
(2007) 05 DEL CK 0185
In the Delhi High Court
Case No : LPA No. 11 of 2007

Mgt. of Hotel Connaught

APPELLANT

Vs

Mr. Om Prakash and Another

RESPONDENT

Date of Decision : 31-05-2007

Acts Referred:

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

Citation : (2007) 96 DRJ 461

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Amit Seth, for the Appellant; Gulshan Chawla, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—This appeal is filed against the judgment dated 31st October, 2006 passed by the learned Single Judge

allowing the application filed by the respondent - workman u/s 17B of the Industrial Disputes Act (hereinafter referred to as the Act).

2. The learned Single Judge while allowing the aforesaid application held that the respondent would be entitled to the wages last drawn with effect

from 3rd June, 1999 when the impugned order dismissing the application filed by the respondent u/s 33(2)(b) of the Industrial Disputes Act, 1947

was passed. It was further directed by the learned Single Judge that the appellant shall pay to the respondent wages last drawn or the minimum

wages notified by the statutory authorities from time to time, whichever is higher, for the period after 28th May, 2004 till the disposal of the writ

petition.

3. Being aggrieved by the aforesaid directions, the present appeal is preferred in which the learned Counsel appearing for the appellant has mainly

canvassed two grounds for assailing the aforesaid judgment.

4. The first ground that is raised is that the learned Single Judge acted illegally and without jurisdiction in granting the benefit u/s 17B of the Act

from the date of termination of service, which order could not have been passed even on a bare reading of the provisions of Section 17B of the

Act.

5. The second contention was that the respondent was gainfully employed in a self-employment and, Therefore, provisions of Section 17B of the

Act could not have been made applicable to him. It was, Therefore, submitted that the order is illegal and is required to be set aside and quashed.

6. In the light of the aforesaid submissions, we have also heard the learned Counsel appearing for the respondent perused the records placed

before us and carefully analysed the decisions which are applicable to the facts of the present case.

7. The respondent herein was employed by the appellant as Assistant Steward. On the allegation that the respondent has committed acts of gross

misconduct, a charge sheet was issued to the respondent by the appellant. Pursuant thereto, an inquiry was conducted, which, we find from the

records, was conducted ex parte. The inquiry officer submitted his report holding that the charges have been proved against the respondent.

Consequent thereto, services of the workman were terminated by order dated 3rd June, 1999. In compliance with the provisions of Section 33(2)

(b) of the Act, the appellant moved an application seeking approval of the action taken against the workman. In the said petition, a prayer was also

made that in the event the Tribunal comes to a conclusion that the inquiry suffers from any illegality, the appellant should be given leave to prove the

charges leveled against the workman/respondent by way of leading evidence before the Tribunal.

8. The Industrial Tribunal before whom the aforesaid petition was filed u/s 33(2) (b) of the Act, considered the entire matter and thereafter passed

an order dated 18th August, 2003 holding that the domestic inquiry was vitiated as the same was conducted by the inquiry officer in haste and in

violation of the principles of natural justice. In terms of the prayer made in the petition, an opportunity was given to the appellant to prove the

allegations by leading evidence. On completion thereof and upon hearing the

counsel for the parties, the Industrial Tribunal passed an order on 28th May 2004, whereby the application filed by the appellant u/s 33(2)(b) of the Act was rejected holding that the appellant had failed to prove the misconduct of the workman.

9. Aggrieved by the aforesaid two orders dated 18th August, 2003 and 28th May, 2004 passed by the Industrial Tribunal, the aforesaid writ

petition was filed by the appellant before the learned Single Judge. Along with the aforesaid writ petition, an application was also filed by the

appellant seeking ad interim stay of the impugned orders dated 18th August, 2003 and 28th May, 2004.

10. During the pendency of the said writ petition, an order dated 27th July, 2004 was passed by the learned Single Judge granting stay of the

operation of the impugned orders dated 18th August, 2003 and 28th May, 2004.

11. The respondent having been served with the notice, filed an application u/s 17B of the Act seeking the benefit as provided for under the said

Section.

12. The aforesaid application was considered by the learned Single Judge and finally by order dated 31st October, 2006, the application was

disposed of with directions as mentioned herein before, which are under challenge in this appeal.

13. The services of the respondent were terminated by order dated 3rd June, 1999 and a petition for approval of the aforesaid action of

termination of service was also filed, as required under the provisions of Section 33(2)(b) of the Act. The said application was, however, dismissed

by the industrial adjudicator. Therefore, by operation of law, it would be deemed that the respondent was never dismissed from service. In coming

to the aforesaid conclusion, we derive support from the decisions of the Supreme Court in Cholan Roadways Limited Vs. G.

Thirugnanasambandam, and Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, . Therefore, the effect of the said

order is that for all practical purposes the respondent would be deemed to be continuing in service of the appellant. However, the respondent was

not allowed to join as the appellant preferred the aforesaid writ petition in which he filed an application seeking stay of the operation of the

impugned orders passed by the Industrial Tribunal. In view of the aforesaid

position, the respondent was entitled to be reinstated in service of the appellant with continuity of service and he was entitled to receive his salary from the appellant from the date of his termination from service. Even

otherwise, in the light of the decision of the Supreme Court in Regional Authority, Dena Bank and Anr. v. Ghanshyam reported in JT 2001

(Supp.1) SC 229, the provisions of Section 17B of the Act were applicable to the case of the respondent and, Therefore, the learned Single Judge

was justified in allowing the said application filed u/s 17B of the Act directing for payment of last drawn wages or minimum wages, whichever is

higher from the date of filing of the application u/s 17B of the Act.

