

(2010) 02 DEL CK 0020

In the Delhi High Court

Case No : Writ Petition (C) No. 8465 of 2003

Ramesh Chand

APPELLANT

Vs

Arihant Polymers Pvt. Ltd.

RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Citation : (2010) 02 DEL CK 0020

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Rakesh Dahiya, for the Appellant; K.K. Tyagi and Iftekhar Ahmad, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner workman seeks a writ of certiorari for quashing the award dated 3 September, 2003 of the Labour Court to the extent it does not award back wages to the petitioner. Notice of the petition was issued by this Court and after the completion of pleadings, the petition ordered to be heard in the category of "after notice miscellaneous matters". The counsels for the parties have been heard.

2. The terms of reference to the Labour Court were as under:

Whether the services of Shri Ramesh Chand have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?

3. The case of the petitioner workman is that he was appointed with the respondent management on 20th November, 1994 as a helper; that he was confirmed as a regular employee/workman on 2nd January, 1995; that on 6th January, 1995 he suffered an injury while on duty and consequently was under treatment; that on 20th November, 1995 he was turned out of employment without any cause and/or notice and on 21st November, 1995 when he went to his place of work, he was not allowed to perform his duties; that his salary for

the month of August, 1995 and onward had not been paid.

4. The respondent management filed a reply to the statement of claim of the petitioner workman denying that the petitioner workman was appointed on 20th November, 1999 though admitting that he joined duty as a helper with the respondent management w.e.f. 2n January, 1995. The respondent management admitted the accident but pleaded the same to be a minor one and further pleaded that the petitioner being covered under the ESI Act availed benefit thereof. It was further denied that the respondent management had terminated the services of the petitioner workman and not allowed the petitioner workman to work. On the contrary, it was pleaded that the petitioner workman had been highly irregular and did not come for work from 21st November, 1995 without applying for leave; notwithstanding the same it was pleaded that taking a lenient stand, the name of the petitioner workman was not struck off from the roll of employees and on 16th December, 1995 a letter was sent by Registered Post AD to the petitioner workman asking him to join duty failing which disciplinary action would be taken against him; his earned wages were also sent through money order which was refused. It is the case of the employer that the petitioner workman instead of reporting for duty sent a threatening letter dated 24th December, 1995 in response to the letter dated 16th December, 1995 (supra) stating that he would go to the Labour Court alleging that his services had been terminated; that upon receipt of the letter dated 24th December, 1995 another letter dated 7th January, 1996 was sent by the employer to the petitioner workman by Registered Post AD again calling upon the petitioner workman to report for duty. This was followed by another letter dated 30th January, 1996 but the petitioner workman failed to join the duty and on the contrary approached the Conciliation Officer. The respondent management states that upon receipt of notice from the Conciliation Officer also, letters dated 1st June, 1996, 17th June, 1996, 29th June, 1996 & 16th July, 1996 were sent by the respondent management to the Conciliation Officer inter alia to the effect that there was no dispute; that the wages of the petitioner workman from August, 1994 to November, 1994 were lying outstanding with the respondent management; that the petitioner workman continued to be shown in the records of the employer as an employee and requesting the Conciliation Officer to direct the petitioner workman to join the duties with the respondent management and if the petitioner workman was not interested in the same then to collect his dues in full and final settlement of the account. It was further pleaded in the reply dated December, 1997 to the statement of the claim itself that if the petitioner workman was really interested in working with the respondent management, he should be directed to report for duty.

5. The petitioner workman filed a rejoinder before the Labour Court expressing willingness to join duty.

6. The matter remained pending before the Labour Court. It appears that an application was filed by the respondent management for directing the petitioner

workman to join the duty and in pursuance to directions thereon, the petitioner workman joined the duties with the respondent management w.e.f. 3rd March, 2003. Thus the only dispute which remained for adjudication before the Labour Court was of the claim of the petitioner workman for wages from December, 1995 till February, 2003.

7. During the course of hearing before this Court the counsel for the petitioner workman has informed that the petitioner continued to work with the respondent management from 3rd March, 2003 to 18th November, 2008 when he resigned from the employment.

