

(2019) 10 DEL CK 0006

In the Delhi High Court

Case No : Civil Writ Petition No. 2108 Of 2003

M.C.D.

APPELLANT

Vs

Maresh Chand & Anr

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 227

Citation : (2019) 10 DEL CK 0006

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Namrata Mukim, Kashpi Agrawal, Meghna De, Sugandh Kochhar

Final Decision : Dismissed

Judgement

Rekha Palli, J

1. The present writ petition filed by the MCD assails the award dated 10.05.2002 passed by the learned Industrial Tribunal-I, Karkardooma Courts, Shahdara, Delhi. Under the impugned award, the learned Tribunal has after holding that the respondent no.1 had been wrongly deprived of his wages for the period between 01.03.1996 to 04.12.1996 directed the petitioner to pay the same with interest at the rate of 9%.

2. Learned counsel for the petitioner submits that the Tribunal was wholly unjustified in passing the impugned award by overlooking the fact that the respondent had in fact absented from duty between 01.03.1996 to 04.12.1996 and was, therefore, was not entitled to receive any wages for the said period.

3. On the other hand, Ms.Meghna De, learned counsel for the respondent no.1 while supporting the impugned award submits that the petitioner had failed to lead any evidence in support of its bald claim that the respondent was absconding from duty. She submits that once the respondent had led evidence before the Tribunal to show that even though he was reporting for duty, he was not being permitted to mark his attendance, which evidence remained

unrebutted, the Tribunal was justified in accepting the respondent's version. She further submits that the impugned award which grants the benefit of only Rs.28,160/- to the respondent already stands implemented and, therefore, prays that the writ petition be dismissed.

4. I have considered the submissions of the parties and with their assistance perused the record including the impugned award.

5. A perusal of the award shows that the findings of the Tribunal that the respondent was duly reporting for duty is based on an appreciation of facts. In view of the settled legal position that a writ Court exercising its jurisdiction under Article 227 of the Constitution of India should not re-appreciate the evidence as an appellate Court unless a perversity or error apparent on record is pointed out. Reference may be made to the decision of the Supreme Court in *Iswar Lal Mohan Lal Thakkar v. Paschim Gujarat Vij Co. Ltd.*, [(2014) 6 SCC 434] wherein it was observed as under:-

"15. We find the judgment and award of the Labour Court well reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power under Article 227 of the Constitution of India to annul the findings of the Labour Court in its award as it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or reappreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere with the same as the award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice.

16. It is relevant to mention that in *Shalini Shyam Shetty v. Rajendra Shankar Patil* [(2010) 8 SCC 329] , with regard to the limitations of the High Court to exercise its jurisdiction under Article 227, it was held in para 49 that:

"49. (m) ... The power of interference under [Article 227] is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court."

It was also held that:

"49. (c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it."

Thus it is clear, that the High Court has to exercise its power under Article 227 of the Constitution judiciously and to further the ends of justice.

17. In *Harjinder Singh v. Punjab State Warehousing Corpn.* [(2010) 3 SCC 192 : (2010) 1 SCC (L&S) 1146] this Court held that:

"20. ... In view of the above discussion, we hold that the learned Single Judge of the High Court committed serious jurisdictional error and unjustifiably interfered with the award of reinstatement passed by the Labour Court with compensation of Rs 87,582 by entertaining a wholly unfounded plea that the appellant was appointed in violation of Articles 14 and 16 of the Constitution and the Regulations."

6. In the present case, the learned Tribunal has while arriving at a conclusion that the respondent was entitled to receive wages from 01.03.1996 to 04.12.1996 duly appreciated the evidence brought on record and has given cogent reasons for arriving at its conclusions. The petitioner has not been able to point out any perversity or error in the Tribunal's findings warranting interference by this Court. Even otherwise in the light of the admitted fact that the award entails payment of a sum of Rs.28,160/- which amount already stands paid to the respondent no.1, I do not see any reason to interfere with the impugned award in exercise of my writ jurisdiction.

7. The writ petition being meritless is dismissed. It is made clear that since the writ petition is being dismissed as the award is based on appreciation of the factual aspects with which this Court finds no reason to interfere, the present decision will not be treated as a precedent.