
(2012) 03 DEL CK 0145

In the Delhi High Court

Case No : LPA 113 of 2012, CM No. 2765 of 2012 (for stay) and CM No. 2767 of 2012 (for exemption)

New Delhi Municipal Council

APPELLANT

Vs

Parveen Chand Sharma

RESPONDENT

Date of Decision : 22-03-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 25F

Citation : (2012) 3 AD 594 : (2012) 189 DLT 176 : (2012) 134 FLR 217

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

Bench : Division Bench

Advocate : Rajesh Mahajan, for the Appellant; J.S. Malik and Ms. Manju Jana, for the Respondent

Judgement

A.K. Sikri, Acting Chief Justice

CM No. 2766/2012 (for condonation of delay in filing the appeal)

For the reasons stated, the delay in filing the appeal is condoned. Cost of Rs. 15,000/- shall be paid to the respondent workman within one week. The application is disposed of.

LPA 113/2012

1. The respondent herein was appointed as a Daily Wager by the appellant NDMC on 12.05.1987. He worked upto 05.03.1988 and whereafter he was not taken on duty. The respondent raised an industrial dispute which was referred to the Industrial Tribunal No. I, Tis Hazari Courts for adjudication with the following terms of reference:

Whether the termination of services of Sh. Parveen Chand Sharma is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

Defence of the appellant was that the respondent was a Daily Wager who had

worked intermittently during the aforesaid period and the total number of days he worked was 236. According to the respondent he had worked continuously for more than 240 days and his services could not have been dispensed with without complying with the mandatory requirement of Section 25F of the Industrial Disputes Act, 1947 and since no compensation or notice/compensation in lieu of notice was given to him before dispensing with his services, such a termination was illegal.

2. The Industrial Tribunal passed the award dated 02.08.1996 in favour of the respondent holding that the respondent had worked for more than 240 days and since provisions of Section 25F of the I.D. Act were not complied with, such a termination was illegal. The respondent was directed to be reinstated in service with full back wages.

3. The appellant challenged this award by filing W.P.(C) No. 1171/1997 in this Court. The said writ petition was admitted and stay of the impugned award was granted. This writ petition was dismissed in default on 03.02.2005. On application made by the appellant, the writ petition was restored vide order dated 12.09.2007. The respondent workman moved an application u/s 17B of the Industrial Dispute Act, 1947 and at that stage, the learned Single Judge heard the writ petition finally and dismissed the same vide order dated 20.07.2011.

4. On merits, it was argued by the appellant that the respondent workman had worked only for 236 days and in support of this contention the appellant had produced photocopies of the Muster Roll Card pertaining to the respondent workman. The Industrial Tribunal did not accept the photocopies and since the original of the Muster Roll Card was not produced, this evidence was discarded by the Industrial Tribunal and the learned Single Judge affirmed the aforesaid view of the Industrial Tribunal. The Industrial Tribunal had gone by the report of the management witness MW-2 as per which the respondent workman had completed 240 days of service. However, when he entered the witness box, MW-2 had taken the stand that the aforesaid report was wrong and this finding is affirmed by the learned Single Judge.

5. In this intra-court appeal filed by the appellant assailing the aforesaid order of the Industrial Tribunal, it is argued by the learned counsel for the appellant that the Industrial Tribunal and the learned Single Judge did not take into consideration the Muster Roll Card as per which the respondent workman had actually worked for 236 days only. According to him, illegality is committed in returning the finding merely on the basis of the report of the management witness which was wrongly prepared and the Industrial Tribunal should have taken into consideration the Muster Roll Card which was the clinching evidence and even the respondent workman had relied only on the said Muster Roll Card. In the alternative, it is argued by the learned counsel for the appellant that in any case in a matter like this where the respondent workman was engaged on daily wage basis and had worked for even less than one year that too way back in the year 1987-88, relief of reinstatement should not have been granted by the

Industrial Tribunal or upheld by the learned Single Judge.

6. Learned counsel for the respondent workman on the other hand relies upon the findings of the Industrial Tribunal as well as the reasons given by the learned Single Judge affirming the said findings. He further submits that the respondent workman has been agitating the aforesaid matter for the last number of years and has not reaped the fruits of the award rendered by the Industrial Tribunal so far and for this reason, the relief of reinstatement granted should not be interfered with.

7. Insofar as the question of number of days for which the respondent workman worked, we are of the opinion that it is a finding of fact recorded by the Industrial Tribunal; moreover on the ground that original Muster Roll Card was not produced by the appellant. Therefore any finding of fact is not to be interfered with in this appeal that is affirmed by the learned Single Judge as well.

8. However, we are convinced with the alternative plea taken by the learned counsel for the appellant that even if the case of the respondent workman is accepted; he had barely worked for 240 days and the period is 12.05.1987 to 05.03.1988; he was working only on daily wage basis; 24 years have elapsed since the services of the respondent workman was dispensed with. In these circumstances, going by the catena of judgments of the Supreme Court and the recent trend, we are of the opinion that the respondent workman may not be entitled to relief of reinstatement.

9. We may also record at this stage that the writ petition was filed in the year 1997. Notice thereof was served upon the respondent workman and the respondent workman put in appearance through counsel sometime in the year 1997 itself. However no application u/s 17B of the I.D. Act was filed at that time. This application was filed only in the year 2011. In this application, learned Single Judge passed order dated 04.05.2011 making categorical observation that such an application has been filed after 14 years of the filing of the writ petition. It was also observed that inspite of directions on 13.01.2011, the additional affidavit had not been filed by the respondent workman. It was on this basis that the Single Judge decided to hear the writ petition finally.

10. While considering the quantum of compensation, we have also to keep in mind the circumstances in favour of the respondent workman viz. though the Labour Court award was rendered in the year 1996 whereby reinstatement with back wages was granted, the respondent workman has not been able to reap the benefit thereof even in the form of payment of back wages. He has been litigating for 24 years. Placing the equities on both sides, we are of the opinion that compensation in the sum of Rs. 5,00,000/- to be paid to the respondent workman in lieu of reinstatement with back wages would be just and equitable. The impugned award of the Industrial Tribunal and the order of the learned Single Judge are modified to that effect. The amount shall be paid within six weeks. The appeal stands disposed of.