
(2006) 11 DEL CK 0054

In the Delhi High Court

Case No : Writ Petition (Civil) No. 5316 of 2006

Sanjeev Kumar

APPELLANT

Vs

Container Corporation of India Ltd.

RESPONDENT

Date of Decision : 02-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 18, 2, 31, 33, 33(2)

Citation : (2006) 11 DEL CK 0054

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Brijesh Kumar Tamber, for the Appellant; Rajender Dhawan and Shefali Dhawan, for the Respondent

Final Decision : Dismissed

Judgement

Manju Goel, J.—The petitioner who was a workman employed with the respondent M/s. Container Corporation of India Limited, was served with a charge-sheet on 25.2.1999 on allegations of certain misconduct and after a domestic inquiry was removed from service on 26.3.2004. In the present writ petition, the petitioner seeks the relief of a mandamus directing the respondent to treat the petitioner as continuing in service and pay him all arrears of emoluments from August, 1998 till date with all consequential reliefs and benefits. The basis of his claim is that he was a workman concerned in ID No. 160/99 pending before the learned Central Government Industrial Tribunal ('CGIT' in short) and his services could not have been terminated without seeking an approval u/s 33(2)(b) of Industrial Disputes Act, ('I.D. Act' in short).

2. On behalf of the respondent it is submitted that the petitioner was not a workman concerned in ID No. 160/99 inasmuch as the petitioner was employed in the district of Ludhiana whereas the industrial dispute was raised by the workmen in Delhi and further that whether the petitioner was the workman concerned in ID No. 160/99 is a question of fact which cannot be adjudicated

upon in the present writ petition. The writ petition is also challenged on the ground that the petitioner cannot come to the writ jurisdiction of this Court in view of other avenues under the I.D. Act itself being open to him.

3. Since there is a preliminary objection to the maintainability of the writ petition it is appropriate that this objection be decided first. The petitioner is seeking to enforce his right given by Section 33 of I.D. Act. The relevant provision is Section 33(2)(b), which reads as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.-

(1) ...

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute or, where there are no such standing order, in accordance with the terms of the contract, whether express or implied, between him and the workman-

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

4. Two more provisions which are required to be read along with Section 33(2) (b) are those of Section 33A and Section 33(C)(2). They are reproduced below:

33A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceeding.- Where an employer contravenes the provisions of Section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner,___

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and

shall submit his or its award to the appropriate government and the provisions of this Act shall apply accordingly.

33C. Recovery of Money Due from an Employer.____

1. ...

2. Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate government within a period not exceeding three months.

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

5. By virtue of Clause (b) of Section 33A if an employer terminates a workman from service the Labour Court/ Industrial Tribunal before whom an industrial dispute is pending for adjudication can adjudicate upon the complaint in the same manner in which an industrial dispute can be adjudicated upon. The Labour Court/Industrial Tribunal in exercise of Section 33A of I.D. Act can return a finding as to whether the complainant or the workman has been removed from service in contravention of Section 33(2)(b) of the I.D. Act. Further since the adjudication u/s 33A has to be of the same nature as an industrial dispute an award in respect of the consequences of violation of Section 33(2)(b) of I.D. Act can also be made by the same Labour Court/Industrial Tribunal. Further the workman u/s 33(C)(2) of I.D. Act can make an application demanding any sum of money that may be due to him from the employer. The provisions of Section 33A read with Section 33(C)(2) of I.D. Act can, Therefore, give the required remedy to the petitioner.

6. Mr. Rajender Dhawan, learned Counsel appearing for the respondent has referred to three judgments of the Supreme Court, namely, The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, , U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh, and Hindustan Steel Works Construction Ltd. and Anr. v. Hindustan Steel Works Construction Ltd. Employee Union (2005) 6 SC 725 in support of his argument that in view of the availability of the relief available to the petitioner under the I.D. Act, the present writ petition is not maintainable. It is sufficient to quote from the third judgment cited above as this judgment reiterates the earlier two judgments, namely, in the case of U.P.State Bridge Corporation (Supra) and Hindustan Steel Works Construction Ltd. (Supra). The relevant portion of the judgment reads as under:

8. In U.P. State Bridge Corporation Ltd. v. U.P. Rajya Setu Nigam S. Karamchari

Sangh it was held that when the dispute relates to enforcement of a right or obligation under the statute and specific remedy is, Therefore, provided under the statute, the High Court should not deviate from the general view and interfere under Article 226 except when a very strong case is made out for making a departure. The person who insists upon such remedy can avail of the process as provided under the statute. To same effect are the decisions in Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke, Rajasthan SRTC v. Krishna Kant, Chandrakant Tukaram Nikam v. Municipal Corporation of Ahmedabad and in Scooters India v. Vijai E.V. Eldred.

