

(2021) 11 DEL CK 0061

In the Delhi High Court

Case No : Civil Writ Petition No. 9182, 9183, 9184, 9186, 9187, 9188, 9189, 9190, 9191, 9194, 9195, 9196 Of 2019, Civil Miscellaneous Application No. 525 Of 2020, 526 Of 2020

Pratap Singh

APPELLANT

Vs

Jaspal Kaur Public School And Anr.

RESPONDENT

Date of Decision : 12-11-2021

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25F(a), 25F(b), 25F(c)
Delhi School Education Act, 1973 — Section 2(h), 8(2), 10

Citation : (2021) 11 DEL CK 0061

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Yashaswi S.K. Chocksey, Mukesh Kumar, Anil Bhat

Final Decision : Dismissed

Judgement

Prathiba M. Singh, J

1. This hearing has been done through video conferencing.
2. The present petitions have been filed challenging the impugned orders dated 3rd May 2019, passed by the Presiding Officer, Labour Court, Rouse Avenue Court Complex, New Delhi, vide which, the applications filed by the Management for rejecting the claim of the Workmen have been allowed, and the claims of the workmen have been dismissed as not maintainable.
3. Ld. counsel for the Petitioners submits that the Petitioners have been non-suited on the ground of res-judicata. He submits that the Labour Court could not have considered the said plea of res-judicata at the initial stage. Ld. Counsel relies upon the judgment of the Supreme Court in Srihari Hanumandas Totala v. Hemant Vithal Kamat and Ors. (Civil Appeal No. 4665/2021, decided on 9th August 2021), to argue that res-judicata ought to be a plea which should have been considered after all the pleadings are complete and issues are framed in the

matter before the Labour Court.

4. Ld. Counsel appearing for the Respondent-School has, on the other hand, taken the Court through the previous round of proceedings before the Education Tribunal and the resultant orders passed in the writ petition bearing W.P.(C) 4335/2017 titled Rampal Singh v. The Director of Education and Anr. and the consequent LPA, bearing LPA No. 611/2017 to argue that the question of retrenchment under Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred as "the Act"), has already been adjudicated by this Court. He submits that the same ground which is sought to be alleged in these writ petitions, has already been raised, considered and decided. According to him, the Petitioners are attempting to obtain a second chance in respect of the same very objections to argue that the retrenchment is illegal, and the Labour Court has rightly held that the claims of the Workman are not maintainable.

5. Heard Id. counsels for the parties and perused the record. A perusal of the Id. Single Judge's order dated 19th May 2017 in W.P.(C) 4335/2017 titled Rampal Singh v. The Director of Education and Anr., and connected matters, which involve the very same Petitioners, shows that the issue considered by the Id. Single Judge in that case was as to whether there was proper adherence to provisions of Section 25F of the Act, prior to the retrenchment of the Petitioners. On this issue, the findings of the Id. Single Judge are as under:

"4. The only plea urged by the learned counsel for the petitioners is that the respondents have not complied with the provisions of Section 25F(c), which reads as under:-

"(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

5. He states, that it was required for the School to give notice to the appropriate Government in a particular format.

6. On a specific query to the learned counsel for the petitioners as to whether such a plea was taken before the Tribunal in the manner now urged by him, the answer is in the negative. He also states that the plea is purely a legal issue and can be considered by the Court in these Writ Proceedings. I am unable to agree with the only submission made by the learned counsel for the petitioners, inasmuch as there was no plea before the Tribunal in the manner it has been urged by the learned counsel before me. The ground with regard to Section 25F was in the following manner:

"because the respondent No.2 retrenched the appellant under Section 25(f) of ID Act but appellant come under Section 2(h), 8(2) and 10 of the Delhi School Education Act, 1972 ".

7. I note, that in reply to the Appeal before the Delhi School Tribunal, the School respondent No.2 has contended as under;-

"XXXX XXXX XXXX

The respondent No.2 strictly complied with all the requirements in respect of the retrenchment for issuance of the necessary notice to the Appropriate Government. XXXX XXXX XXXX XXXX"

8. There is no rebuttal to this stand of the respondent No.2 in rejoinder wherein the petitioners have only stated as under;-

"That the contents of para 7 of the preliminary objection are wrong and denied. However the respondent No.2 with a malafide intention made all the driver including the appellant on the road by retrenchment, they even did not follow the Rule and Regulation of DSE Act. "

9. In view of the aforesaid, it must be held that Section 25F(c) has been followed. I may also state here on a specific query to the learned counsel for the petitioners that whether requirement under Section 25F(a) and Section 25F(b) have been complied with by the respondent No.2, the answer was in the affirmative. In other words, the compensation has been rightly given to the petitioners with proper notice. The following are the details of the compensation received by each of the petitioners in this batch of writ petitions:-

S.NO.

W.P.(C)

DATE OF

RETRENCHMENT/TERMINATION

COMPENSATION

1.

4308/2017

May 31,2016

Rs.9,85,349/-

2.

4335/2017

May 31, 2016

Rs. 13,39,883/-

3.

4370/2017

May 31,2016

Rs.7,21,560/-

4.

4314/2017

May 31,2016

Rs.5,93,411/-

5.

4307/2017

May 31,2016

Rs.7,45,050/-

6.

