
(2011) 11 DEL CK 0061
In the Delhi High Court
Case No : Writ Petition (C) 1956 of 2008

Prasar Bharati

APPELLANT

Vs

L.B. Narula

RESPONDENT

Date of Decision : 14-11-2011

Acts Referred:

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

Citation : (2011) 11 DEL CK 0061

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Gaurang Kanth, for the Appellant; Garima Bhardwaj, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the award dated 29.07.2007 of the Industrial Adjudicator on the following reference:

Whether the contract awarded by the management of Chief Engineer, Civil Construction Wing, All India Radio, New Delhi to M/s Om Prakash, Malikpur, Tagore Park, New Delhi, is sham? If so, whether the demand of Sh. L.B. Narula for reinstatement in the establishment of Chief Engineer, Civil Construction Wing, All India Radio, New Delhi is justified? If so to what relief the workman is entitled to.

and directing the petitioner to reinstate the respondent workman along with 50% back wages with effect from the date of termination.

2. Notice of the petition was issued and vide ex parte order dated 12.03.2008, the operation of the impugned award and proceedings initiated by the respondent workman for implementation thereof stayed subject to the petitioner depositing a sum of Rs.2,00,000/- in this Court. The respondent workman applied u/s 17B of the Industrial Disputes Act, 1947 and which application was allowed vide order dated 28.10.2009 though in the absence of the petitioner. Thereafter on 24.11.2009, the writ petition was dismissed in default. Restoration

was applied for and allowed. The petitioner has also applied for recall of the order u/s 17B. Counter affidavit has been filed by the respondent workman. Counsels have been heard.

3. It is not in dispute that the respondent workman was on 20.12.1992 engaged as a Project Operator during the International Film Festival and worked till 23.10.1999.

4. The respondent workman along with another had in or about the year 1996 filed OA No.1426/1996 before the Central Administrative Tribunal (CAT) claiming, that he had been engaged as Assistant Project Operator and was being paid his salary first by the Director, Film Festival and thereafter by the Civil Construction Wing of the All India Radio (AIR); though it was proposed to create regular post but the same had not been done. The petitioner, in the said OA thus sought the relief of being allowed to continue as a casual employee till the creation of the post and to be considered for being absorbed as a permanent employee. It was the plea of the petitioner then that no regular post had been created; that it had never engaged the respondent workman; that the respondent workman had in fact been engaged by the Contractor appointed by the petitioner.

5. The said OA No.1426/1996 was disposed of vide order dated 13.05.1997 of CAT. The said order records that the respondent workman had admitted in the OA that he had been engaged by the Contractor. The order however further records that there was some ambiguity as to whether the respondent workman was then working as a casual employee directly engaged by the petitioner or as an employee of the contractor; that it appeared that the engagement initially of the respondent workman was through the Contractor but the wages were being paid to him directly by the petitioner. The CAT in view of the statement of the petitioner that no post had till then been created disposed of the said OA with a direction to the petitioner that in case regular post were created, the petitioner should consider the respondent workman therefore subject to the respondent workman fulfilling the requisite minimum qualifications; direction was also issued for giving relaxation in age to the respondent workman.

6. The respondent workman filed another OA No.19996/1999 before the CAT seeking regularization in service. During the pendency thereof, the respondent workman was disengaged. The CAT dismissed the said OA vide order dated 01.02.2000 as being barred by res judicata and giving liberty to the respondent workman to move the Labour Court against the order of his removal.

7. Aggrieved from the aforesaid, the respondent workman filed W.P.(C) No.3032/2000 which was dismissed in limine vide order dated 16.11.2000.

8. It appears that thereafter the respondent workman raised the dispute on which the reference aforesaid came to be made.

9. The Industrial Adjudicator has in the award impugned in this petition, for the reason of:

- (i) the Duty Pass issued by the petitioner to the respondent workman not mentioning that the respondent workman had been engaged through Contractor;
- (ii) the Duty Card mentioning the designation of the respondent workman as Assistant;
- (iii) the issuance of appreciation letters by the petitioner to the respondent workman, again not mentioning that he had been engaged through any Contractor;
- (iv) the petitioner having not produced any agreement with the Contractor through whom the respondent workman was claimed to have been engaged; and
- (v) the witness of the petitioner having, inspite of cross examination, not produced records pertaining to payment to the contractor.

held that the contractor through whom the respondent workman was claimed to have been engaged was a camouflage, smokescreen and disguise. The Industrial Adjudicator held that it was not in dispute that the respondent workman had worked for the petitioner from 1992 till 1999 and that his termination was in violation of Section 25F of the Industrial Disputes Act, 1947. It was further held that in the circumstances aforesaid the work for which the respondent workman was engaged was of perennial nature. Accordingly, a finding of a relationship of employer and employee between the parties was returned and the respondent workman held entitled to reinstatement.

