
(2001) 08 DEL CK 0231
In the Delhi High Court
Case No : C.W. No. 77 of 1996

Raj Kamal Handloom Industry	Vs	APPELLANT
Shyam Bali and others		RESPONDENT

Date of Decision : 24-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 08 DEL CK 0231

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. D.N. Vohra, for the Appellant; Mr. P. Chakraborty, for the Respondent

Judgement

Dr. Mukundakam Sharma, J.—The present writ petitioner was preferred by the petitioner/management as against the award passed by the Presiding Officer, Labour Court, Delhi in I.D. Case No. 151/1979 (re-numbered as New I.D. Case No.1250/83) holding that the order of termination passed against the respondent by the petitioner management was illegal and unjustified and that the respondent/workman should be reinstated in service with full back wages with continuity of service, but a sum of Rs.3582.85 earned by the workman prior to the intervening period would be set off.

2. At the instance of respondent/workman and on the issue of his termination of services, an industrial dispute was referred to the Labour Court for adjudication. The term of reference was as follows:-

"Whether the services of Sh. Shyam Bali have been terminated illegally and/or justifiably and, if so, to what relief is he entitled?

3. The parties filed their respective claims and written statement and on the basis of the pleadings of the parties, issues were framed and parties were allowed to lead their evidence. During the said proceedings the Workman examined two witnesses and the management examined seven witnesses.

Thereafter, the Labour Court heard the counsel appearing for the parties and passed the aforesaid award holding that the order of termination was unjustified and illegal and that the workman is entitled to reinstatement with full back wages and continuity of service. The Labour Court, however, ordered for deduction of an amount of Rs.3582.85, which was earned by the Workman during the intervening period.

4. Mr. Vohra, appearing for the petitioner/ management, submitted that the reference to the Tribunal was illegal as the issue of abandonment of service by the petitioner, which was the specific stand of the management, was not made a part of the reference when the aforesaid reference was made and, Therefore, the reference itself was illegal and is liable to be quashed. He also submitted that there was no pleading by the Workman in his statement of claim that he was unemployed during the entire period from the date of termination till the date of filing of the claim petition and that he had completed 240 days of work and, Therefore, the Labour Court acted illegally and without jurisdiction in allowing the evidence to be led in that respect and on putting reliance on such evidence. It was submitted that as evidence was allowed to be led without there being any pleadings in that regard, the impugned award is liable to be set aside and quashed. It was also submitted that before the award was passed the workman completed 58 years of age, which was the age of retirement and, Therefore, no award could have been passed by the Tribunal for reinstatement of the petitioner nor any award should have been passed by the Tribunal regarding payment of back wages to the workman.

5. Counsel appearing for the respondent/workman, however, submitted that this court while exercising jurisdiction under Article 226 of the Constitution of India would not sit as an Appellate Court on the award passed by the Tribunal and also would not re-appreciate the evidence. It was also submitted that the workman attained the age of superannuation of 60 years only on 17.10.97, which is after the date of passing of the award. He further contended that the establishment in which the workman was working at the time of termination of service, was closed by the management on 13.10.95 i.e. after the award was passed by the Labour Court. Therefore, according to him, the award passed by the Labour Court was legal, valid and is required to be enforced. He also submitted that the respondent/workman is entitled to full back wages from the year 1987 to 30.10.1995, when the establishment was closed by the management, if not till 17.10.1997 when the respondent/workman attained the age of 60 years.

6. So far the issue with regard to reference being illegal, the terms of reference have been set out in the proceeding paragraph 2. It relates to an enquiry as to whether the service of the respondent/workman were illegally terminated. The stand of the petitioner/management before the Conciliation Officer as also before the Labour Court was that the respondent/workman had voluntarily abandoned his service. Whether it is a case of respondent or illegal termination or is a case of abandonment, are inter-related issues and, Therefore, when one of such

issues is taken up for consideration, the other issues being inter-related would necessarily have to be considered as and when the same is raised. It was pleaded by the workman that his services were illegally terminated by the management whereas to rebut the said contention the management took up the plea that the workman had abandoned his service and in terms of the reference both the issues were required to be considered by the Labour Court. Being conscious of the said fact also both the parties have led their evidence in support of their respective contentions. The workman has sought to establish that he was a willing worker and reported for duty several times but was not allowed to join, whereas the management has led evidence to show that the workman had voluntarily abandoned his services and worked elsewhere. Evidence was led by the parties in support of their respective pleas and whether it is a case of abandonment or retrenchment and/or illegal termination, was also considered by the Labour Court. The evidence adduced thereto was appreciated and thereafter the findings were recorded. Therefore, it is too late in the day to submit that abandonment was not an issue, which was referred to Labour Court for adjudication and was not decided by the Labour Court. This will be clear and apparent when we read the paragraph 8 of the award, wherein the Labour Court has recorded that the only dispute was as to who had brought about the termination of the service of the workman, as according to the workman it was a result of the action of the employer whereas according to the employer the termination brought about by the workman himself. This issue that was framed by the Labour Court for its consideration speaks for itself and the records indicate that the alleged case of abandonment pleaded by the management and the case of illegal termination pleaded by the workman were the pleas considered and decided by the Labour Court, on which it gave its decision as well. The first contention, Therefore, is without any merit and is rejected.