4317/2017

May 31,2016

Rs. 10,53,676/-

7.

4319/2017

May31,2016

Rs.6,29,340/-

8.

4344/2017

May 31,2016

Rs.11,11,160/-

9.

4328/2017

May 31,2016

Rs.7,44,180/-

10.

4325/2017

May 31,2016

Rs.7,49,994/-

10. I may also note, the learned counsel for the petitioners has referred to the judgment of the Supreme Court in the case reported as (2016) 6 SCC 541 Raj

Kumar v. Directorate of Education to contend that provisions of Section 25F need to be followed scrupulously. There is no dispute on the said proposition. As concluded by the Delhi School Tribunal that provisions of Section 25F have been followed, with which I concur, I do not see any merit in the only plea urged by the learned counsel for the petitioners. The writ petitions are accordingly dismissed. No costs."

6. This judgment was carried in appeal before the Division bench, where vide order dated 15th September 2017, the LPA, bearing LPA No. 611/2017, was withdrawn by the Petitioners, and liberty, as sought, was granted in the following terms.

"It is pointed out that the limited ground urged in this appeal is that the learned Single Judge despite noticing that the provisions of Section 25 F(c) of The Industrial Disputes Act, 1947 have not been complied with and further noticing that the pleadings in that regard did not support arguments, proceeded to render findings. It is submitted therefore that the appellant / workman may be permitted to withdraw the present appeal with liberty to pursue remedy in accordance with law under The Industrial Disputes Act, 1947. Liberty granted. This appeal and pending application are accordingly dismissed as withdrawn."

7. A perusal of the above paragraph of the order of the Division Bench shows that, first, the submission of Id. Counsel for the Appellants therein was that the Id. Single Judge had held that provisions of Section 25F of the ID Act had not been complied with, whereas in fact, the Id. Single Judge holds the contrary, which is clear from the reading of the first sentence of paragraph 9 of the order of the Id. Single Judge. In any event, the liberty to withdraw, which was granted to the Appellants, was to be exercised in accordance with law.

8. A perusal of the order of the Id. Single Judge dated 19th May 2017 shows that the Petitioners' counsel raised the issue regarding Section 25F compliance in the writ petition. The same was considered by the Court. The order is clear and categorical to the effect that there was complete compliance of Section 25F of the Act. The Id. Single Judge has given clear findings to the effect that compensation has been paid and the amounts of the compensation have also been mentioned. They were given proper notice and all the requirements were complied with. In fact, the pleadings of the Petitioners have also been extracted to show the fact that compliance of 25F of the Act has been done, and the same was even not denied by the Petitioners herein.

9. The Labour Court, in the impugned order, has held that once the Id. Single Judge had held that the Section 25F of the Act is duly complied with, the claims are not maintainable. The relevant findings of the Labour Court are as under:

"...The fact remains the Hon'ble Single Judge of the Hon'ble High Court of Delhi has given a categorical and detailed finding that the compliance under Section 25F of the Industrial Disputes Act, 1947 has been duly followed by the management. Keeping in view all these facts and circumstances, this court

cannot pass an award with a finding on the retrenchment when the same has already been decided and upheld by the Hon'ble Single Judge of the Hon'ble High Court of Delhi. Further, the said finding has not been set aside by the Hon'ble Division Bench of the Hon'ble High Court of Delhi and has thus attained finality and cannot be re-agitated before this court. Further, this court is also in agreement with the judgment relied upon by Ld. AR for management i.e. Chairman and Managing Director, The Fertilizers And Chemicals Tranvancore Ltd. & Anr. Vs. General Secretary FACT Employees Association & Ors. (supra) and since the issue in question has already been decided by a competent court i.e. Ld. Delhi School Tribunal, the claim of the claimant also suffers from the Principals of res-judicata and the claimant cannot be permitted in law to re-agitate the same issue before this court. Therefore, keeping in view all these facts and circumstances, the application of the management is allowed and the claim of the claimant is rejected being not maintainable."

Once the Id. Single Judge had held that there was compliance of Section 25F of the Act, the Labour Court has inevitably followed the said judgment. The Labour Court rightly holds that the finding of the Id. Single Judge has attained finality.

10. In respect of the submission of Id. Counsel for the Petitioner, that the plea of res-judicata cannot be considered at this stage by the Labour Court, the said plea does not hold weight and would not be applicable when admittedly the Petitioners themselves had availed of their remedies under the Delhi School Education Act, 1973, and had urged the contention of non-compliance of Section 25F of the Act before the Court dealing with the writ petition. The same objection cannot be raised twice, heard twice and adjudicated again.

11. Even if the same is not treated as res-judicata, the judgment of the Id. Single Judge can be read in evidence before the Labour Court, and can be considered even at the preliminary stage as a judgment which is of relevance. This Court is of the opinion, that the Petitioners after having accepted the compensation paid intend to merely take a chance, firstly before the Education Tribunal and thereafter before the Labour Court. Such an approach cannot be permitted.

12. Under these circumstances, in view of the order of the Id. Single Judge of this Court dated 19th May 2017, the retrenchment having been held to be in compliance with Section 25F of the Act, the present petitions challenging the impugned order would not be maintainable. The impugned order is correct and does not warrant any interference.

13. All the petitions are dismissed, with no orders as to costs.