

(2011) 06 DEL CK 0096

In the Delhi High Court

Case No : Writ Petition (C) 4072 of 2011 and CM No. 8432 of 2011

Sewa International Fashion

APPELLANT

Vs

Sh. Mehar Chand

RESPONDENT

Date of Decision : 03-06-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25FFF, 25N

Citation : (2011) 06 DEL CK 0096

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Manish Malhotra, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner employer by these writ petitions impugns separate but identical awards of the Industrial Adjudicator on the claims of the Respondent workmen. The Industrial Adjudicator has granted the relief of lump sum compensation of Rs. 1 lac only to the Respondent workman in W.P.(C) No. 4072/2011 and of Rs. 75,000/- only to the Respondent workman in W.P.(C) No. 4073/2011.

2. It was the case of the Respondent workmen before the Industrial Adjudicator of the Petitioner employer having works at Mayapuri as well as Kirti Nagar and their services being taken at both the works and having been terminated illegally w.e.f. 1st July, 1999.

3. The Petitioner employer contested the claim contending that the Respondents were not workmen within the meaning of Section 2(s) of the I.D Act and by further contending that the Respondents were employed at its works at Mayapuri only and never worked at Kirti Nagar and the undertaking at Mayapuri in which Respondents were employed stood closed w.e.f. January, 1999.

4. The Petitioner employer though cross-examined the workmen, did not lead any evidence whatsoever of its own before the Industrial Adjudicator.

5. The Industrial Adjudicator in the awards impugned in these writ petitions has held the Respondent in each case to be workman within the meaning of Section 2(s) of the Act and has also returned a finding of fact that the services of the Respondent workmen were being taken at both the works at Mayapuri as well as Kirti Nagar.

6. As aforesaid, no evidence was led by the Petitioner employer qua closure. However, the Industrial Adjudicator on the basis of the admission by the workmen in cross-examination that the works were lying closed, returned the finding of closure in favour of the Petitioner employer.

7. The awards are challenged primarily on the findings returned by the Industrial Adjudicator under Issue No. 5 as to the legality and justification of termination. While returning the said findings, the Industrial Adjudicator has referred to Section 25N of the Act. It is the contention of the counsel for the Petitioner employer that the Industrial Adjudicator has wrongly presumed Section 25N to be applicable when there was nothing before him to hold so.

8. In this regard I may notice that it was the case of the Respondent workmen that the Petitioner employer was employing more than 2000 persons. The Respondent workmen also deposed so in their affidavit by way of examination-in-chief. The counsel for the Petitioner employer admits that there is no cross-examination on the aforesaid deposition of the Respondent workmen. Again, as aforesaid, the Petitioner employer did not lead any evidence whatsoever denying employment of more than 2000 persons.

9. The counsel for the Petitioner employer contends that Section 25N would not apply and in this regard relies upon Rajasthan Small Scale Industries Employees Union v. State of Rajasthan 1990 (61) FLR 157 Rajasthan. However without laying any factual basis to contend the matter to be covered by a particular judgment, no reliance on judgment can be permitted.

10. Be that as it may, even if it were to be held that the Industrial Adjudicator erroneously referred to Section 25N, the same would still not invalidate the award inasmuch as in view of the other findings, the termination by the Petitioner employment of the Respondent workmen has been made out to be illegal and the relief granted to the Respondent workmen of payment of lump-sum compensation only as aforesaid cannot be said to be perverse or unreasonable.

11. It may be noticed that even though the Respondent workmen had in cross-examination stated that they had stopped reporting for work as works at Mayapuri had closed down but it was for the Petitioner employer to plead the case of abandonment but which in fact was not pleaded. Even otherwise, abandonment is a misconduct actionable only by holding an inquiry and taking appropriate action and not otherwise. Nothing of the nature was done. Reference may be made to Anil Chuttani v. ONGC 2010 (117) DRJ 433. Thus it cannot be held that owing to such statement of Respondent workmen in cross-examination,

the Petitioner employer stood absolved of its liability.

12. There is another aspect of the matter. It was neither the plea of the Petitioner employer nor proved that the provisions of Section 25FFF which the counsel for the Petitioner employer also admits would have been attracted in the case of closure were complied with. The counsel for the Petitioner employer at this stage states that even the works at Kirti Nagar were subsequently closed and the Petitioner employer is willing to pay the closure compensation to the Respondent workmen. However the same supports the finding of the Industrial Adjudicator of the termination being illegal and the offer now made is belated and cannot be the ground for judicial review of the awards.

13. There is no merit in the writ petitions; the same are dismissed. No order as to costs.