
(2009) 05 DEL CK 0288

In the Delhi High Court

Case No : LPA No. 699 of 2008 and C.M. No. 16024 of 2008

Rajan Babu T.B. Hospital Patients Welfare Society Regd.

APPELLANT

Vs

Savitri Devi

RESPONDENT

Date of Decision : 28-05-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 05 DEL CK 0288

Hon'ble Judges : Dipak Misra, C.J.; Neeraj Kishan Kaul, J

Bench : Division Bench

Advocate : Mukesh Gupta, for the Appellant; Rajiv Agarwal, for the Respondent

Judgement

1. This appeal arises from the order of the learned single judge passed in Writ Petition (Civil) No. 3698 of 1993 on 10.9.2008.

2. The appellant is a voluntary organization, being a society registered under the Societies Registration Act. The appellant Society has been established with an objective to help and rehabilitate the children of T.B. patients. It appears that prior to the formation of the appellant Society there was no institution which would protect the children of T.B. patients from the infection of the disease. Normally, in case a T.B. patient was admitted to the hospital for treatment, their children used to remain with them as most of them belonged to poor families or the children were to beg for their meals. The object of forming the Society was to support a creche round the clock in which the children of T.B. patients of the age group between one year to twelve years are kept. The MCD provided space within the hospital premises and the Rotary Club donated funds for constructing the building. The appellant is running a creche in this building since 1975. According to the appellant, it is purely a voluntary organization and is run with the help of the grants in aid. The appellant used to engage female attendants/helpers to look after children and ordinarily a poor T.B. patients or ex-female T.B. patients were employed as helpers.

3. The respondent was wife of a T.B. patient and was engaged as a helper. The case of the appellant is that the respondent was living in a hutment near Kingsway Camp and when the same was demolished, she also left without giving any address to the Society. The Society tried to trace her but she could not be contacted and the Society was forced to have an alternative arrangement as it cannot leave the children unattended for such a long absence of an attendant.

4. It appears that the respondent raised an industrial dispute and a notice was issued to the appellant Society to appear before a Conciliation Officer to which the appellant filed a reply stating that the services of the respondent were never terminated and she had left the institution of her own accord. It was also stated that the respondent was not a regular employee and was only working as a helper in the creche and the vacancy caused by the respondent had to be filled in immediately. As Conciliation Officer submitted a failure report, dispute was referred to the Labour Court under Industrial Disputes Act in I.D. No. 367 of 1986. It is the case of the appellant that they never received any summons or notice from the Labour Court. They came to know about the passing of the ex-parte award by the Labour Court only when they received a notice from the Assistant Collector for implementation of the Award dated 16.10.1987. The appellant moved an application dated 2.3.1988 for setting aside the ex-parte award but the Labour Court rejected the application on the ground that after making the award, the court has become functus officio.

5. Aggrieved by the order of the Labour Court, the appellant then preferred a writ petition under Article 226 of the Constitution of India for setting aside the ex-parte award. By the order under appeal, the writ petition was dismissed by the learned single judge.

6. We have heard learned Counsel appearing for both the parties. Learned senior counsel Mr. Sandeep Sethi contended that the Industrial Disputes Act does not apply to an organization like the appellant which is purely voluntary and where there is no organized activity, it cannot be termed as an industry. Mr. Sethi argued that the appellant is a voluntary organization running mainly on the donation and the grants and as a result of the ex-parte award, if they are made to pay the full back wages, as ordered by the Labour Court, they will be required to shut down the creche. He also made an offer to the respondent counsel to pay reasonable lumpsum amount for settlement. Learned Counsel for the respondent, however, flatly refused the offer for settlement.

7. Having regard to the facts and circumstances of the case, we are of the opinion that the ex-parte award passed in the present case by the Labour Court cannot be sustained. The award of the Labour Court as well as the order of the learned single judge are set aside. The matter be remitted back to the Labour Court to decide the I.D. No. 367 of 1986 in accordance with law. Labour Court is directed to decide the application expeditiously and in any case on or before 31.12.2009.

8. The petition stands disposed of.