
(2008) 09 DEL CK 0009
In the Delhi High Court
Case No : LPA No. 1933 of 2006

Mr. Satya Vir Sharma

APPELLANT

Vs

Gul Marg Ice Factory and Cold Storage

RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Industrial Disputes Act, 1947 — Section 10, 12(5), 25F, 33C(2)

Citation : (2008) 09 DEL CK 0009

Hon'ble Judges : Mukul Mudgal, J; Manmohan, J

Bench : Division Bench

Advocate : R.B. Pandey, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—The present appeal has been filed seeking setting aside of the judgment and order dated 18th August, 2006 passed by Learned Single Judge as well as for an order/direction to the Respondent Management to reinstate the Appellant workman with full back wages.

2. Briefly stated, the facts as alleged by the Appellant workman are that on 20th October, 1980 the Appellant workman was appointed/employed as a Storekeeper by the Respondent Management. The Appellant alleges that after 19 years of unblemished service, the Appellant's employment was terminated by the Respondent Management. It was further alleged that despite two demand notices dated 1st February, 2001 and 25th April, 2001 the Respondent Management did not pay the dues as claimed by the Appellant workman.

3. As the dispute between the parties could not be settled by the conciliation officer, the Secretary of Labour Department, Government of NCT of Delhi in exercise of powers conferred u/s 10(c) and 12(5) of the Industrial Disputes Act, referred the Appellant's case to the Labour Court. Though the Respondent Management filed reply to the claim, it did not appear thereafter and was

proceeded ex-parte. However, the learned Tribunal having found no force in the claim of the Appellant dismissed the same holding that the Appellant's services had been retrenched after making payment in accordance with law.

4. The Writ Petition filed by the Appellant was also dismissed by learned Single Judge by observing as under:

5. I have gone through the affidavit filed by the petitioner as well as other documents filed by the petitioner. The petitioner served first notice upon the management on 1.2.2001. In this, the petitioner stated that he was given a cheque of Rs. 26,334/- which was accepted by him under protest and to be adjusted against his unemployment salary. In this notice, he does not mention that Rs. 15,000/- was taken back by the management. He served another notice on 25.4.2001, claiming increment for the years 1998 and 1999. He also claimed wages from May, 1998, stating that he had not received the wages. This was not his claim in first notice wherein he had nowhere stated that he was not paid wages for May, 1998 to December, 1998 @ Rs. 3968/- per month. In this notice, he had simply stated that he had not been paid salary from 1.7.1999 to 11.8.1999. The claim of the petitioner that his last drawn salary was Rs. 4558 per month, is belied from his notice dated 25.4.2001, wherein he has claimed amount of increment for the year 1998 and 1999 to be paid to him u/s 33(C)(2) of ID Act. It is obvious that the petitioner had not come to the Tribunal and this Court with clean hands and made false averments about last drawn wages and also about the cheque reserved by him. It is also evident that the petitioner raised industrial dispute after about one and a half year of his receiving the cheque against retrenchment compensation.

6. I consider that the learned Tribunal rightly held that there was no force in the claim of the petitioner and he was not illegally terminated but he was retrenched on payment of retrenchment compensation. I find no perversity in the order of the Tribunal.

5. Learned Counsel for the Appellant, Mr. R.B. Pandey contended that there was no contradiction in the two demand notices as held by learned Single Judge. He further contended that even if there was any contradiction or difference in the two demand notices, it was neither material nor important as demand notices are not mandatory under the Industrial Disputes Act. He submitted that the Appellant workman had approached the Writ Court with clean hands and the learned Single Judge had failed to consider the Appellant's plea that Section 25-F of the Industrial Disputes Act had been violated by the Respondent Management.

6. We are not impressed by the Appellant's arguments as in our opinion the essential prerequisite before a Writ Court exercises its discretion in Petitioner's favour is that the Petitioner should have approached the Court with clean hands. In the present case, the claim filed by the Appellant workman and as set out in the writ petition was a considerable improvement from first demand notice

issued by the Appellant. In fact, in the first notice there was no allegation that a sum of Rs. 15,000/- had been taken back by the Respondent Management. There was further no allegation in the said notice that he had not received wages from the period May 1998 to December, 1998. Consequently, the contemporaneous record does not support the case set out by the Appellant in its writ petition.

7. The Hon''ble Supreme Court in the case of B. Venkatamuni Vs. C.J. Ayodhya Ram Singh and Others, while dealing with the question of powers of an appellate court to interfere with the exercise of discretion in an intra court appeal held as under:

11. In an intra-court appeal, the Division Bench undoubtedly may be entitled to re-apprise both questions of fact and law, but the following dicta of this Court in Umabhai and Anr. v. Nilkanth Dhondiba Chavan (Dead) By Lrs. and Anr. could not have been ignored by it, whereupon the learned Counsel for Respondents relied:

52. It may be, as has been held in Asha Devi v. Dukhi Sao that the power of the appellate court in intra-court appeal is not exactly the same as contained in Section 100 of the CPC but it is also well known that entertainment of a letters patent appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the learned Single Judge. Even as noticed hereinbefore, a court of first appeal which is the final court of appeal on fact may have to exercise some amount of restraint.

12. In the said decision, it was further noticed:

50. Yet in Manjunath Anandappa v. Tammanasa it was held.

36. It is now also well settled that a court of appeal should not ordinarily interfere with the discretion exercised by the courts below.

8. In our view the learned Single Judge in exercise of his jurisdiction and discretion has taken a reasonable view in the impugned judgment and order dated 18th August, 2006 and we find no reason to reverse the findings of learned Single Judge.

9. The learned Single Judge in our view has rightly held that the Appellant herein did not approach this Court with clean hands and the action of the Appellant cannot be justified on the ground that he is having a good service record. In any event, the exercise of discretion by the learned Single Judge is not so unreasonable so as to warrant interference in the Letter Patent Appeal, as held by the Hon''ble Supreme Court in B. Venkatamuni (Supra)

10. In this view of the matter, we see no reason for differing from the finding of the learned Single Judge and accordingly the present appeal is dismissed along with the pending applications, but with no orders as to costs.