
(2011) 12 DEL CK 0280
In the Delhi High Court
Case No : LPA 844 of 2011

MCG Design

APPELLANT

Vs

Ram Naresh Chauhan

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2011) 12 DEL CK 0280

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : A.K. Bajpai with Mr. M.F. Khan, for the Appellant;

Final Decision : Allowed

Judgement

A.K. Sikri, Acting Chief Justice

1. Notice in this appeal was issued limited to the question of grant of compensation in lieu of award of reinstatement with 50% back wages granted by the Labour Court and upheld by the learned Single Judge. It was also directed that the notice shall indicate that the appeal shall be finally heard and decided on the next date. The notice was duly served for 29th November, 2011 but nobody appeared on behalf of the respondent. In the interest of justice the case was adjourned for today to give another opportunity to the respondent to make appearance and argue the case. However, none has appeared today as well.

2. In these circumstances, we have no option but to proceed with the matter on merits.

3. M/s Okhla Industrial Workers Union has espoused the case of ten workmen alleging that their services were terminated illegally and unjustifiable. The dispute was referred in respect of all these ten workmen to the Labour Court. Though initially this dispute was prosecuted by the Union and the workmen also appeared, after some time, the workmen stopped appearing. When the case was listed on 24th November, 2000 for cross-examination of management witnesses,

none of the workmen had appeared. Nobody appeared even at the time of argument on behalf of the workmen. However, the Labour Court proceeded with the reference as by that time, evidence of workmen had been recorded and workmen had been cross-examined. The Labour Court rendered the award dated 17th March, 2011; in respect of nine workmen it held that there was relationship of employer and employee. However, in respect of one workman namely Sh. Ram Naresh Chauhan (respondent herein) it was held that his services were terminated illegally as he had worked for more than 240 days and before terminating his services provisions of Section 25F of the Industrial Disputes Act were not complied with. It was further held that the said workman was not served with any show cause notice or chargesheet or any inquiry was got conducted.

4. We may note here that the defence of the appellant was that Sh. Ram Naresh Chauhan had himself abandoned his job by remaining absent un-authorisedly. It is in this context the Labour Court held that if he was absenting himself, it was necessary for the appellant to issue show cause notice or chargesheet or got conducted inquiry. When it was not done and provisions of Section 25F were also violated, termination was held to be illegal.

5. Thus, in respect of respondent herein namely Sh. Ram Naresh Chauhan, the Labour Court passed the award directing his reinstatement with 50% back wages @ his last drawn salary i.e Rs. 3400/- per month.

6. The appellant challenged the said award by filing the writ petition which has been dismissed in limine by the learned single Judge by holding that there is no infirmity in the award.

7. As pointed out above, in this appeal, notice was issued limited to the relief granted by the Labour Court. Therefore, we proceed on the basis that the termination of the respondent's services was illegal.

8. It is contended by the learned counsel for the appellant that as per the various pronouncements of the Supreme Court and recent trend and the facts of this case, the reinstatement should not have been granted to the respondent. The appellant has highlighted the fact that the respondent workman was in the employment way back in the year 2000 and he worked hardly for two years i.e. from 2000 to 2002. It was also submitted that though there was a technical lapse on the part of the appellant in not holding any inquiry, the fact remains that it was the respondent who had started absenting himself from service. It is also argued that thereafter the respondent did not show any interest which is also clear from the fact that before the Labour Court the respondent stopped appearing after a particular stage and the award was given in his absence. He also further highlights the fact that even when notice of this appeal has been served upon the respondent, none has appeared here also.

9. Learned counsel, in support, relies upon the judgment of the Supreme Court in the case of Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh

Kumar Seal and Others, .

10. We are of the opinion that the appellant has been able to make out a case for non-grant of reinstatement and instead in the aforesaid circumstances only lump sum compensation should have been awarded to the workman. In our opinion, ends of justice would be subserved by granting lump sum amount of Rs. 1 lakh (rupees one lakh only) in lieu of reinstatement and back wages. 11. The impugned award as well as the order of the learned Single Judge is modified to the aforesaid extent. The appeal is allowed in the aforesaid term. No order as to costs.