
(2005) 02 DEL CK 0018
In the Delhi High Court
Case No : WP (C) No. 2849 of 2002

Municipal Corporation of Delhi	Vs	APPELLANT
Ajay Kumar		RESPONDENT

Date of Decision : 04-02-2005

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 77, 78

Citation : (2005) 117 DLT 614 : (2005) 80 DRJ 360 : (2006) 1 SLJ 193

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Vinay Sabharwal, for the Appellant; Sanjoy Ghosh, for the Respondent

Judgement

Mukul Mudgal, J.—This writ petition challenges the impugned Award dated 18th January, 2001, passed in I.D. No. 153/98 by the Presiding Officer, Labour Court No. VI, Delhi in which reference for adjudication was made in the following terms:-

"Whether the services of Sh Ajay Kumar, daily rated ward boy posted in Hindu Rao Hospital have been terminated illegally and/or unjustifiable by the mgt., and if so, to what relief is he entitled and what directions are necessary in this respect?"

The award was delivered on the basis of the violation of Section 25G and 25H of the Industrial Disputes Act, 1947 (in short the `ID Act') and Rule 77 to 78 of the Industrial Disputes (Central) Rules 1957 (in short the `Rules"), directing the reinstatement of the respondent/workman with full back wages in view of the violation of Section 25G, 25H of the ID Act and Rules 77 to 78 of the Rules.

2. The respondent/workman had joined as a Ward Boy in Hindu Rao Hospital of MCD on 12th December, 1995 and his services were terminated without any reason on 13th March, 1996. He approached the Labour Court averring that the post against which he was working was of a regular and permanent nature and

vacancies still existed and his services had been illegally terminated without following the established position of law. Juniors to the respondent/workman such as S/Sh. Khajan Singh and Rajinder Kumar had been taken in service after the termination of services of the respondent. The petitioner MCD contended in reply inter alia that term of the respondent, who was a daily wager expired on 13th March, 1996 and his services stood terminated automatically.

3. By the impugned award dated 18th January, 2001, the Labour Court recorded the following findings:-

(i) that in spite of the several opportunities, the management/petitioner herein failed to file its written statement;

(ii) that it was not the case of either of the party that the workman/respondent herein had been employed only for a specific period;

(iii) that as per the stance taken by the management in the cross-examination that the workman had left the service on his own, then as per the position of law laid down by the decision reported in Municipal Corporation of Delhi Vs. Sukhvir Singh and Others, , an appropriate enquiry ought to have been held.

4. The provisions of Section 25G and H of the ID Act read as follows:-

"25G. Procedure for retrenchment-Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workman in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25H. Re-employment of retrenched workman. Where any workman are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed given an opportunity (to the retrenched workman who are citizens of India to offer themselves for re-employment, and such retrenched workmen) who offer themselves for re-employment shall have preference over other persons."

(v) that in view of the aforesaid provisions of the ID Act the workman's pleading that juniors to him have been retained in service, i.e., namely, S/Sh. Khajan Singh, Rajinder Kumar is fully justified.

In view of the specific averments of the respondent which remained unrebutted and the fact that the termination of the respondent's services was not covered by Section 2(oo)(bb) of the ID Act, the termination of the respondent's services was clearly in violation of Section 25G & 25H of the ID Act which is the position of as laid down by the Hon'ble Supreme Court in Samishta Dube Vs City Board, Etawah & Anr. reported as 1999 LLR 460; Central Bank of India Vs S. Satyam & Ors. reported as 1996 SCC 1273 and this Court in Gopal Vs MCD & Anr. reported

as 2003 6 AD (DEL) 256.

5. The relevant position of law laid down in Central Bank's case(supra) is as under:-

"7. Section 25H then provides for re-employment of retrenched workmen. It says that when the employer proposed to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons. Rules 77 and 78 of the Industrial Disputes (Central) Rules, 1957 prescribe the mode of re-employment. Rule 77 requires maintenance of seniority list of all workmen in a particular category from which retrenchment is contemplated arranged according to seniority of their service in that category and publication of that list. Rule 78 prescribes the mode of re-employment of retrenched workmen. The requirement in Rule 78 is of notice in the manner prescribed to every one of all the retrenched workmen eligible to be considered for re-employment. Shri Pai contends that Rules 77 and 78 are unworkable unless the application of Section 25H is confined to the category of retrenched workmen to whom Section 25F applies. We are unable to accept this contention.

