
(2007) 08 DEL CK 0288
In the Delhi High Court
Case No : Writ Petition (C) No. 6419 of 2004

M.C.D.	Vs	APPELLANT
Balbir Singh		RESPONDENT

Date of Decision : 06-08-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2007) 142 DLT 776 : (2007) 115 FLR 88 : (2007) 3 LLJ 1000

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Geeta Mehrotra and Devendra Nautiyal, for the Appellant; Sanjoy Ghose, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.

1. This writ petition is directed against the award dated 21st March, 2003 passed by the Presiding Officer, Industrial Tribunal (hereinafter referred to as 'the Tribunal') in ID No.168/97 answering the reference in favor of the respondent workman and holding that the services of the respondent workman had been terminated illegally, thus entitling him to reinstatement in service with continuity of service and full back wages as drawn by his regular counterparts, without any increment up to the date of his reinstatement. It was also held that the respondent workman would be entitled to receive salary without any increment as drawn by his regular counterparts.

2. A brief narration of sequence of events is necessary. The respondent workman filed a statement of claim before the Tribunal stating inter alias that he joined the employment of the petitioner MCD (hereinafter referred to as 'the MCD'), with effect from 1st May, 1986 as Chowkidar and he was being treated as daily rated/casual/muster roll worker and was being paid his wages as fixed and revised from time to time under the Minimum Wages Act. The services of the respondent

workman were terminated by the MCD with effect from 1st June, 1995 without assigning any valid reason. He was neither issued any written order of termination, nor was he served with any charge sheet. No domestic enquiry was held against him, no seniority list was displayed and no notice or compensation in lieu thereof was given to him at the time of retrenchment. It was averred that a fresh hand, Mr.Naresh was appointed in his place. It was also stated that the respondent workman had been discriminated against with regard to pay and allowances, since his counterparts doing identical work were being paid salaries in proper pay scale with usual allowances and increments. He claimed that he was unemployed since 1st June, 1995 and thus prayed that he was entitled to reinstatement as a regular permanent employee with continuity of service and full backwages as also that he was entitled to receive wages at par with his regular counterparts for the period of his muster roll employment.

3. Following terms of reference was forwarded by the appropriate Government to the Tribunal for adjudication:

1. Whether the services of Sh. Balbir Singh 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. Whether Sh.Balbir Singh workman on a daily rate/casual muster roll basis is entitled to wages at par with their regular counterparts for the period of his muster roll employment and if so, what directions are necessary in this respect?

4. The MCD opposed the claim of the respondent workman by filing a brief written statement wherein two preliminary objections were raised to the effect that the reference was bad, not having been espoused by massive majority and it was also not maintainable on account of non-joinder and mis-joinder of parties. On merits, it was admitted that the respondent workman was employed as a Chowkidar but it was stated that he had abandoned the job of his own accord. The claim of the respondent workman to the effect that he was entitled to payment of wages etc. at par with permanent employees was also rebutted by the MCD.

5. After hearing the parties, following issues were framed by the Tribunal on 27th May, 1999:

1. As per terms of reference.

2. Whether there has been a proper espousal? (OPM)

3. Whether the claim is bad for rejoinder and misguide of the parties? OPM

6. The parties were permitted to lead their respective evidence. The respondent workman examined himself as WW1 and tendered various documents in evidence. The MCD examined Mr.Rajinder Pal Khatri as MW-1 in part and Mrs.Swatantra Bala, Deputy Education Officer, Education Department, MCD West Zone, as MW-2. After perusing the entire evidence as also the documents and

other material placed on record, Issue No. 2 was decided against the MCD by holding that the dispute raised by the respondent workman was maintainable as a proper and valid industrial dispute. Issue No. 3 was also answered against the MCD by holding that no Explanation was furnished by the MCD as to who were liable to be joined as parties and which were the parties that were misjoined.

7. The last issue which was the subject matter of terms of reference, comprised of two parts, namely, reference No. 1 and reference No. 2. In respect of reference No. 1, as to whether the services of the respondent workman had been terminated illegally and/or unjustifiably by the MCD, after examining the deposition of the parties as also the documents filed on the record, the Tribunal held that it was established that the MCD had contravened the provisions of Section 25F, G and H of the Industrial Disputes Act, 1947 (for short 'the Act') and that the services of the respondent workman had been illegally terminated with effect from 1st June, 1995, thus entitling him to reinstatement with continuity of service with full back wages.

8. It may be noted that while arriving at the aforesaid conclusion, a reference made by the management witness, MW-2 to the doubtful veracity of school leaving certificate furnished by the respondent workman to establish his date of birth was not taken into consideration by observing that the said question being beyond the scope of pleadings, the said evidence could not be treated as evidence in the matter.

9. While answering reference No. 2, as to whether the respondent workman working as daily rated/casual/muster roll was entitled to the wages at par with the regular counterparts for the period of his muster roll employment, on the basis of the admissions made by the management witness, MW-2 to the effect that the Chowkidars who were engaged in the year 1986 to 1987 had been regularized in the regular pay scale and that the respondent workman used to perform similar duty as regular Chowkidars used to perform for the same period, it was held that despite the fact that the respondent workman had worked with the MCD continuously for more than 9 years, his services had been terminated illegally. However, keeping in view the facts and circumstances of the case, it was held that the respondent workman would not be entitled to equal wages when he was on muster roll and the MCD was directed to reinstate him in service and pay the difference of wages to the respondent workman.

