the same order of termination. By placing reliance on the decision of a Division Bench of this Court in Delhi Transport Corporation vs. Sarjeevan Kumar 2013 (5) SLR 328 (Delhi), he submits that this Court can, in appropriate circumstances, substitute a direction for grant of full backwages made by the Labour Court by reducing the quantum of backwages. He, therefore, prays that the present writ petition be allowed.

7. On the other hand, Mr. Vinay Sabharwal, learned counsel for the respondent submits that the Tribunal has, after correctly appreciating the evidence, come to the conclusion that the petitioner has failed to prove any misconduct on the part of the respondent and had therefore rightly rejected his approval application. He submits that by way of these proceedings, the petitioner is seeking re-appreciation of evidence by this Court, which is not permitted in the exercise of writ jurisdiction. He, therefore, prays that the writ petition be dismissed.

8. I have considered the submissions of the parties and with their assistance perused the record. Although this Court while exercising writ jurisdiction under Article 226/227 of the Constitution of India is not expected to interfere with the findings of fact arrived at by the Tribunal upon appreciation of evidence unless they are found to be perverse, I have, with the assistance of learned counsel for

the parties, still carefully examined the evidence led by the petitioner before the Tribunal. A perusal of the impugned order shows that the Tribunal has meticulously recorded its findings by providing cogent reasons for disbelieving each of the management witnesses. I, therefore, find no reason at all to differ with the finding of the Tribunal that no misconduct on the respondent's part was established.

9. Now coming to the petitioner's contention that the respondent could not be granted reinstatement as the petitioner/Mill was closed on 30.11.1996, pursuant to the orders passed by the Supreme Court, once it is the petitioner's own case that its factory was relocated to Baddi, it is evident that all similarly placed workmen continued to be employed in Baddi unless they had chosen to voluntarily leave the services of the respondent. Therefore, there is no reason to deprive the respondent of the consequential benefits arising out of the impugned order.

10. However, I find merit in the petitioner's submissions that this was not a case warranting grant of 100% back wages especially since the Tribunal has, in industrial disputes arising out of the same incident, awarded 50% back wages to similarly placed workmen. In this regard, reference may be made to the decision of a Division Bench of this Court in Sarjeevan Kumar (supra) wherein it was held that in a case where termination of the workman was held to be illegal, the Court has the discretionary power to decide the quantum of backwages to be awarded to the workman.

11. In these circumstances, the writ petition is allowed by modifying the impugned order to the extent of the direction of backwages granted to the respondent. It is accordingly directed that the respondent, who has already attained the age of superannuation, would be entitled to all consequential benefits and reinstatement with 50% back wages. The said amount is to be released to the respondent within a period of eight weeks.

12. The writ petition is disposed of in the aforesaid terms.