10. It is the plea of the petitioner, that the award is inconsistent with the decisions aforesaid of CAT which has attained finality; that the respondent workman had indulged in bench hunting tactics; that while the decisions of CAT proceeded on the premise that the respondent workman had been engaged by a contractor, the Industrial Adjudicator has held the respondent workman to be an employee of the petitioner.

11. I may mention that the Industrial Adjudicator has also held the contract labour to be prohibited. A large part of the writ petition is devoted to the challenge to the said finding of the Industrial Adjudicator. Though there is merit in the said challenge by the petitioner inasmuch as there is nothing on record to show that the contract labour in the field of Project Operators was prohibited but the same would not be relevant for decision of this writ petition inasmuch as the finding of the Industrial Adjudicator of the existence of employer employee relationship between the parties is de hors the same.

12. The only challenge by the petitioner to the aforesaid finding is on the ground of the order(s) of CAT and of this Court in writ petition preferred against the said order.

13. I am however unable to find any case of inconsistency. The CAT in the order dated 13.05.1997 in the first OA preferred by the respondent workman did not return any conclusive finding as to whether the respondent workman was directly

engaged by the petitioner or through a Contractor, though noted the admission of the respondent workman in the OA of having been engaged through the Contractor. This was so noted in the order dated 01.02.2000 in the second OA also. Rather in the order in the second OA, liberty was expressly granted to the respondent workman to move the Labour Court. The said order was maintained in the order dated 16.11.2000 (supra) of this Court also in the writ petition filed by the respondent workman.

14. It is not as if the respondent workman while raising the dispute, disputed having been initially engaged through a Contractor. Rather the reference itself was as to whether the same was a sham and a camouflage. The Industrial Adjudicator has returned a finding of fact of the contract pleaded by the petitioner being sham and camouflage. Such finding of fact of Industrial Adjudicator is ordinarily not subject to interference in exercise of powers of judicial review unless shown to be perverse. No case of perversity has been pleaded or argued. The Industrial Adjudicator has recorded that the petitioner neither produced any agreement with the Contractor through whom the respondent workman was pleaded to have been engaged nor led any evidence to otherwise show relationship with the Contractor. It was asked from the counsel for the petitioner during the hearing also whether any contract or other evidence to show such contractual relationship can be shown; nothing has been forthcoming. Thus the said finding cannot be interfered with.

15. Once the conclusion of relationship of employer and employee between the parties is established, it is not in dispute that the provisions of Section 25F of the ID Act were not complied with. No error can thus be found in the finding of the Industrial Adjudicator holding the termination to be illegal and directing the petitioner to reinstate the respondent workman.

16. I am however of the opinion that the relief granted by the Industrial Adjudicator to the respondent workman needs modification. It is felt that considering:

- (i) that the respondent workman was a casual employee engaged for a job for which no post existed;
- (ii) the respondent workman has not worked for the petitioner for the last nearly 12 years;
- (iii) there has been complete overhaul in the interregnum of AIR in which the respondent workman was casually employed;
- (iv) it being not deemed expedient to burden the petitioner with the respondent workman when it has no use for his services; and
- (v) the change in technology owing whereto the need for Projector Operators may have disappeared,

the relief of reinstatement with back wages is not the appropriate relief and

compensation in lieu thereof be awarded.

17. I may also mention that the petitioner in its application for recall of the order u/s 17B has pleaded that the respondent workman has been found to be running his own business of a tea shop; the petitioner in proof thereof has filed a DVD of video clip purportedly showing the respondent workman carrying on the said business. The said averment of the petitioner, a Public Sector Undertaking, is believable inasmuch as the respondent workman cannot be expected to have remained without any vocation for the last over 12 years.

18. Considering the aforesaid aspects and particularly that of the respondent workman having worked with the petitioner for seven years, compensation of Rs.4,00,000/- inclusive of the amounts u/s 17B of the Act which do not appear to have been paid is found appropriate.

19. The petition is therefore partly allowed to the aforesaid extent and is disposed of. The Registry to after four weeks hereof release in favour of the respondent workman the amount of Rs.2,00,000/- deposited by the petitioner as aforesaid in this proceeding together with up to date interest accrued thereon. The petitioner to within eight weeks hereof pay to the respondent workman, the balance out of the compensation of Rs.4,00,000/- after adjusting the amount so received by the respondent workman failing which the petitioner besides other remedies of the respondent workman shall also be liable for interest thereon at the rate of 10% per annum.

No order as to costs.