
(2012) 12 DEL CK 0177
In the Delhi High Court
Case No : Writ Petition (C) 3873 of 1997

MGT. of DDA

APPELLANT

Vs

P.O., Indus. Tribunal No. 1 and Another

RESPONDENT

Date of Decision : 20-12-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 25, 25F, 25G, 33(2)

Citation : (2013) 136 FLR 963 : (2013) 2 LLJ 105 : (2013) 1 LLN 140 : (2013) LLR 179

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Arun Birbal, for the Appellant; Anuj Aggarwal, Advocate for the workman, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Ms. Justice Mukta Gupta

1. By the present petition the Petitioner seeks setting aside of the award dated 16th June, 1997 passed by the Presiding Officer, Industrial Tribunal

in an industrial dispute ID No. 203/90 wherein the learned Tribunal directed the Management to reinstate the workman and grant him full back

wages. Learned counsel for the Petitioner contends that the learned Tribunal erred in holding that the services of Respondent No. 2 were

terminated in violation of Section 25F of the Industrial Dispute Act, 1947 (in short the ID Act). The workman was appointed as a muster roll

employee with the Management on daily wages. A daily wager is paid wages for the day on which he had worked/attended his duty with the

department. Hence, he is not entitled to any back wages. Further the workman was appointed on a temporary basis, thus he is precluded to claim

any right to the post with the Management. Reliance is placed on Hemanshu Kumar Vidyarthi vs. State of Bihar and others, 1997 (3) SCC 733 . It

is further contended that the Respondent No. 1 has gone beyond the terms of reference by giving direction to the Petitioner to make the payment

of back wages within one month of the award becoming enforceable and initiate action against officers who may be found responsible for causing

loss to the Management. Otherwise also, if the learned Tribunal had to grant any relief to the workman it should have granted compensation to the

workman instead of reinstatement with full back wages considering the nature of his duties as he was employed on a muster roll with the

Management. Reinstatement and back wages should not be granted by the courts mechanically after holding the termination of services of

workman to be illegal. Reliance is placed on M/s D.S.I.I.D.C. Vs. Pravin Kumar Sharma, and Management of Sri Guru Tegh Bahadur Hospital

and Another Vs. Narender Kumar and Another, . Relying on Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and

Others, , Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, it is lastly submitted that the workman has worked for less

than three years with the Management and thus compensation would have been the appropriate relief instead of reinstatement with full back wages.

2. Per contra learned counsel for the Respondent No. 2 contends that the services of the workman were terminated without complying with the

provisions of section 25F of the ID Act. No notice was given, no notice pay was either offered or paid and no service compensation was paid.

There being no perversity in the order of the Tribunal, this Court in exercise of its writ jurisdiction will not interfere in the order of the Tribunal. The

High Court would also not be justified in interfering with a reasoned award which has been passed by the Tribunal taking into consideration all the

material on the record. Further there exists no rule that the Tribunal cannot grant reinstatement with back wages. Reliance is placed on Krishan

Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana), and the Management of Municipal Corporation of

Delhi vs. Presiding Officer, Industrial Tribunal, W.P. (C) No. 6024 of 1999 decided on 25th August, 2011. It is further contended that the

Management has not complied with the order of this Court dated 25th May, 2006 wherein it was directed to make payment to the workman u/s

17B of the ID Act subject to the workman filing an undertaking by way of an affidavit setting out his latest address that in the event of the court

holding in favour of the Petitioner ultimately, the workman shall reimburse the differential amount between the last drawn wages and wages paid

under order of this Court. Hence at this stage the Petitioner is not entitled to any relief by this Court. It is lastly contended that the Petitioner was

discriminated as workmen junior to Respondent No. 2 have been retained in service and Respondent No. 2 was terminated from the service. In

such a condition the award of the learned Tribunal granting the relief of reinstatement with full back wages to the workman was correctly passed.

3. I have heard learned counsel for the parties.

4. Briefly the case of the petitioner is that the Respondent No. 2 was engaged on muster roll as a daily wager with the Management on 27th July,

1984. His services were terminated pursuant to an order passed by the Vice Chairman, DDA on 1st November, 1986. The workman was again

engaged in the services with the Management under the order of the Chief Engineer on 12th December, 1986. However, the services of

Respondent No. 2 were again disengaged on 3rd May, 1987. On 8th February, 1989 demand notice was sent by the workman leading to finally

raising of an industrial dispute by him which was referred for adjudication by Delhi Administration on the following terms:

Whether the termination of services of Shri Hari Ram is illegal and/or unjustified and if so, to what relief is he entitled to and what directions are

necessary in this respect?

5. Statement of claim was filed by workman, written statement by the Management and a rejoinder by the workman. Issues were framed leading

to finally passing of the impugned award dated 16th June, 1997. It is admitted that the workman was employed with the Management on muster

roll as a daily wager. It is also admitted that the services of the workman were terminated with effect from 1st November, 1986 and an industrial

dispute was raised by the Respondent along with several other workman which was referred by Delhi Administration vide order dated 1st April,

1987 for adjudication. However, during the pendency of the conciliation proceedings, Respondent No. 2 was taken back on service with effect

from 12th December, 1986 but the other workmen were not reinstated. Thus

while passing the award dated 3rd January, 1989 the Tribunal granted the relief of reinstatement with full back wages to the workmen therein, however qua Respondent No. 2 it was directed that he be paid wages from 1st November, 1986 till 12th December, 1986 and also directed that the entire term would be considered as a period of continuous services. However, as the Management had again in the interregnum passed an order of termination against Respondent No. 2 on 3rd May, 1987, therefore, the Respondent No. 2 filed another industrial dispute challenging the termination order dated 3rd May, 1987. The learned Labour Court vide the impugned award dated 16th June, 1997 held that the termination amounted to retrenchment, was in violation of the provisions of Section 25 ID Act and invalid. The Tribunal directed reinstatement with full back wages to the Respondent-2 workman.

6. The Management had produced Shri R.S. Taneja before the Tribunal who had tendered his evidence by way of an affidavit and in his cross-examination admitted that the workman has been paid for the period of 1st November, 1986 to 11th December, 1986 under the directions of the presiding officer in the previous industrial dispute. He also admitted that no notice was given to the workman before termination of the service nor was any compensation paid to him. He has also admitted that the work of Khalasi was still continuing with the Management. The workman in his evidence by way of affidavit supported his claim.

7. The most important aspect in the matter is that at the time of termination of services of the Respondent No. 2 on 3rd May, 1987, a dispute with regard to wages of the Respondent No. 2 and termination of other workmen was pending. Admittedly, no approval u/s 33(2) of the ID Act was taken justifying the action regarding termination of Respondent No. 2 on 3rd May, 1987. In the light of this non-compliance as well which was though not the basis of the impugned award and the fact that the termination was illegal as mandatory provisions of Section 25F and 25G of the ID Act were not complied with, the learned Trial Court committed no error in directing that back wages be paid to the workman within one month from the award becoming enforceable and initiate action against official/officers who may be found responsible for causing such loss to the management by their wrongful action and recover the amount in full or part from

their salaries. In view of the gross illegalities committed by the
Petitioner, the Petitioner cannot claim that the impugned award suffers from any
illegality. Petition is dismissed. The Respondent No. 2 will be
entitled to receive the amount of Rs. 1,38,000/- along with the interest that has
accrued thereon deposited by the Petitioner with the Registry of this
Court pursuant to order dated 3rd December, 1997 in part satisfaction of the
relief granted to him by the impugned award.