
(2007) 02 DEL CK 0060
In the Delhi High Court
Case No : Writ Petition (C) No. 5989 of 1999

Sh. Bhopal

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 08-02-2007

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 76, 77, 78
Industrial Disputes Act, 1947 — Section 2, 25F, 25G, 25H

Citation : (2007) 140 DLT 36

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Sanjay Ghose, for the Appellant; Nemo, for the Respondent

Judgement

Hima Kohli, J.—The present writ petition is directed against the impugned order dated 14th January, 1999 passed by the Labour Court, wherein it was held that the petitioner workman failed to prove that his services have been terminated by the respondent/management illegally and unjustifiably and hence, he was held not entitled to any relief.

2. Brief facts relevant for disposing of the present petition are as follows. The petitioner workman joined the employment of the respondent Municipal Corporation of Delhi in its Horticulture Department at Roshanara Garden with effect from May 1985 and was posted at the nursery as a daily rated casual muster roll worker. He was being paid wages as fixed and revised from time to time under the Minimum Wages Act. His services were terminated with effect from 9th April, 1986. He tendered a demand notice on the respondent/management in the year 1992, but no reply was received. After conciliation proceedings failed, matter was referred for adjudication to the Labour Court. It has remained un-controverted on the Labour Court record that the petitioner workman had completed 240 days of continuous service as required under the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The petitioner workman contended that the termination of his service was illegal

since the mandatory provisions of Section 25F, 25G, 25H of the Act read with Rules 76, 77 and 78 of the Industrial Disputes Act (Central) Rules, 1957, were not complied with.

3. While coming to the conclusion that the petitioner workman had not been illegally terminated, the Learned Presiding Officer observed that a pre-requisite condition for the application of Section 25F, 25G and 25H of the Act is that there should be retrenchment. Reliance was placed on the case of Himanshu Kumar Vidyarthi v. State of Bihar reported as 1997 IV AD S.C. 196, wherein the Hon"ble Supreme Court was considering the case of daily wage workmen, the petitioners therein, and held that since they were not appointed according to rules against any post and they were only appointed according to the need of the work, they had no right to the post and Therefore their termination without complying with the provisions of Section 25F of the Act, was not illegal, as there was no retrenchment. Having placed reliance on the aforementioned case, the Labour Court held that disengagement or termination of daily rated, casual, muster roll worker namely Bhopal was not retrenchment and that the provisions of Section 25F, 25G, 25H were not applicable in the present case, and thus his services were not terminated illegally or unjustifiably by respondent/management.

4. Learned Counsel for the petitioner workman stated that having completed 240 days of continuous service, the petitioner workman could not have been terminated without complying with the provisions of Section 25F, 25G, 25H. In support of his contention, he placed reliance on a judgment of the Division Bench of this Court in the case of Delhi Cantonment Board Vs. Central Govt. Industrial Tribunal and Others, wherein the Court considered the definition of "workman" u/s 2(s) and held that as long as a person is employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, he is workman under Industrial Disputes Act and will get benefits under the Act and since the respondents therein were workmen under the Act, Section 25F of the Act had to be complied with if the workmen had put in 240 days of service in the year prior to the date of termination of service. It was also held that unlike service law, where there is an important difference between a temporary employee and a permanent employee and a permanent employee has a right to the post whereas a temporary employee does not, in industrial law there is no such distinction between a permanent employee and a temporary employee whether a probationer, casual, daily wage or ad hoc employee.

5. Learned Counsel for the petitioner also sought to draw support from the case of Management of Horticulture Department of Delhi Adm. Vs. Trilok Chand and Another, wherein this Court after referring to a number of judgments of the Supreme Court, including that of Himanshu Kumar (supra), took the view that that having worked for more than 240 days continuously, such a person would clearly come within the definition of workman u/s 2(s) of the Act and held that the termination of the respondent workman therein without compliance with the provisions of Section 25F, was illegal. Reference to the following paragraphs of

the aforesaid judgment are useful:

21. My aforesaid conclusion is further fortified by the judgment of Supreme Court in the case of L. Robert D'Souza v. Executive Engineer, Southern Railway and Anr. reported in 1982 SCC 124 . In that case apex Court held that even the casual or seasonal workman who rendered continued service for one year or more could not be retrenched on such ground without complying with the requisition of Section 25F of the Act. In another case entitled Rattan Singh v. Union of India, (1997) 11 SCC 396 . It was held by the Apex Court that provision of Section 25F were applicable to termination of even a daily rated workman who had continuously served for requisite statutory minimum period for a year and termination of services of such a workman without complying with provisions of Section 25F was illegal. To the same effect is the judgment of Supreme Court in the case of Samishta Dubey v. City Board, Etawah reported in 1989 LLR 2160 and Municipal Corporation of Delhi v. Praveen Kumar Jain reported in 1998 (8) SCC 468.

22. Notwithstanding the aforesaid position in law Mr. Anil Grover, learned Counsel appearing on behalf of the petitioner argued that respondent is not to be treated as workman and is not entitled to the benefit of the provision of Section 25F of the Act and in support of his submission he tried to draw sustenance from another judgment of Supreme Court in the case of Himanshu Kumar Vidyarthi and Ors. v. State of Bihar and Ors. reported in.... In this case, decided by a Division Bench, no doubt certain observations were made by the Supreme Court which give the impression that temporary working of daily wages ... would not be considered to be retrenched under the Act. However, a close look would show that the case was mainly decided on the ground that the concerned department namely, Cooperative Training Institute, Deogarh was not to be treated as "industry" within the meaning of Section 2(j) of the Act and further in this case Supreme Court did not take into consideration the earlier case decided by it holding to the contrary and as noticed above. Not only this even in the following subsequent judgments, Supreme Court has taken the view that provision of Section 25F would be applicable even in a case of daily rated workman. These cases are:

1. Rattan Singh v. Union of India, (1997) 11 SCC 396 .
2. Municipal Corporation of Delhi v. Praveen Kumar Jain reported in (1998) 9 SC 468.
3. Samistha Dubey v. Etawah reported in 1999 LLR 460 .

