
(2013) 01 DEL CK 0215
In the Delhi High Court
Case No : W.P. (C) 3366/2008

Om Prakash and Others

APPELLANT

Vs

Old Village Industries Ltd.

RESPONDENT

Date of Decision : 07-01-2013

Acts Referred:

Citation : (2013) 1 AD 768

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Judgement

Mukta Gupta, J.—By the present petition, the Petitioners challenge the award dated 21st January, 2008 passed by the learned Presiding Officer, Labour Court in the industrial dispute ID No. 225/2006 wherein the learned trial court awarded a compensation of Rs. 35,000/- each in favour of Petitioner Nos. 1 and 3 and a compensation of Rs. 40,000/- in favour of the Petitioner No. 2 in lieu of reinstatement and full back wages. Learned counsel for the Petitioners contends that the learned trial court, while passing the award, has failed to consider that the workmen/Petitioners had worked with the Management for quite sometime. Learned Labour Court wrongly placed reliance on Employers, Management of Central P and D Inst. Ltd. Vs. Union of India (UOI) and Another, , Pramod Kumar and Another Vs. The Presiding Officer and Another, and Indian Hydraulic Industries Pvt. Ltd. Vs. Kishan Devi and Bhagwati Devi and Others, while passing the impugned award. These judgments would not justify the compensation amount awarded in the present case as the facts of these cases are quite different from that of the present case. In Employers, Management of Central P & D Industries Ltd. (supra) the Hon'ble Supreme Court awarded the compensation of Rs. 25,000/- to the employee when he refused to join duty despite reinstatement and had joined somewhere else. In Pramod Kumar (supra) the workmen had worked for only two years with the Management hence a compensation of Rs. 50,000/- was awarded and lastly in Kishan Devi (supra) compensation to the tune of 50% back wages was granted where the workmen were part time sweepers for two hours a day. However, in the present case the

Petitioner Nos. 1 and 3 had worked for approximately nine years with the Respondent and petitioner no. 2 for approximately eleven years and in such a case, awarding such a meager compensation is neither proper nor justified. Looking at the service rendered by the workmen, the compensation should have been of a substantial amount. Even in the case where the industry was declared as a sick unit, the Hon?ble Supreme Court had awarded a compensation for a sum of Rs. 2,00,000/- in lieu of reinstatement and back wages. Reliance is placed on Talwara Coop. Credit and Service Society Ltd. Vs. Sushil Kumar, in support of this contention. Learned counsel further contends that the Management has failed to prove that the workmen had remained unauthorizedly absent from their duties from 3rd April, 1999. The workmen had not participated in the strike on 4th April, 1999 and in fact they were not allowed to join on duty by the Management. It is lastly contended that before the learned Trial Court the Management/Respondent has nowhere stated that it has closed its manufacturing activities and there are no employees on the roll of establishment since then. In fact the Management is continuously running its manufacturing unit and exporting readymade garments business. It has also various sister concerns in various parts of Delhi and the documents/letters produced by the Management along with their counter affidavit are forged and fabricated.

2. The pleadings in this matter are complete. On 21st October, 2010 since none had appeared for the parties, the matter was dismissed for non-prosecution. Thereafter an application was filed by the petitioner seeking restoration of the present petition in which notice was finally served on the Respondent Management by substituted mode through publication. Despite service, none had appeared for Respondent on 8th August, 2012. Hence the application for restoration of the petition was allowed and the matter was posted for hearing on 10th October, 2012. On the said date also none had appeared for the Respondent hence the Management was proceeded ex-parte.

3. I have heard learned counsel for the Petitioner and perused the Trial Court record.

4. Briefly the case of the Petitioners is that Petitioner Nos. 1 and 3 joined the services of the Management as cutter man and thread cutter respectively in the year 1990 and petitioner No. 2 joined the Management as a karigar on 24th December, 1987. On 4th April, 1999 their services were terminated by the Management without any notice, charge sheet or enquiry. Thereafter, the workmen served a demand notice dated 27th March, 2000 seeking reinstatement with back wages, however, this notice was not replied by the Management. Statement of claims was filed before the conciliation officer, however, on the failure of the conciliation proceedings the matter was referred for adjudication by the appropriate government on the following terms of reference:

Whether the services of S/Smt. Prem Suman, Varsha Lamba and Sh. Om Prakash have been terminated illegally and/or unjustifiably by the Management and if so, to what relief is he entitled and what directions are necessary in this respect?

5. Petitioner No. 1 has in his evidence by way of an affidavit stated that he joined the services of the Management in the year 1990. However, his ESI card shows the date of his joining as 1st August, 1991 which is exhibited as Ex. WW1/1. His services were terminated on 4th April, 1999 without giving any reason, notice or inquiry. The demand notice dated 28th March, 2000 exhibited as Ex. WW1/3 was never replied by the Management. In his cross-examination he has stated that although there was a strike on 4th April, 1999 however, he had not participated in it. Even after 4th April, 1999 he had worked with the Management at a unit in Gurgaon. Likewise Petitioner Nos. 2 and 3 in their evidence by way of affidavit before the trial court exhibited as Ex. WW2/A and WW3/A respectively have stated that their services were illegally terminated by the Respondent Management on 4th April, 1999. They have also exhibited demand notice dated 28th March, 2000 Ex. WW1/3 jointly sent with petitioner no. 1 which was not replied by the Management. Further in their cross-examination both, these workmen have stated that although they were aware of the existence of a strike/demonstration on 4th April, 1999, however, they did not participate in the same.

