
(2012) 10 DEL CK 0191

In the Delhi High Court

Case No : Writ Petition (C) No. 13314 of 2005

Munna Prasad

APPELLANT

Vs

The Mgmt of M/s Sawhney Rubber

RESPONDENT

Date of Decision : 10-10-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo), 2(oo)(c), 25F

Citation : (2013) 136 FLR 268 : (2012) LLR 1255

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : H.K. Chaturvedi, for the Appellant; Raavi Birbal, for the Respondent

Judgement

Hon"ble Ms. Justice Mukta Gupta

1. By the present petition the Petitioner challenges the award dated 5th December, 2003 whereby it was held that the Petitioner had failed to

prove that his services were terminated illegally or unjustifiably by the management and thus he was not entitled to any relief. According to the

Petitioner he was appointed by the management on 27th August, 1988 as a Tyre Press Operator, though the management contends that the

Petitioner was employed as unskilled labourer on 27th July, 1988. Unfortunately, on 25th June, 1989 the Petitioner suffered an accident while on

duty due to which his both hands got amputated below the femur bones. However, the Petitioner continued working with the Respondent but

finally on 25th January, 1999 the services of the Petitioner were terminated vide the letter of termination dated 23rd January, 1999 on the ground

of continued ill-health.

2. The grievance of the Petitioner is that though he suffered a disability in June,

1989 thereafter for 10 years the Petitioner continued working for the management and the management was satisfied by his duties but after 10 years his services could not have been terminated on the ground of ill-health. It is stated that there is only one appointment letter and the Petitioner continued working pursuant thereto. It is not the case of the Respondent that after the disability a fresh appointment was given to the Respondent and his health deteriorated resulting in his termination.

Learned counsel for the Petitioner contends that Section 2(oo)(c) of the Industrial Disputes Act (in short the ID Act) is not applicable to the facts of the present case. The case of the Respondent that after the accident they appointed him on compassionate ground for 10 years is wholly incorrect as the Petitioner continued on the same duties for 10 years despite disability. Since the termination was without complying provisions of Section 25F of the ID Act, the same was illegal and is bound to be set aside. Reliance is placed on Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana), . The Petitioner is entitled to be reinstated even in terms of the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

3. Learned counsel for the Respondent on the other hand contends that the termination of the Petitioner falls under the exception (c) of Section 2(oo) of the ID Act. The provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 are not applicable, as neither the Act was in force when the disability accrued nor the Respondent is a Government authority. Still as a model employer the Respondent employed the Petitioner on compassionate grounds for 10 years despite 100% disability. After 100 % disability the Petitioner had no right to continue. It was a case where the Petitioner was appointed on compassionate grounds and was not a case of compassionate appointment.

4. I have heard learned counsel for the parties. The undisputed facts are that the Petitioner was employed with the management since 1988 and on 25th June, 1989 he suffered an accident while on duty and both his hands got amputated below his femur bones. Though the witness of the witness of the Respondent in his affidavit Ex. MW1/1 stated that the letter of appointment is annexed, however the same was not filed despite the order

dated 13th December, 2002 when time was sought to produce the said documents. Be that as it may, neither of the parties dispute that the

Petitioner was a workman as defined under the ID Act and thus entitled to raise an industrial dispute. The only issue is whether or not the Petitioner

falls within exception (c) of Section 2(oo) of the ID Act. Section 2(oo) of the ID Act reads as under:

2. (oo) "Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a

punishment inflicted by way of disciplinary action but does not include-

(a) Voluntary retirement of the workman; or

(b) Retirement of the workman on reaching the age of Superannuation if the contract of employment between the employer and the workman

concerned contains a stipulation in that behalf; or

[(bb) Termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the

workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) Termination of the service of a workman on the ground of continued ill-health;]

5. Thus, termination of the services of a workman would not be retrenchment on the ground of continued ill-health. However, in the facts of the

present case, it would be seen that 100% disability accrued to the Petitioner on 25th June, 1989. However, the Petitioner continued in service with

the Respondent despite amputated hands. There was no complaint whatsoever against the Petitioner while performing his duties. The Respondent

in his written statement claims that after both the hands of the Petitioner were amputated and the Petitioner became 100% physically disabled, the

Petitioner was not able to do any work, however was paid minimum wages. It may be noted that the main job of the Petitioner was to help in

shifting articles from one section to another since his employment on 27th July, 1988 as unskilled worker and such other jobs as assigned to him by

his superiors. Though it is contended that the workman after the accident was not in a position to do any work, however it is not stated that during

the pendency of 10 years while the Petitioner worked with the Respondent, the Petitioner did not do any work. MW1 Shri Anup Sethi in cross-

examination admitted that after the accident, the claimant continued to work with them till 25th January, 1999. On a specific question as to the complaints regarding the work of the claimant, it was stated that the claimant was not doing anything. This averment of the Respondent appears to be without any basis as there is nothing on record to show that the Petitioner was not working with the Respondent after his accident for 10 years and getting the wages sitting ideally. This is further borne out from the fact that though both the hands of the Petitioner are amputated, he has been able to append his signatures on the affidavit filed with the writ petition. Further, the statement of claim, affidavits etc., all have been signed by the Petitioner.

6. In view of the undisputed fact that despite disability the Petitioner continued to work with the Respondent for 10 years, the termination of the Petitioner vide letter dated 23rd January, 1999 can be clearly stated to be illegal and a colourable exercise. During the course of arguments learned counsel for the Respondent submitted that the factory has virtually closed down and there are only 12 workers who are working in view of the pending disputes pursuant to the orders passed by the Court. In this view of the matter no directions for reinstatement can be granted. However, it is a fit case for grant of compensation. Since the termination of the Petitioner has been held to be illegal and the Petitioner had worked for 10 years even after the accident, the Respondent is directed to pay a compensation of Rs. 2 lakhs to the Petitioner within 8 weeks. Petition is disposed of.