
(2009) 09 DEL CK 0233

In the Delhi High Court

Case No : Writ Petition (C.) No. 11312 of 2009

Pramod Kumar and Others

APPELLANT

Vs

Continental Telepower Industries Ltd.

RESPONDENT

Date of Decision : 01-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25(F)

Citation : (2009) 09 DEL CK 0233

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : K.B. Hina, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.

C.M. No. 10874/2009 in W.P.(C.) No. 11312/2009

Exemption as prayed for is granted subject to all just exceptions.

W.P.(C.) No. 11312/2009

1. The workmen, who are four in number, have filed this writ petition seeking to challenge an industrial award dated 21.08.2008 passed by the Industrial Adjudicator awarding them compensation of Rs. 1,00,000/-, Rs. 80,000/-, Rs. 60,000/- and Rs. 60,000/- respectively to each one of them in lieu of their claim for reinstatement and back wages for alleged termination of their services by the management of the respondent w.e.f. 26. 12.2005.

2. Heard.

3. The petitioners were appointed by the management of the respondent to the post of Insulation Operator on different dates between 1989 to 2001. They alleged termination of their services by the management of the respondent w.e.f.

26.12.2005 and had raised an industrial dispute with regard to their termination before the Labour Court. The petitioners in their statement of claim filed before the Labour Court had claimed their reinstatement with back wages.

4. The respondent had contested the claim of the petitioners before the Labour Court on two grounds, namely, (i) that the petitioners had abandoned the services of the respondent w.e.f. 16.12.2005, and (ii) that the establishment of the respondent was closed down w.e.f. 31.03.2006. 5. On the pleadings of the parties, the Labour Court had framed following issues on 10.07.2006:

(i) Whether the workmen had abandoned the job themselves w.e.f. 16.12.2005 and did not report for duty as claimed in preliminary Objection No. 1 of the written statement?

(ii) Whether the management has been closed w.e.f. 31.03.2006, if so, its effect?

(iii) Whether the services of the workmen have been terminated illegally and unjustifiably?

6. The Labour Court, on the basis of evidence produced before it, did not accept the plea of the management that the petitioners had abandoned its service w.e.f. 16.12.2005 as alleged by it and have returned finding on Issue No. (i) in this regard against the management. However, the Labour Court accepted the plea of the management that it had closed its establishment w.e.f. 31.03.2006 and accordingly returned findings on this point in favour of the management while deciding the Issue No. (ii). As the Labour Court found that termination of the petitioners from the service of the respondent was contrary to the provisions of Section 25(F) of the Industrial Disputes Act, 1947, the Court below awarded different amounts of compensation in favour of each of the petitioners depending upon the length of their service before their termination and the last drawn wages which they were getting prior to their termination. The petitioner No. 1 was awarded compensation of Rs. 1,00,000/-, the petitioner No. 2 was awarded compensation of Rs. 80,000/- and the petitioners No. 3 and 4 were awarded compensation of Rs. 60,000/- each.

7. The petitioners being the workmen have not challenged the findings of the Labour Court on Issue No. (ii) regarding closure of the establishment of the respondent w.e.f. 31.03.2006. Ms. K.B. Hina, learned Counsel appearing on behalf of the petitioners, on being asked, could not point out anything on record to show that the establishment of the respondent was not closed w.e.f. 31.03.2006 as decided by the Labour Court in favour of the management.

8. In U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, , it was held by the Hon'ble Supreme Court that in a case where the establishment was closed by the management, the workman on being found to be illegally terminated, is entitled only for wages for the period between the date of his termination and the date of the closure of the establishment.

9. In the present case, the petitioners were terminated on 26.12.2005 and the

establishment of the respondent was closed down shortly thereafter w.e.f. 31.03.2006. The petitioners in that situation would have been entitled only for wages of around three months besides Notice Pay of one month in terms of Section 25(F) of the Industrial Disputes Act, 1947.

10. In *Telecom District Manager and Others Vs. Keshab Deb*, , it was held by the Hon"ble Supreme Court as under:

Even in a case where an order of termination is illegal, an automatic direction for reinstatement with full back wages is not contemplated. He was at best entitled to one month's pay in lieu of one month's notice and wages of 15 days of each completed years of service as envisaged u/s 25-F of the Industrial Disputes Act. He could not have been directed to be regularized in service or granted any given a temporary status. Such a scheme has been held to be unconstitutional by this Court in *A. Umarani Vs. Registrar, Cooperative Societies and Others*, and *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, .

11. Having regard to the facts and circumstances of the case and the law laid down by the Hon"ble Supreme Court in the above-mentioned judgments, by no means it can be said that the compensation awarded by the Industrial Adjudicator to the petitioners in lieu of their claim for reinstatement and back wages, is inadequate.

12. In the facts and circumstances of the case, I do not find any perversity in the impugned award that may call for an interference by this Court in exercise of its extraordinary discretionary writ jurisdiction under Article 226 of the Constitution of India. This writ petition, therefore, fails and is hereby dismissed in limine.