

(2012) 02 DEL CK 0093

In the Delhi High Court

Case No : LPA 32 of 2012

National Handicrafts and Handloom Museum

APPELLANT

Vs

Ashok Kumar and Others

RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2012) 02 DEL CK 0093

Hon'ble Judges : A.K. Sikri, Acting C.J.; Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Jaswinder Singh, for the Appellant; Rajiv Aggarwal with Mr. Anuj Aggarwal, for the Respondent

Judgement

A.K. Sikri, Acting Chief Justice

CM No. 921/2012

1. There is a delay of 46 days in filing the appeal. Learned counsel for the Respondent has no objection if the same is condoned subject to payment of some costs. For the reasons stated in this application, prayer made therein is allowed and delay is condoned subject to payment of Rs. 10,000/- as costs which shall be paid to the Respondent Nos. 1 to 3 equally. CM stands disposed of.

LPA 32/2012

Mr. Rajiv Aggarwal, learned counsel for the Respondents/Workmen submits that one of the workmen, namely, Mr. Mann Singh S/o Shri Lal Singh (Respondent No. 4) is not interested in this litigation. In fact even the amount of Rs. 1,76,000/- deposited by the Appellant in this Court has not been withdrawn by him and this amount can be refunded to the Appellant.

2. The Respondents/Workmen were appointed on daily wage basis some time in the year 1988. When their services were terminated, they raised industrial dispute challenging the said termination. The dispute was referred with the

following terms of reference:

Whether the action of the management of M/s. National Handicrafts & Handlooms Museum, Pragati Maidan, New Delhi in terminating the services of S/ Shri Ashok Kumar, Vijender Singh, Man Singh and Uday Vir Singh is justified? If not, what relief the workman concerned are entitled to?

3. After recording the evidence, the learned Industrial Tribunal recorded a finding of fact that these workmen had worked for more than 240 days in a year and, therefore, their termination was in violation of Section 25F of the Industrial Disputes Act, 1947 as the mandatory compensation and notice pay was not given to them before termination of their services. Holding the termination to be illegal and unjustified on the aforesaid ground, in the award dated 28.2.2001 rendered by the Industrial Tribunal, reinstatement with backwages was granted. Though the Respondents/Workmen were working on daily wage, the Industrial Tribunal also held that these Workmen were entitled to get the similar pay scale and other service benefits equal to their counterparts performing identical jobs. The Appellant preferred the writ petition against the aforesaid award and the writ petition has been dismissed by the learned Single Judge vide impugned judgment dated 1.9.2011. This appeal assails that order of the learned Single Judge. Notice in this appeal was issued limited to the question as to whether lump sum compensation be granted to the Workmen in lieu of reinstatement and backwages. Therefore, we have heard the learned counsel for the parties today on this aspect.

4. Insofar as the Workmen are concerned, as stated above, there is an award of the Industrial Tribunal in their favour granting reinstatement and backwages. As per the award, they are entitled to the same pay scale and other service benefits which are given to regular employees. Further, this award has been upheld by the learned Single Judge.

5. On the other hand, we find that there are certain circumstances which weigh in favour of the Appellant as well. It is not in dispute that the Respondents/ Workmen were engaged only on daily wage basis and the amount of daily wage at that time was Rs. 33/- per day. It is also not in dispute that all these Workmen/Respondents hardly worked for a period of two years. The purported termination of their services was way back in the year 1990 and 22 years have passed in the process. Though, the Tribunal has ordered payment of wages at the same rate which was given to regular employees, the terms of reference did not include this aspect and to this extent the award of the learned Labour Court, ex facie, is not proper. On the basis of pay scale given to regular employees, the backwages are calculated at Rs. 14.5 lacs after adjusting the amount of Rs. 1,76,000/- which is already paid. Although the Appellant did not challenge this aspect, however, while determining the question whether lump sum compensation is to be paid to the Workmen, we would like to keep this aspect in mind.

6. It is also to be kept in mind that termination is held to be illegal only on technical ground, namely, non-compliance of the provisions of Section 25F of the Industrial Disputes Act, 1947. When we weigh and balance the aforesaid considerations in favour of the Workmen as well as in favour of the management, we are of the opinion that interest of justice would be met by making lump sum compensation of Rs. 5 lacs to each of these three Workmen. These Workmen have already been paid Rs. 1,76,000/- which shall accordingly be adjusted. Remaining amount shall be paid by the Appellant to the Workmen/Respondent Nos. 1 to 3 within a period of two months from today. Impugned award is modified and the order of the learned Single Judge is modified to that extent. We make it clear that if the remaining amount is not paid by the Appellant to the Workmen/Respondent Nos.1 to 3 within two months from today, the Workmen/Respondent Nos. 1 to 3 shall be entitled to interest @ 12% per annum from the date of this order.

7. In view of the aforesaid, the appeal is disposed of accordingly.