10. Aggrieved by the aforementioned award, the MCD has filed the present writ petition.

11. Counsel for the MCD submitted that the observations made in the impugned award in refusing to take into consideration the evidence tendered on behalf of the MCD to show that the respondent workman had furnished a school leaving certificate of doubtful veracity, was misconceived and erroneous as the respondent workman had in his statement of claim made a reference to the allegations leveled against him by the MCD vide communication dated 12th

March, 1996, thereby informing him that he had provided a wrong date of birth. Thus it was submitted that the Tribunal ought to have taken into consideration the fact that there were pleadings available on the record with regard to wrong date of birth furnished by the respondent workman which was the basis of issuing a memorandum dated 12th March, 1996 to him and was also the basis of rejecting the case of the respondent workman for regularization. It was contended that the Tribunal failed to appreciate the fact that the respondent workman had himself referred to the memorandum dated 12th March, 1996 served upon him, as also to the reply filed by him thereto which documents were duly exhibited and the Tribunal ought to have appreciated the fact that had the services of the respondent workman been terminated, then the memorandum dated 12th March, 1996 would not have been served upon him and he would have been considered for regularization. It was also submitted that the Tribunal failed to appreciate the fact that it was on a memorandum being served upon him that he abandoned the job himself and it was not a case of termination. It was further contended that the said statement was borne out from the fact that the name of the respondent workman was continuing to exist in the attendance register but he did not report for duty after 31st May, 1995.

12. On the other hand, counsel for the respondent workman supported the impugned award by submitting that there was not a whisper in the written statement filed by the MCD before the Tribunal with regard to the memorandum dated 12th March, 1996 and that the date of birth of the respondent workman was relevant for the purposes of his regularization in service but not for reinstatement as a muster roll employee, particularly when he had worked for almost 9 years with the MCD. It was further submitted that the plea of abandonment taken by the MCD had not been proved before the Tribunal. Therefore, the impugned award was justified and does not deserve interference.

13. Counsel for the respondent workman further submitted that re-appreciation of evidence was not permissible while exercising powers of judicial review as it would amount to sitting in appeal over the findings of facts as arrived at in the award. In support of his contention, he relied on the following judgments:

(i) Sadhu Ram v. Delhi Transport Corporation AIR 1984 SC 1967.

(ii) Harbans Lal Vs. Jagmohan Saran,

(iii) Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Others,

(iv) Sudhoo Vs. M/s. Haji Lal Mohd. Biri Works and others,

14. I have heard the counsels for the parties and have carefully perused the impugned award and the records as placed on the court file.

15. The plea raised on behalf of the MCD that the Tribunal failed to take into consideration the pleadings of the parties or did not address the issue with regard to the wrong date of birth given by the respondent workman is without

any basis. The MCD cannot be permitted to adopt the averments made by the respondent workman in his statement of claim and set up a case beyond what was pleaded in its written statement. As indicated above, apart from stating that the respondent workman had abandoned the job of his own accord and that a daily wager was not entitled to the benefits available to a permanent employee, there is not a whisper in the written statement about the wrong date of birth given by the respondent workman. Thus the grounds taken in the present petition to the effect that the Tribunal erred in not considering the evidence with regard to the respondent workman providing documents containing the wrong date of birth and are not available to the petitioner, are not borne out from the record. When the said issue was never raised by the MCD before the Tribunal, there is no question of the same being adjudicated upon.

16. On the same grounds, the plea raised on behalf of the MCD that had the services of the respondent workman been terminated, then the memorandum dated 12th March, 1996 could not have been served upon him and he would have been considered for regularization, does not further the case of the MCD in any manner for the reason that the scope of reference was as to whether the services of the respondent workman were terminated illegally and/or unjustifiably and whether the respondent workman, being a daily rated/casual/muster roll employee, was entitled to wages at par with his regular counterparts for the period of his muster roll employment. Even assuming in favor of the MCD that the respondent workman had abandoned his job, evidence adduced by the MCD is self-contradictory. On the one hand, MW-2 who deposed on behalf of the MCD stated that when the respondent workman did not produce the original school leaving certificate, he was issued a show cause notice dated 12th March, 1996 to which he replied on 29th March, 1996 and since his reply was not found satisfactory, he was not given further extension of service. But on the other hand, in the cross-examination, it was admitted by the said witness that the name of the respondent workman was still existing in the attendance register and that he did not come for duty after 31st May, 1995 and further that in his place, one Sh.Laxman Dass was taken on the job. In these circumstances, the Tribunal rightly arrived at the conclusion that the MCD had terminated the services of the respondent workman in violation of the provisions of Section 25F, G and H of the Act. Again assuming in favor of the MCD that the respondent workman had given a wrong date of birth, at best he could not have been denied regularization in service but this could not be taken as a ground to terminate his services without following the due process of law.

17. No other ground has been raised for assailing the impugned award.

18. It may be noted here that recovery of a sum of Rs. 4,28,290/- in terms of the award had already been made by the respondent workman on 7th April, 2004, well before the filing of the present writ petition.

19. In view of the aforementioned facts and circumstances and taking into consideration the fact that the findings given in the impugned award are based

on the evidence, documents and other materials placed on the record, this Court does not find any illegality or infirmity in the impugned award that may justify any interference. In any case, as has been held in various judgments of the Supreme Court as well as this Court as referred to hereinabove, it is not permissible for this Court to re-appreciate and re-appraise the evidence produced before the Tribunal without sufficient reason in law so as to arrive at findings contrary to those rendered by the subordinate court.

20. The writ petition, Therefore fails and is dismissed. Parties are left to bear their own costs.