
(2019) 12 DEL CK 0162

In the Delhi High Court

Case No : Civil Writ Petition No. 4957 Of 2003

Mgt.Of M/S.Flood Control & Drainage

APPELLANT

Vs

Workmen Om Prakash & Anr

RESPONDENT

Date of Decision : 11-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 12 DEL CK 0162

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Zahid Hanief, Naushad Ahmd Khan, Rajiv Agarwal, Meghna De

Final Decision : Disposed Of

Judgement

Rekha Palli, J

1. The present writ petition filed by the Management assails the award dated 12.12.2002 passed by the Industrial Tribunal-II in ID No.109/1998. Under the impugned award, the Tribunal has, after holding that the petitioner itself was at fault for not permitting the respondent/workman to join duties, directed the petitioner to pay wages to the respondent for the period between 07.08.1996 to 15.12.1997, i.e., the period during which the petitioner did not permit him to discharge duties.

2. The respondent was employed as a muster roll Beldar in the petitioner department on 16.03.1994 to discharge duties in Civil Division No. VI at Alipur, G.T. Karnal Road. On 07.08.1996, the respondent was transferred to Civil Division No. VII at Pala, at which posting he declined to join on the ground that the place of transfer was located at a great distance from his place of residence. Upon the respondent challenging his transfer on the ground of it being an unfair labour practice, though the petitioner issued an administrative order on 11.10.1996 directing the respondent to rejoin service at Civil Division No. VI at Alipur, but never communicated the same to the respondent till 15.12.1997.

Consequently, the respondent was taken back in service at Civil Division No. VI on 16.12.1997 and, on not being paid wages for the period between 07.08.1996 to 15.12.1997, he raised an industrial dispute claiming the unpaid wages.

3. The respondent's claim was allowed by the Labour Court vide its impugned award by observing as under:-

"12. The factual position emerges from the above mentioned discussion is that the workman was transferred on 07.08.96 from C.D. VI to C.D. VII. He was transferred to Division No.7 and his service record was sent to Division No.7 on 24.8.96 and thereafter he was retransferred to Division No.6 on 11.10.96 and as per the order dated 24.12.97 the workman Om Prakash was taken back in Division on 16.12.97. In the present case, admittedly, the workman was transferred on 7.8.96 and the matter of controversy on which the decision can be taken is only on 11.10.96 when his transfer order was cancelled and he was ordered to report back. Though the order was passed on 11.10.96 but finally concern was directed to supply the copy through Assistant Engineer, Division No.6, Gur Mandi, Delhi. The copy was sent to Assistant Engineer. The above mentioned position undone the stand taken by the management that the workman was transferred under the policy. Apparently, the order passed by Executive Engineer, Division No.6 was undone by the Superintending Engineer, as a result that order of transfer stand recalled. In such a circumstances the workman could not be blame for not joining in Division No.7 particularly when the order of management was subsequently recalled and it has been categorically shown in Ex.MW 1/W1 that official had not yet joined. Similarly, though the cancellation order was passed on 11.10.96 but it has not been shown by the management that when the order was actually conveyed to the workman. Moreover, the workman has submitted his joining report dated 16.12.97 and the same was accepted by the management. No record produced before me by the management from which it could be gather that the order dated 11.10.96 was conveyed to the workman but he did not join the job or wilfully remained absent rather it appears that some controversy was going on which resulted into the cancellation of the transfer order dated 7.8.96 vide order dated 11.10.96. As mentioned above, the compliance of joining was sent to Div. No.7 on 24.12.97 which shows that till his joining the workman was being treated the employee of C.D.VII whereas the order of transfer to C.D.VII had already been recalled on 11.10.96.

13. In the circumstances mentioned above, the workman cannot be said for not being on job from 7.8.96 despite of recalling order dated 11.10.96. He remained shuttle cock and ultimately his joining was accepted on 16.12.97. Thus, it is held that workman Shri Om Prakash is entitled for salary for the period 7.8.96 to 15.12.97. Consequently, the management is directed to pay the wages to workman Shri Om Prakash for the period 7.8.96 to 15.12.97. Award is passed accordingly. File be consigned to record room."

4. In support of the petition, learned counsel for the petitioner submits that once

the respondent was transferred from Unit Civil Division -VI to Civil Division-VII on 07.08.1996, it was incumbent for him to join duty at the said Division and having failed to do so, he was rightly denied wages for the period during which he did not discharge duties. He, therefore, submits that the impugned award granting the respondent wages for the said period is unsustainable and prays that the same be set aside.

5. On the other hand, learned counsel for the respondent no.2 submits that once the petitioner itself had, on 11.10.1996, modified the respondent's posting to Civil Division-VII ordered on 07.08.1996, by once again transferring him back to Civil Division VI, the respondent was neither permitted to rejoin duty at Civil Division-VII nor was he able to rejoin Civil Division-VI as he was not informed about the order dated 11.10.1996. She thus submits that even if the petitioner's stand is accepted, the respondent would at best be not entitled to receive wages for the period between 07.08.1996 to 11.10.1996 and would still be entitled to receive wages for the period between 12.10.1996 and 15.12.1997.

6. She further submits that once the Tribunal has after considering the factual position arrived at a conclusion that it is the petitioner itself which was at fault in not permitting the respondent to join duty by treating the respondent like a shuttlecock and has thereafter directed the petitioner to pay the wages to the respondent for the period between 07.08.1996 to 15.12.1997, there is no reason why this Court under Article 226 of the Constitution of India should interfere with the impugned award.

7. Having perused the impugned award, though I find merit in the petitioner's contention that once the respondent was transferred to Civil Division-VII on 07.08.1996, it was incumbent on him to join there for duty, till the said transfer order was recalled. However, the fact remains that the respondent's transfer to Civil Division-VII was modified by way of an administrative order passed by the petitioner on 11.10.1996, which order was never communicated to the respondent. In these circumstances, even though the respondent's claim for wages for the period between 07.08.1996 and 11.10.1996 was not maintainable, as he failed to rejoin duty at the place of transfer of his own accord, there is no reason to deny him wages for the period subsequent thereto. In any event I find that the petitioner has been unable to explain its reason for not permitting the respondent no.1 to join duty at Civil Division-VII or for depriving him wages for the said period.

8. Accordingly, for the reasons stated hereinabove and the fair stand taken by the learned counsel for the respondent no.1, the impugned award is modified by directing the petitioner to pay the respondent the unpaid wages due to him for the period between 12.10.1996 and 15.12.1997. The said arrears will be released to the respondent within four weeks.

9. The writ petition is disposed of in the aforesaid terms.