7. The petitioner's counsel, Mr. Brijesh Kumar Tamber, does not dispute the availability of Section 33A and Section 33(C)(2) of I.D. Act. He, however, draws the attention of this Court to the judgment of the Supreme Court in the case of M.D., Tamil Nadu State Transport Corporation Vs. Neethivilangan Kumbakonam, in which it was laid down that in the absence of approval u/s 33(2)(b) the order of dismissal/discharge has to be treated as honest and the employer is bound to treat the employee as continuing in service and to give him all consequential benefits. It was also held in this judgment that if such benefits are refused a writ petition to enforce the right of the workman would subsist. The judgment, however, has to be read in the context of its facts. The workman in that case was dismissed after a departmental inquiry. An application thereafter was duly made u/s 33(2)(b) of I.D. Act before the Tribunal. The Tribunal rejected the prayer for approval on merit. The employer then filed a writ petition challenging the order passed by the Tribunal which was dismissed. The writ appeal was also dismissed. So was the special leave petition. Despite this the workman was neither reinstated in service nor paid his wages although the workman was ready and willing to work. The workman then filed the writ petition for reinstatement in service and for payment of wages and other consequential benefits. The Single Judge of the High Court held that the workman was to be treated to have continued in employment. The writ appeal was dismissed. The Supreme Court eventually upheld the decision of the Single Judge and returned a finding that after dismissal of the approval application, the employer was duty bound to treat the employee as continuing in service and pay him his wages. The question of maintainability in this case was related to the merits of the case and not to the preliminary objection as to whether in view of the availability of reliefs u/s 33A and Section 33(C)(2) of I.D. Act, the petitioner can approach the High Court under Article 226 of the Constitution. The petitioner has further referred to the judgment in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, which is the celebrated authority on the effect of non-making of an application u/s 33(2)(b) of I.D. Act. Reference is also made to the judgment of Delhi Transport Corporation v. Jagdish Chander 2005 5 AD (Delhi) 217. Unfortunately in these judgments also no light has been thrown on the preliminary objection raised by the respondent. In fact, in Jagdish Chander (Supra) the provision of Section 33A of I.D. Act has been eulogized and its effectiveness restated. Further it is clarified in this judgment that Section 31 of

I.D. Act further provides for punishment for failure to comply with the provisions of Section 33 of I.D. Act. It has also been stated in this judgment that when the approval is not granted by the Industrial Tribunal u/s 33(2)(b) of I.D. Act a workman can invoke the provisions of Section 33(2) of I.D. Act so far as monetary benefits are concerned. Thus, I find that while the petitioner has several rulings to support his case on merit, there is nothing to meet the preliminary objection that in view of sufficient efficacious remedy being available under the I.D. Act, the petitioner cannot invoke the writ jurisdiction of this Court. Following the Supreme Court judgments in the cases of Premier Automobiles (Supra), U.P.State Bridge Corporation Ltd. (Supra) and Hindustan Steel Works Corporation Ltd. (Supra) mentioned in para 6 above, I hold that the present writ petition is not maintainable.

8. On merit the respondent's case is that the petitioner was not a workman concerned in I.D. No. 160/99. The terms of reference of I.D. No. 160/99 related to the demand for payment of incentive for complying with the small family norm. According to the respondent the petitioner had been transferred to Ludhiana whereas the dispute had been raised by the workers in Delhi.

9. The petitioner's claim is two-fold. In the first place, the petitioner says that at the relevant point of time he was in Delhi and was one of the workers who had raised a demand and had authorized a union to take it further. The letter of espousal is cited as an evidence. Secondly it is contended that this dispute did not relate only to those who espoused the cause or those working in Delhi but related to the workers of Container Corporation of India working throughout the length and breadth of the country. The judgment cited by the petitioner in this regard is New India Motors (P) Ltd. New Delhi Vs. K.T. Morris, The Supreme Court had the following to say on the meaning of the expression 'workman concerned in an industrial dispute':

10. ... In dealing with the question as to which workmen can be said to be concerned in an industrial dispute we have to bear in mind the essential condition for the raising of an industrial dispute itself, and if an industrial dispute can be raised only by a group of workmen acting on their own or through their union, then it would be difficult to resist the conclusion that all those who sponsored the dispute are concerned in it. As we have already pointed out, this construction is harmonious with the definition prescribed by Section 2(s) and with the provisions contained in Section 18 of the Act. Therefore, we are not prepared to hold that the expression "workmen concerned in such dispute" can be limited only to such of the workmen who are directly concerned with the dispute in question. In our opinion, that expression includes all workmen on whose behalf the dispute has been raised as well as those who would be bound by the award which may be made in the said dispute.

11. In view of this judgment it is not necessary to enter into question as to whether the petitioner had espoused the cause. If he is to benefit from the award passed in such industrial dispute he would be a workman concerned with the

dispute. Thus, prima facie, the petitioner may be a workman concerned in the industrial dispute. However, it still remains a question of fact to be determined on adjudication. It will not be out of place to mention here that the industrial dispute eventually ended in a "No Dispute Award" because the President of the workers union made a statement to the effect that the scheme with regard to the incentive for small family norm was already in existence and was being implemented and the workmen were satisfied with the scheme. The No Dispute award was passed on 4.1.2006. The petitioner, however, claims that no dispute award was passed by the CGIT on fraud being played upon it by some impersonation and an application for restoration of I.D. No. 160/99 is now pending. Thus, there is a question of fact to be determined as to whether the petitioner was already getting the benefits and, Therefore, not concerned with the industrial dispute and whether the petitioner was concerned with the industrial dispute as he was expecting to be benefitted by an award in favor of the workmen. This Court sitting in writ jurisdiction cannot undertake the exercise of finding the fact.

12. In view of my findings as above, the writ petition cannot be entertained by this Court. Therefore, the writ petition is dismissed.