
(2009) 07 DEL CK 0371

In the Delhi High Court

Case No : Writ Petition (C) No. 14921 of 2006

Sh. Haripal

APPELLANT

Vs

Patel Oil Mills

RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2009) 07 DEL CK 0371

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Naveen K. Jha, for the Appellant; Raavi Birbal, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—This writ petition filed by the workman (petitioner herein) is directed against an order dated 09.11.2004 in O.P. No. 15/99 passed by Shri P.S. Teji, Presiding Officer, Industrial Tribunal-II, Delhi granting approval u/s 33(2)(b) of the Industrial Disputes Act, 1947 to the petitioner for his dismissal from service of the respondent vide order dated 04.02.1999.

2. Brief facts of the case are that the petitioner was employed with the respondent as Assistant Operator w.e.f. 11.08.1989. He was served with a charge sheet dated 04.07.1998 and he was accused of adopting go-slow tactics from 25.05.1998 to 10.06.1998 as well as indulging in abusing and slogan shouting at the management along with his other colleagues during the strike period. The domestic inquiry was held against the petitioner in which he was found guilty of the charges leveled against him.

3. The management of the respondent after considering the Inquiry Report and taking into account other relevant material decided to dismiss the petitioner from its service and the petitioner was accordingly dismissed vide order dated 04.02.1999.

4. Since at the time management of respondent No. 1 dismissed the petitioner

from its service vide order dated 04.02.1999, an industrial dispute relating to general demands of the workers ID No. 95/1998 was pending adjudication before the Labour Court, the management filed an application u/s 33(2)(b) of Industrial Disputes Act, 1947 for approval of dismissal of the petitioner before the Labour Court which vide impugned order has been allowed and the approval has been granted to the management for dismissal of the service of the petitioner.

5. While the approval application of the management for dismissal of the petitioner was pending consideration before the Tribunal below the workman raised an independent industrial dispute relating to his dismissal from service of the respondent. This industrial dispute raised by the workman was registered as ID No. 851/1999.

6. As the workman was aggrieved by the impugned order dated 09.11.2004 granting approval to the respondent for dismissal of the petitioner, the workman filed the present writ petition seeking to set aside the said approval order inter alia on the ground that the approval order was without jurisdiction because according to him the respondent instead of asking for approval was required to obtain prior permission of the Tribunal below for dismissing the petitioner from its service.

7. This Court has been informed by Ms. Raavi Birbal, learned Counsel appearing on behalf of the respondent that during the pendency of the present writ petition, the industrial dispute relating to dismissal raised by the workman (ID No. 851/1999) has been decided by the Tribunal below and the dismissal of the petitioner has been found to be justified. Both inquiry issue as well as the issue relating to quantum of punishment are stated to have been decided by the Tribunal below against the workman and in favour of the management.

8. Mr Naveen K. Jha, learned Counsel appearing on behalf of the petitioner says that he has instructions from his client to challenge the award of the Tribunal below by which the dismissal of the petitioner has been upheld by the Tribunal below during the pendency of the proceedings of the present writ petition.

9. Since the industrial dispute relating to dismissal of the petitioner from service of the respondent has been decided by the Tribunal below against the workman and in favour of the management, I am of the view that the prayer made by the petitioner in the present writ petition is rendered infructuous because the challenge to the approval order made by the workman in the present petition for want of jurisdictional error will also be a ground of challenge to the award confirming the dismissal of the petitioner. The petitioner can take all such grounds as may be available to him in law including his contention that the management was required to take prior permission of the Tribunal below instead of applying for approval for dismissing the petitioner from its service, while filing a writ petition challenging the award passed by the Tribunal below in ID No. 851/1999. All contentions which the petitioner has taken against the impugned order of approval in the present writ petition are left open to be considered in the

writ petition to be filed by the workman against the award that has been given by the Tribunal below during the pendency of the present petition. Subject to that, the present writ petition is dismissed leaving the parties to bear their own costs.

CM Nos. 11780/2006 & 13233/2006

Since the main writ petition has been dismissed, both these applications are rendered infructuous.