6. MW1 Sh. Viklesh Kumar has in his evidence by way of an affidavit before the trial court stated that the petitioner workmen had gone on a strike without any reasonable cause and justification and the report of the same was sent to the competent authority. Thereafter on 4th April, 1999 they had absented themselves without intimation or sanction of leave and abandoned their services. In his cross-examination he has denied that the Management had terminated the services of the workmen. He further stated that the workmen were orally asked to join duties and further that the workmen who were on strike were paid their dues by the Management in full and final. MW1 has admitted that the Management has neither issued any charge sheet nor letter to the workmen nor has filed any list of workmen who went on strike on 4th April, 1999 however, he denied that the company of the Management is still running at the same premises.

7. It is the consistent case of the workmen that the Management had terminated their services on 4th April, 1999 without giving notice, charge sheet or conducting an inquiry and as such their termination is illegal. On the other hand, Management has before the trial court submitted that the workmen had abandoned their employment at their own free will and have been in gainful employment ever since. Further they had participated in the strike on 4th April, 1999 and thereafter failed to resume their duties. However, the Management has not produced any evidence to show that the workmen had voluntarily abandoned their services. In fact, MW1 has in his cross-examination admitted that no list of workmen who went on strike had been produced before the trial court. He also stated that Management had neither issued any charge sheet nor any letter to the workman. In his evidence by way of an affidavit MW1 has stated that the report of the strike was sent to the competent authority, however, the said report was also not exhibited as evidence. Clearly the Management has failed to discharge the onus to prove abandonment of services by the workmen. Further

in the written statement it was stated that the workmen had absented themselves from 4th April, 1999 and thus it was presumed that they were not interested to resume their duties. However, the Management has not shown any reason of such a presumption especially in the case when no evidence is produced to show that the Management had taken all necessary steps from its side to make sure that the workmen resumed duties by sending call back notices to the said workmen. On the other hand, the Petitioners have produced a demand notice dated 28th march, 2000 Ex. MW1/3 asking the Management to take them back on duties which the Respondent never replied to. In such a case, Management cannot justify its action of removal of services of the Petitioners. Further the management has not assailed the findings of the Trial Court that the services of the Petitioners were terminated in contravention of the provisions of Industrial Disputes Act.

8. Further MW1 has before the trial court denied that company of the Management is running at the same premises. However, no evidence is produced on record before the learned labour court and only now, in the present petition, the Respondent has annexed two letters, one dated 26th August, 2003 addressed to the Regional Director, ESI Corporation and the other dated 10th September, 2003 to the Officer In Charge, Sub-account Officer, EPF Origination in which the factum of closure of the manufacturing activities of the establishment with effect from 30th November, 2002 and that no employees are taken on their roll ever since is mentioned. However, the said two documents are contested by the Petitioners as forged, fabricated and procured one and it is submitted by the petitioner that the Management is continuously running its manufacturing and has various concerns in different parts of Delhi. Even if the said documents are presumed to be forged and fabricated, it would not entitle the workmen automatically to the relief of reinstatement with the Management. It is now settled that in a case of illegal termination, reinstatement with full back wages would not follow as an automatic consequence and a number of factors are to be looked at while granting this relief. This court in *Rajesh Wire Industries Vs. Shri Umesh and Another*, held:

15. This Court is of the view that although the termination of services of the Respondent/workman was rightly held to be as illegal and unjustified but keeping in view the facts of the present case, the Labour Court ought not to have granted reinstatement and the payment of full back wages. This is on account of the fact that there are number of factors which ought to be taken into consideration while directing reinstatement and it should not be automatic or ipso facto on account of holding that the termination is unjustified and illegal. The facts because of which the reinstatement ought not to have been ordered are the facts that the Respondent/workman services were terminated in the year 1996 and since then more than 12 years have lapsed. The long gap of period between the termination and the reinstatement will only add ultimately to the unrest rather than industrial peace in the organization because there would be lack of trust between the employer and the employee.

9. Since the workmen were terminated in the year 1999 and they have not been able to show that the establishment is still continuing its business, the relief of reinstatement would not be justified. Keeping in view the fact that the workmen have worked for a substantial number of years with the Respondent, I am of the view that ends of justice would be met if the compensation awarded by the learned Trial Court is enhanced to Rs. 2,00,000/- each to the Petitioners. It is ordered accordingly. The Respondent is directed to pay compensation of Rs. 2 lakhs each to the Petitioners herein within 8 weeks. The petition is disposed of accordingly.