

(2002) 08 DEL CK 0039
In the Delhi High Court
Case No : C.W.P. No. 733 of 1985

N.D.M.C. and Another

APPELLANT

Vs

Mohd. Shamim and Others

RESPONDENT

Date of Decision : 29-08-2002

Acts Referred:

Factories Act, 1948 — Section 2(M), 2K
Industrial Disputes Act, 1947 — Section 2J
Industrial Employment (Standing Orders) Act, 1946 — Section 12, 12A, 13A, 2
Model Standing Orders — Rule 13, 1B
Penal Code, 1860 (IPC) — Section 379, 380, 411

Citation : (2003) 97 FLR 155 : (2003) 2 LLJ 81

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Arvind Shah, for the Appellant; Nemo, for the Respondent

Judgement

S.B. Sinha, C.J.—This writ petition arises out of an order dated 07.12.1984 passed by the Presiding Officer, Industrial Tribunal, Delhi (hereinafter for the sake of brevity referred to as, "the Tribunal") where by hereunder in exercise of his powers conferred upon him u/s 13-A of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter for the sake of brevity referred to as, "the said Act") an order dated 08.06.1981 terminating the services of respondent No.2 herein was set aside.

2. The respondent No.2 herein was appointed as a Khalasi. He has been working in the Electricity Department of the petitioner herein. The said Department is said to be used to deal with generation, transmission and distribution of electricity. The said establishment allegedly comes within the purview of the provisions of the said Act.

Admittedly, there did not exist any certified standing order in relation to the said establishment. According to the respondents, as no certified standing orders existed, model standing orders would be deemed to be applicable in relation to

the said establishment in terms of the provisions of Section 12 of the Said Act.

Allegedly, no permanent ticket number as prescribed under the Standing Orders No.3 of the Model Standing Orders had been issued in favor of the said respondent.

By reason of an order dated 08.06.1981 impugned before the learned Tribunal, the petitioner had been relieved of his duties with immediate effect without assigning any reason therefore.

In the aforementioned situation, the said application was filed praying for the following reliefs:-

"(a) that the Model Standing Orders as prescribed in the Act are applicable to the parties;

(b) that the petitioners entitled to a permanent ticket from the respondent as required under Standing Orders No.3:

(c) that the order dt. 8.6.81 whereby the petitioner was relieved of his duty is in contravention of the Model Standing Orders as prescribed under the Industrial Employment (Standing Orders) Act, 1946."

3. At the outset, the petitioner herein raised a question as regard jurisdiction of the learned Tribunal to entertain the said application inter alia on the ground that it was not an industry as defined u/s 2(J) of the Industrial Disputes Act, 1947 (hereinafter for the sake of brevity referred to as, "I.D. Act"). On merit also, it was disputed that the respondent No.2 herein joined services of the petitioner in 1977, but it was contended that he was appointed with effect from 05.12.1980 for a period of 3 months on a consolidated salary of Rs. 409.97 vide office order dated 30.12.1980. It was also stated that the petitioner was only concerned with distribution of electrical energy and not with its generation. It was contended that the petitioner herein having constituted under the Punjab Municipal Act, 1911 (hereinafter for the sake of brevity referred to as, "P.M. Act") is governed by the provisions thereof and, thus, the supplemental and fundamental rules would be applicable in the case of their establishment. It has been contended that the said order of discharge was issued consequent upon the verification of an incident, which was found to be false as contained in his application for appointment as he intentionally failed to disclose that he was involved in a criminal case u/s 379, 380 and 411 of the Indian Penal Code (hereinafter for the sake of brevity referred to as, "I.P.C.").

4. In view of the rival contentions, as noticed hereinbefore, the following issues were framed:-

"1. Whether the New Delhi Municipal Committee is an industrial establishment as defined u/s 2-E of the Industrial Employment (Standing Orders) Act, 1946?

2. Whether the Standing Orders Act is applicable to the N.D.M.C.?

3. Relief."

5. It was held that the petitioner which deals with generation, transmission and distribution of electricity and would be deemed to be an industrial establishment with the meaning of Section 2(e) of the said Act. In support of the said contention, reliance has been placed on a decision of the Madras High Court in K. Thiruvengkataswami v. Coimbatore Municipality 1968 L. I.C. 1567.