14. The contention of the appellant that no such order for payment of last drawn wages could have been passed by the learned Single Judge from

the date of the order of termination under the provisions of Section 17B of the Act received indepth consideration from us. Section 17B of the Act

provides that if the employer prefers any proceedings against an award directing for reinstatement of any workman in a High Court or the Supreme

Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme

Court, full wages last drawn by him. The aforesaid expressions and the provisions came to be interpreted by this Court in the decision of the Full

Bench in Delhi Transport Corporation Vs. Jagdish Chander, . In the aforesaid decision rendered by the Full Bench, it was held that provisions of

Section 17B of the Industrial Disputes Act would be applicable in a case where the management in the writ petition has challenged the order of the

Labour Court/Industrial Tribunal whereby its application u/s 33(2)(b) of the Act seeking approval of the order of dismissal was dismissed by such

Court or Tribunal, subject to the conditions stated in Section 17B itself.

15. While coming to the aforesaid conclusion, the Full Bench of this Court accepted and agreed the view taken by the Delhi High Court, Andhra

Pradesh High Court, Calcutta High Court and Rajasthan High Court, which gave a liberal construction to the provisions of Section 17B of the Act,

which is more in consonance with the legislative object of the said provisions and the scheme underlining the Industrial Disputes Act.

16. In our considered opinion, the ratio of the aforesaid Full Bench decision entitles the respondent to receive payment of last drawn wages drawn

or minimum wages, whichever is higher. In the light of the aforesaid Full Bench decision of this Court and also in the light of another Full Bench

decision of this Court in Delhi Development Authority v. Smt. Omvati and Ors. (LPA No. 84/2002 disposed of on 24th May, 2006), since an

order was passed by the Industrial Tribunal denying approval of the order of termination of service, by operation of law and in view of the decision

of the Supreme Court, the respondent would be deemed to have continued in service, which factor had weighed with the learned Single Judge

while passing an order that the respondent should be paid wages last drawn from the date of termination of service itself. It cannot be said that the

learned Single Judge did not have jurisdiction and power to grant last drawn wages from the date of termination of service by modifying the earlier

order of granting stay. Although such an order may not be strictly envisaged u/s 17B of the Act, the learned Single Judge has the jurisdiction and

power to modify the order of stay granted, directing for payment of wages last drawn to the respondent from the date of termination of his

services, by way of modification of the interim order passed earlier. We, Therefore, are not inclined to interfere with the order passed by the

learned Single Judge on the aforesaid issue, which was raised before us.

17. Now, coming to the second contention that the respondent was gainfully engaged in self employment, we have gone through the records.

Considering the records, the learned Single Judge has given a finding that the respondent was not gainfully employed in any employment, by way of

engagement with some other establishment. The learned Single Judge has also held that there is no sufficient evidence on record to disprove the

statement of the respondent that he is unemployed since the date of termination from the job. The learned Single Judge has clearly held that

deposition of the workman that he remained unemployed since the date of his termination from the job is unrebutted by the materials placed by the

management/petitioner before this Court. The learned Single Judge also held that the management has failed to prove that the workman is gainfully

employed. The learned Single Judge has also referred to the decisions of the Supreme Court as also of this Court to the effect that even sporadic

employment or intermittent income has no mitigation from the right of the workman to subsistence allowance in the form of payment u/s 17B of the

Act. Once application under u/s 33(2)(b) of the Act is rejected, the workman continues to be in service as if no order of termination was passed.

The workman has to survive and requires money for his day to day needs.

18. The aforesaid findings arrived at by the learned Single Judge are findings of fact. There is no other rebutting evidence to disprove and dislodge

the aforesaid findings of facts. We are not inclined to accept the second contention raised before us by the counsel appearing for the appellant.

Reliance on the decision of the Supreme Court in Administrator, Kamala Nehru Memorial Hospital v. Vinod Kumar reported in 2006 (1) CLR

253 is misplaced as the facts of the said case are clearly distinguishable. The said decision was rendered in the light of the fact that the workman

was working as an advocate having decent professional income. Such materials are missing in the present case. The other decision of the Supreme

Court in North East Karnataka Road Transport Corporation v. M. Nagangouda reported in is also not applicable as the decision was rendered in

the light of sufficient materials on record that the workman had sufficient income from agricultural operations.

19. It was submitted that the wife of the respondent has a business of her own, which is now being looked after by the respondent. The wife of the

respondent can have her own business or vocation and the same under no circumstances could become the vocation or business of the

respondent. Besides, intermittent employment / engagement cannot be said to be gainful employment in any undertaking. The second contention is

also, Therefore, without any merit and is rejected.

20. Consequently, there is no merit in this appeal, which is dismissed. No costs.