7. The Labour Court considered the evidence adduced by the parties and upon such consideration of the evidence, it came to the conclusion that the workman was under employment of the employer for two years prior to termination of his services. Having held thus, the plea of the management that the workman voluntarily left his job after 30.10.97 was also considered by the Labour Court in the light of the evidence adduced. The Labour Court on consideration of the evidence on record found that admittedly in the present case the employer did not issue him any letter directing him to report back for duties or asking him to explain the alleged absence from duties. He also found that it is an admitted position by the employer that no chargesheet was issued to the workman with regard to the alleged absence of the workman after 30.10.1978. It was also found that there is no standing order providing for loss of lien due to absence for certain period. Having held thus the Labour Court proceeded to hold that the employer did not ask the workman concerned to explain his alleged absence from duty and Therefore, the termination was illegal in the light of the decision of the Supreme Court in D.K. YADAV VS. J.M.A. reported in 1993 (3) SCC 617. It was held that since the workman was in service for two years, when he was

alleged to have abandoned the employment, the same should have been a ground for holding an enquiry against the workman and the same not having been done the termination is bad in law. The contention of the management that the workman had voluntarily abandoned his service as because he had got an alternative employment, was also considered by the Labour Court in the context of the evidence adduced. It was recorded by the Labour Court that the written statement would disclose the name of the employer with which the workman started working after 30.10.1978 as against which the workman had claimed that he had been unemployed ever since his termination. The Labour Court considered the evidence produced by the management that the workman had secured alternative employment, but on consideration of the same, the Labour Court found that the said evidence did not inspire confidence. He found that different witnesses of the management had given different names of the alleged employer and even the period and dates of employment were stated to be different and since there was no unanimity between various witnesses in that regard, the court held that such evidence cannot be accepted to hold that the workman concerned had abandoned his employment.

8. It is not for the High Court to constitute itself into an appellate Court over the award passed by the Tribunal constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of fact decided by those Tribunals. Reference may be made to a decision of the Supreme Court in *Sadhu Ram Vs. Delhi Transport Corporation*, wherein the aforesaid principle of law was recorded. Reference could also be made to a decision of the Supreme Court in *Harbans Lal Vs. Jagmohan Saran*, wherein it laid down by the Supreme Court that the limitations on the jurisdiction of the High Court under Article 226 of the Constitution of India are well-settled and that unless the order of inferior tribunal or subordinate court suffers from an error of jurisdiction or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law it should not be interfered with. It was further held that there is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach findings of fact contrary to those rendered by an inferior court or subordinate court. In *SUDHOO VS. M/S. HAJI LAL MOHD. BIRI WORKS AND OTHERS* reported in 1990 Lab. Industrial Cases 1538, it was held by the Supreme Court that the findings of the authority are based on appreciation of evidence produced before the authority and we do not agree with the High Court that the findings recorded by the authority are based on no evidence and, Therefore, the High Court should not have interfered with the findings of fact reached by the Prescribed Authority on appreciation of evidence.

9. There being such limitation on the powers of the High Court to sit over the conclusion of facts arrived at by the said Tribunal, this Court cannot sit as an Appellate Court over the findings recorded by the Tribunal/Labour Court and to re-appreciate the same in order to come to a contrary finding. The Labour Court, in the present case, has considered the evidence on record at length and on

appreciation thereof, has come to a conclusion that the plea of abandonment, as sought to be put up by the management, was not proved. On consideration of the evidence, adduced by the parties it found that it is pure and simple case of termination of service without conducting an enquiry and without giving any notice. This is Therefore, neither a case of no evidence at all nor a case of any manifest error of law apparent on the face of the records.

10. Contention was also raised on behalf of the petitioner/management that there was no pleading before the Labour Court that the workman was unemployed, so as to enable the Labour Court to grant back wages. The said plea is also not tenable, for it is apparent on a bare reading of the award passed by the Labour Court that the parties adduced evidence on the aforesaid aspect as to whether the workman was engaged elsewhere and on the basis of such evidence, the Labour Court has also recorded findings. When the parties knowing fully well the case to be proved lead evidence in support of it or to counter the said plead, no prejudice is caused to any of the parties when the said aspect is dealt with the considered by the Tribunal upon consideration of the evidence on record. The said plea, Therefore, has no merit at all.

11. Another contention was raised by the counsel appearing for the petitioner/management that the payment of back wages is illegal. I find no reason to hold as such. The petitioner was definitely out of service after his termination except for a short period when he was working elsewhere and for rest of the period it could not be proved that the petitioner was engaged elsewhere.

12. It is now an admitted position that the workman attained the age of 60 years on 17.10.97, which is the age of superannuation. The establishment now stands closed only w.e.f. 30.10.95. In the aforesaid context, as of date, no order for reinstatement of the workman could be made in terms of the award as he would have in any case stood superannuated on 17.10.97. However, the establishment was closed by the management with effect from 30.10.1995 and Therefore, it is ordered that the workman shall be paid his back wages from the date of his termination to 30.10.1995, from which also the amount of Rs. 3582.85 shall be deducted. The said amount shall also carry an interest @ 9% per annum from the date of the award till payment is made. The order of reinstatement is held to be rendered infructuous due to the subsequent events. With the aforesaid modification the award is upheld and the writ petition stands disposed of in terms of the aforesaid observations and directions but without any costs.