
(2006) 10 DEL CK 0121

In the Delhi High Court

Case No : Writ Petition (Civil) No. 1208 of 1996

Mata Sundari College

APPELLANT

Vs

Shri Padam Kant Saxena and Others

RESPONDENT

Date of Decision : 11-10-2006

Acts Referred:

Evidence Act, 1872 — Section 106

Citation : (2007) 137 DLT 294 : (2006) 92 DRJ 625

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : A.P.S. Ahluwalia, for the Appellant; B.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Manju Goel, J.—The petitioner - Mata Sundari College - is challenging the award dated 20.1.1996 passed by the Labour Court No. IX directing reinstatement of respondent No. 3, hereinafter referred to as the respondent with full back wages. The respondent was employed as Lab Attendant by the petitioner in its college. He was served with a charge-sheet on 27.3.1981. The respondent filed a reply to the charge-sheet on 27.5.1981. Subsequently a notice dated 30.9.1981 was issued to the respondent to show cause against the proposed penalty of termination. The Managing Committee of the petitioner appointed an Inquiry Committee which held its proceedings on 19.10.1981. The respondent did not participate in the inquiry. The respondent was eventually terminated on 9.11.1981. Subsequently the respondent raised an industrial dispute which was referred to the Industrial Tribunal on 12.1.1982 with the following terms:

Whether the termination of services of Sh. Jagdish Singh is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this regard?

2. The Labour Court on 13.3.1983 framed the following issues:

1. Whether a valid and fair enquiry was held by the mgt. before terminating the

service of the workman?

2. Whether the reference is bad as alleged by the mgt.

3. On 29.5.1989 the Authorized Representative of the petitioner made the following statement:

The workman was examined by the Governing Body of the Mgt. Since he did not cross examine the witness, I will request this Court to hold a formal enquiry.

4. The Advocate for the respondent/workman then made the statement as under:

The workman was called in the enquiry by the governing body but his statement was not recorded. No witnesses were produced by the management nor ny (any) witness was examined in the presence of the workman. The mgt. has Therefore no right to refuse (request) the court to hold enquiry.

5. On 30.5.1989 the petitioner formally moved an application seeking permission to adduce evidence and requesting the court to hold a formal inquiry. On 14.12.1989 the Authorized Representative of the petitioner made the following statement:

I have already made a statement on 29.5.89 to the effect that the workman was called before the enquiry committee but he left and did not cross examine the witnesses. I submit that the enquiry is defective and is no enquiry in the eye of law. The management may Therefore be allowed to lead evidence on the charges, this Court may itself hold an enquiry into the charges.

6. Accordingly issue No. 1 was decided against the petitioner. The Labour Court held that the management/petitioner had a right to ask for permission to lead evidence of misconduct before the Labour Court but that if the management chooses to exercise its right it must make up its mind at the earliest stage and file an application for that purpose without unreasonable delay. For this purpose, the Labour Court relied upon the judgment of this Court in the case of Bannett Coleman and Co. Ltd. v. Presiding Officer 1989 RLR 321. The Labour Court observed that the written statement was filed before the issues were framed in 1985 and that the management did not lead evidence till 1987 when it was proceeded ex parte. The ex parte proceedings were set aside on 10.3.1989 and thereafter only on 29.9.1989 the request for permission to lead evidence before the Labour Court was made for the first time. The Labour Court then held that since the inquiry was vitiated the termination order based on such an inquiry was also bad. It then proceeded to further say that ordinarily the setting aside of the dismissal order will lead to an order of reinstatement of the workman and further that full back wages was the normal rule. The Labour Court then observed that the employer had not pleaded any such facts which may disentitle the workman from getting the normal relief of full back wages and, Therefore, opined that the reinstatement be ordered with full back wages.

7. It may be mentioned here that an interim award for payment of wages till the

passing of the award was made on 15.4.1995 which was challenged by the petitioner in W.P.(C). No. 2798/95 in which an interim relief was granted staying the operation of the award subject to the condition that the petitioner pay to the respondent/workman 50% of the awarded amount within six weeks.

8. The petitioner challenges the award mainly on the following grounds:

(a) The Labour Court was wrong in declining the permission to lead evidence as the prayer was made at the earliest opportunity.