23. In view of the aforesaid restatement of law as recent as in 1999 as well, I respectfully follow the same in preference to the view expressed in the case of Himanshu Kumar Vidyarthi and Ors. v. State of Bihar and Ors. (supra). Accordingly, this point is also decided against the petitioner.

6. I have perused the records including the impugned award passed by the

Labour Court. The petitioner states that the respondent/management did not appear in the said proceedings, nor did it file any written statement or lead any evidence. None has appeared on behalf of the respondent/management even before this Court, though a counter affidavit was filed by the MCD in the year 2000, wherein it is stated that the petitioner workman was engaged on muster roll for the sanctioned work and that after completion of the said sanctioned work, the petitioner workman was disengaged. It has further been denied that the petitioner worked continuously and uninterruptedly up to 09.4.1986. It may be noted that the averments made by the respondent in the counter affidavit are not supported by any document whatsoever. Needless to state that as the respondent No. 2 failed to appear before the Labour Court after being served and failed to contest the case as set up by the petitioner, the Labour Court did not have before it any of the pleas as set up and pleaded by the management in the present petition. Thus the finding arrived at in the impugned Award can only be examined in the light of the deposition of the petitioner and the unrebutted evidence placed on the record before the Labour Court.

7. Having gone through the aforementioned case law and in the light of the facts and circumstances of the case there is no doubt that the petitioner comes within the definition of a "workman" in terms of Section 2(s) of the Act. Once it is found that the petitioner comes within the definition of a "workman", and that he has rendered 240 days of continuous service in the year, then irrespective of whether he was a daily wager or not, the natural consequence thereof is the conclusion that the provisions of Section 25F of the Act were applicable to him and termination of his services without complying with the provisions of Section 25F was illegal.

8. In the present case, keeping in mind that the respondent/ management failed to appear before the Labour Court and the only evidence available on record was that which were adduced by the petitioner workman, which remained unrebutted, there was no occasion for the Labour Court to arrive at a finding that the provisions of Section 25F, 25G, 25H, were not applicable to the petitioner.

9. Accordingly the writ petition is allowed and the impugned award is set aside.

10. Now, coming to the relief the petitioner is entitled to, considering that the services of the petitioner had been terminated in the year 1986 and that a period of more than 20 years has since elapsed, and also keeping in view that fact that it has been 8 years since the impugned award has been passed by the Labour Court, it is not appropriate to remand the matter back to the Labour Court as it would only result in delaying the cause of justice.

11. It is an unrebutted position on the Labour Court record that the petitioner workman had worked with respondent No. 2 corporation from May 1985 to April 1986, i.e., for less than a year. Also as on date, his services stand terminated for more than 20 years. Thus for all effects and purposes, the petitioner, having failed to contribute to the respondent in any material way, it is not found to be a

fit case where the relief of reinstatement with back wages ought to be granted. Instead, the interests of justice would be met, if the petitioner is paid a lump sum compensation in lieu of reinstatement and back wages. Reliance may be placed on the judgment rendered by the Supreme Court in the case of Rattan Singh v. Union of India, (1997) 11 SCC 396 , wherein termination of services of the workman was made without complying with the provisions of Section 25F of the Industrial Disputes Act, and the Court ordered payment of compensation in lieu of reinstatement and back wages. In this regard, the Supreme Court observed as follows:

3. We find merit in the said submission of Shri Ashri. From the date mentioned in the judgment of the first appellate court dated 22-1-1985, it appears that the appellant had continuously worked for more than 240 days in a year. Since he was a workman, he was entitled to the protection of Section 25F of the Act and the said protection could not be denied to him on the ground that he was a daily-rated worker. It is not the case of the respondents that the provisions of Section 25F of the Act were complied with while terminating the services of the appellant. In these circumstances, the termination of services of the appellant cannot be upheld and has to be set aside. The services of the appellant were terminated in the year 1976. Nearly 20 years have elapsed since then. In these circumstances, we are not inclined to direct reinstatement of the appellant. But having regard to the facts and circumstances of the case, we direct that a consolidated sum of Rs. 25,000 be paid to the appellant in lieu of compensation for back wages as well as reinstatement.

In this case support is also drawn from the judgment of the Supreme Court passed in Gujarat State Road transport Corporation and Anr. v. Mulu Amra reported as 1995 Supp (4) 548 and the judgment rendered by a Division Bench of this Court in Murari Lal Sharma Vs. Nehru Yuva Kendra Sangathan, . In both these cases, it was not considered appropriate to direct reinstatement with back wages after long period of 20 years and 13 years respectively, had passed from the date of termination from service.

12. In view of the facts and circumstances of the present case and the position of law as discussed above, the respondent No. 2 is hereby directed to pay to the petitioner, a lump sum amount of Rs. 70,000/- (Rs. Seventy Thousand only) as compensation in lieu of reinstatement and back wages, in full and final settlement of the claims of the petitioner workman, within a period of four weeks from today.

13. With these observations, the writ petition stands disposed of in above said terms, leaving the parties to bear their own costs.