In any event, according to the learned Tribunal, it was a "factory" u/s 2(M) read with Section 2K(iii) of the Factories Act.

6. As regard the questions as to whether the said Act is applicable in the case of the petitioner, it was held that the same would be applicable. With regard to the applicability of the Model Standing Orders, the learned Tribunal referred to the provisions of Section 12A and 13 A of the said Act and held that as no certified Standing Orders has been framed, the Model Standing Orders would be applicable. Relying upon a decision in Madras State Electricity Board v. P. Raman Nambisan and Ors. 30 F.J.R. 409, it was held that in a case of this nature even if the petitioner had been following the fundamental and supplemental rules, the certified Standing Orders would apply. It was further held that the said Act would prevail over the Electricity (Supply) Act.

7. The learned Tribunal further held that having regard to the definition of "permanent employee" as contained in Rule 1B of the Model Standing Orders, the respondent No.2 herein was a permanent workman. Holding that the petitioner had failed to comply with the Rule 13 of the Model Standing Orders contained in Schedule 1-A of the Industrial Employment (Standing Orders) Central Rules, 1946 (hereinafter for the sake of brevity referred to as, "the said Rules"), the impugned order was set aside.

8. Mr. Arvind Shah, the learned counsel appearing on behalf of the petitioner, would submit that the learned Tribunal committed an illegality in passing the impugned Order insofar as it failed to take into consideration that having regard to the fact that the Central Civil Services Rules were applicable in the case of employees of the petitioner, the Model Standing Rules would not apply. It was also submitted that the learned Tribunal had not jurisdiction to entertain the said application, as the respondent No.2 herein was not a permanent employee.

9. Section 13A of the said Act reads thus:-

"13A. Interpretation, etc., of standing orders. -If any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workman [or a trade union or other representative body of the workmen] may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947, and specified for the disposal of such proceeding by the appropriate Government by notification in the Official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision

shall be final and binding on the parties."

10. The learned Tribunal has exercised its jurisdiction u/s 13A of the Act in terms whereof the Labour Courts alone have jurisdiction to entertain said application. Labour Court, Industrial Tribunal and the National Tribunal are constituted under Industrial Disputes Act, 1947. Separate jurisdictions have been assigned to each of them.

Having regard to the provisions of Section 13A of the said Act, as noticed hereinbefore, we have no other option but to hold that the learned Tribunal had no jurisdiction to entertain the said application.

11. Furthermore, the learned Tribunal itself had noticed the definition of "permanent workman" as contained in Rule 1B of the Model Standing Orders contained in Schedule I-A of the said Act, which is as under:-

"A "permanent" workman is a workman who has been engaged on a permanent basis and includes a person who has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial establishment, including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal strike) or involuntary closure of the establishment."

The respondent does not answer the said description.

The learned Tribunal had not arrived at a finding of fact that the respondent No. 2 herein was engaged on a permanent basis. The contention of the petitioner herein, as noticed hereinbefore, is that he was appointed only for a period of 3 months and not on a permanent basis, thus, the learned Tribunal failed to exercise its jurisdiction insofar as it failed to consider the contention of the petitioner herein.

For the views we have taken, it is not necessary for us to decide as to whether the establishment of the petitioner would come within the purview of the provisions of the said Act or not.

12. In this view of the matter, the impugned judgment cannot be sustained, which is set aside accordingly.

13. However, before parting with this case, we may notice that respondent No. 2 herein was to be directed to be paid 50% of the last drawn wages during the pendency of the petition by an order dated 17.12.1985. Allegedly, he had been taken back. He died in November, 1988 and his heirs and legal representatives were substituted as parties in his place. Having regard to the fact that respondent No. 2 has died, we are of the opinion that any amount paid to him or to his heirs and legal representatives may not be recovered.

14. This writ petition is accordingly disposed of with the aforementioned observations and directions without any order as to costs.