(b) Since the Labour Court had already passed an award for payment of wages during the pendency of the industrial dispute giving an opportunity to lead evidence before the court would not have prejudiced the respondent/workman.

(c) Payment of full back wages was not automatic and it depended upon the facts and circumstances of each case.

9. The ground (c) was raised at the time of argument as it was a legal plea. The writ petition is contested by the respondent. It is submitted by the respondent that the proceedings have already continued for many years and granting an opportunity now to the petitioner to lead evidence will break the back of the respondent/workman.

10. Two principal questions have arisen for consideration in this case. The first is whether the petitioner/management should have been allowed to lead evidence before the Labour Court to prove the misconduct of the respondent. The right of the management to prove the misconduct of the workman before the Industrial Tribunal or Labour Court is not disputed. The only controversy is whether the management could have asked for such a relief at a belated stage. In the present case the reference was made in 1982 and the written statement was filed in January, 1984. It was only in May, 1989 that the management for the first time made a request for holding a formal inquiry in the court itself. Although the management had not led its evidence till then it cannot be said that it was the earliest stage when the management could have made such a request. The request should have been made in the written statement itself or at best soon after the written statement was filed. Reliance can be made to the judgment of the Supreme Court in the case of Shambhu Nath Goyal Vs. Bank of Baroda and Others, Therefore, I find no ground to differ with the Labour Court's opinion on this aspect.

11. Second controversy to be resolved in this case is whether back wages was the normal rule and only because the management had not pleaded anything to debar the petitioner from getting back wages, full back wages could be awarded. I am constrained to say that on this point judicial opinions expressed in the recent years have taken into consideration various factors apart from the illegality or unjustifiability of the order of termination. It will suffice to refer to two recent rulings on this aspect. In the case of M.P. State Electricity Board Vs. Smt. Jarina Bee, the Supreme Court took note of its previous judgment in the

case of P.G.I. of M.E. and Research, Chandigarh Vs. Raj Kumar, and quoted with approval the following portion of the judgment:

Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no strait-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety.

12. The Supreme Court then proceeded to take note of its judgment in the case of Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya and Anr. 2002 AIR SCW 3008 and Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, and quoted that it was wrong to hold that the award of full back wages was the natural consequence. This view has been reiterated in the judgment of U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, . In this case after a finding that the termination was wrongful back wages of only 25% was allowed. It was also, inter alia, observed in this judgment that although the earlier view of the Supreme Court was that it was for the employer to raise the plea of alternative employment of the workman but having regard to the provisions of Section 106 of the Evidence Act or provisions analogous thereto such a plea should be raised by the workman.

13. A Division Bench of this Court also in its judgment in the case of Thankur Singh Rawat and Ors. v. Jagjit Industries Ltd. 2006 2 AD (DELHI) 225, inter alia, held that the workman cannot be heard to argue that irrespective of any plea of unemployment during the interregnum period having been raised the workman was entitled to full back wages as a matter of course.

14. In view of above, it is clear that although the impugned award cannot be faulted on the ground that the petitioner management should not be afforded an opportunity to prove the misconduct of the respondent by leading evidence before the Court, its finding that full back wages have to be awarded as a matter of course whenever reinstatement is awarded is not the correct view.

15. Unfortunately there is nothing on record on the basis of which the quantum of back wages which can be ultimately awarded to the respondent can be ascertained. Therefore, this Court has no option but to send the case back to the Labour Court for giving a finding on this aspect based on the evidence of the parties. In the trial before the Labour Court for determination of the appropriate amount of back wages the parties will be at liberty to lead evidence on aspects even other than employment or unemployment of the respondent/workman during the interregnum period if the same has any bearing on the determination of back wages to be awarded.

16. The writ petition is accordingly allowed in part and, while upholding the award on the point of reinstatement, the award to the extent of back wages is quashed. Respondent No. 1, namely, Labour Court, shall now allow the parties to lead evidence on the question of an appropriate quantum of back wages to be awarded to the workman and shall announce an award to this effect afresh. This

exercise before the Labour Court shall be concluded as soon as possible and in any case within a period of six months from this date. The parties shall appear before the Labour Court on 1.11.2006. Copy of the award be sent to the Labour Court without delay.