8. Rule 77 requires the employer to maintain a seniority list of workmen in that particular category from which retrenchment is contemplated arranged according to the seniority of their service. The category of workmen to whom Section 25F applies is distinct from those to whom it is inapplicable. There is no practical difficulty in maintenance of seniority list of workmen with reference to the particular category to which they belong. Rule 77, Therefore, does not present any difficulty. Rule 78 speaks of retrenched workmen eligible to be considered for filling the vacancies and here also the distinction based on the category of workmen can be maintained because those falling in the category of Section 25-F are entitled to be placed higher than those who do not fall in that category. It is no doubt true that persons who have been retrenched after a longer period of service which places them higher in the seniority list are entitled to be considered for re-employment earlier than those placed lower because of a lesser period of service. In this manner a workman in the lower category because of not being covered by Section 25F can claim consideration for re-employment only if an eligible workman above him in the seniority list is not available. Application of Section 25H to the other retrenched workmen not covered by Section 25F does not, in any manner, prejudice those workmen not covered by Section 25F because the question of consideration of any retrenched workman not covered by Section 25F would arise only, if and when, no retrenched workman covered by Section 25F is available for re-employment. There is, thus, no reason to curtail the ordinary meaning of "retrenched workmen" in Section 25H because of Rules 77 and 78, even assuming the rules framed under the Act could have that effect.

9. The plain language of Section 25H speaks only of re-employment of

"retrenched workmen". The ordinary meaning of the expression "retrenched workmen" must relate to the wide meaning of "retrenchment" given in Section 25F. Section 25F also uses the word "retrenchment" but qualifies it by use of the further words "workman ... who has been in continuous service for not less than one year". Thus, Section 25F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman .. who has been in continuous service for not less than one year". It is clear that Section 25F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments while Section 25F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25F.

10. The next provision is Section 25H which is couched in wide language and is capable of application to all retrenched workmen, not merely those covered by Section 25F. It does not require curtailment of the ordinary meaning of the word "retrenchment" used therein. The provision for re-employment of retrenched workmen merely gives preference to a retrenched workman in the matter of re-employment over other persons. It is enacted for the benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman.

11. Chapter V-A providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment and, Therefore, there is no reason to restrict application of Section 25H therein only to one category of retrenched workmen. We are, Therefore, unable to accept the contention of Shri Pai that a restrict meaning should be given to the word "retrenchment" in Section 25H. This contention is, Therefore, rejected."

The aforesaid position of law was also applied by the Supreme Court in Samishta Dubey's case(supra) as under:-

"We shall next deal with the point whether in case employees junior to the appellant were retained, the directions issued by the Labour Court Act (which corresponds to Section 25G of the Central act of 1947) states that where any workman in an industrial establishment is to be retrenched and he belongs to a particular category of workmen in this behalf _ the employer and the workmen in this behalf _ the employer shall ordinarily retrench the workmen who was the last person to be employed in that category, unless for reasons to be recorded, the employer retrenches any other person. Now the provision is not controlled by

conditions as to length of service contained in Section 6(N) (which corresponds to Section 25F of the Industrial Disputes Act, 1947). Section 6P does not require any particular period of continuous service as required by Section 6N. In Kamlesh Singh v. Presiding Officer in a matter which arose under this very Section 6P of the U.P. Act, it was so held. Hence the High Court was wrong in relying on the fact that the appellant had put in only three and a half months of service and in denying relief. (See also in this connection Central Bank of India Vs. S. Satyam and others, ."

This Court in Gopal's case(supra) followed the aforesaid position of law.

The aforesaid judgments clearly apply to the facts of the present case. There is a clear finding by the Labour Court that juniors to the petitioner have been retained in service. However, since the petitioner is Municipal Corporation of Delhi and taking into consideration the nature of public employment involved and the fact that prior to the MCD approaching to this Court in 2002, in respect of the impugned award certain recoveries were made and certain payments were also made u/s 17B of the ID Act, no further payment as a consequence of the award shall be made to the respondent/workman subject to his being reinstated on or before 2nd April, 2005. For this purpose the respondent is directed to report for duty to the Medical Superintendent, Hindu Rao Hospital, New Delhi on 2nd April, 2005 at 10.00 AM. The petitioner Corporation will be at liberty to act in accordance with law.

6. The writ petition stands disposed of accordingly with no order as to costs.