8. It is not in dispute that the petitioner workman did not work for the respondent management from 21st November, 1995 till 3rd March, 2003. The question which falls for consideration is whether, without having worked during the said period the petitioner is entitled to wages for that period. He would be so entitled if he proves that his services were illegally terminated or he was prevented from working. The Labour Court found that the respondent management had proved the letters referred to herein above, asking the petitioner workman to join duty. On the basis of the evidence, it was held that despite repeated offers, the petitioner workman neither showed any intention to join duty nor joined the duty. The petitioner workman was as such not held entitled to back wages.

9. The counsel for the respondent management has during the course of hearing handed over copies of the letters (supra) proved before the Labour Court.

10. I have enquired from the counsel for the petitioner workman whether the petitioner workman challenges the existence of the evidence aforesaid on the basis whereof the Labour Court held the petitioner workman to be neither intending to nor joining the employment of the respondent management till 3rd March, 2003. I do not find any ground or challenge in that regard being taken in the petition preferred before this Court. The counsel for the petitioner workman is also unable to show or even argue that the petitioner workman had in the course of trial before the Labour Court challenged any of the aforesaid documents or offered any explanation with respect thereto. There thus appears to be evidence before the Labour Court for the conclusion reached. The parameters laid down by the Supreme Court for exercise of jurisdiction by the High Court under Article 226 and/or 227 of the Constitution of India in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, , and which have been consistently reiterated in subsequent dicta, do not permit interference or issuance of a writ of certiorari in such circumstances. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals i.e. where orders are passed without jurisdiction or in excess of jurisdiction or as a result of failure to exercise jurisdiction or where the inferior Court or Tribunal decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted in dealing with the disputes is opposed to principles of natural justice. The findings of fact reached by the inferior Court or

Tribunal as a result of appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence and which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by a writ of certiorari. However, a finding of fact cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal and the said points cannot be agitated before the writ court.

11. Applying the aforesaid principles, no case for interference with the order of the Tribunal is made out. The petitioner and/or his counsel appear to be under the impression that an order directing payment of back wages is automatic to an order of reinstatement and continuity of service. However that is not so. The Supreme Court in *P.G.I. of M.E. and Research, Chandigarh Vs. Raj Kumar*, has held that the payment of back wages having a discretionary element involved in it has to be dealt with in the facts and circumstances of each case and no straightjacket formula can be adopted. Further it has been consistently reiterated by the courts that grant of back wages is not automatic and that in cases, back wages may not be warranted at all. Reference in this regard may be made to *J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another*, and *The Depot Manager A.P.S.R.T.C. Vs. P. Jayaram Reddy*, . The award itself refers to several dictas where the courts have held that where the workman is shown to be not interested in reinstatement and/or is not shown to have reported for work, he is not entitled to any back wages.

12. I am however constrained to observe a disturbing fact which emerges from these proceedings. In terms of the statute, the dispute between the petitioner workman and the respondent management first went to the Conciliation Officer. The disputes so reached the Conciliation Office within months of accruing. While the petitioner workman was claiming to have been illegally terminated, the respondent management was denying the same and contending that it had not terminated the services and was asking the petitioner workman to join the services. This Court is unable to fathom as to why in these circumstances the Conciliation Officer failed to discharge his duty and as to why the reference was made and why the valuable time of the Industrial Tribunal was taken for nearly five years when the proceedings remained pending before it. From the documents and the award it appears that the Conciliation Officer ought to have directed the petitioner workman to join the duty. Not only so, even when the matter reached the Labour Court, in view of the pleadings, the Labour Court

ought to have at least in the year 1998 attempted to have resolved the dispute by directing the petitioner workman to join the duty. It is inexplicable in the face of the record and the counsels are also not able to explain as to why this did not happen. If nothing else, it shows a complete failure of the machinery under the ID Act. It appears that no attempt at all is being made to bring about a settlement and conciliation has become but a formality. The Conciliation Officer does not appear to have applied his mind and appears to have treated the dispute as an ordinary civil litigation which has to run through its entire life. Had the authorities functioned in the spirit and letter of the law, this dispute would not only have not consumed the precious time of different fora, but such time could have been spent in other contentious matters; the matter would also not have even reached this Court then.

In the circumstances, the writ petition is dismissed, however, no order as to costs.