
(2009) 07 DEL CK 0516

In the Delhi High Court

Case No : Writ Petition (C.) No. 6736 of 2006

Sh. Manmohan Mehta

APPELLANT

Vs

The Management of R.V. Sales Pvt. Ltd.

RESPONDENT

Date of Decision : 27-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 33C(2), 60(1)
Constitution of India, 1950 — Article 311(2)

Citation : (2009) 07 DEL CK 0516

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

Bench : Single Bench

Advocate : Gajender Giri, for the Appellant; Nemo, for the Respondent

Judgement

S.N. Aggarwal, J.—This writ petition filed by the workman (the petitioner herein) is directed against an award dated 02.05.2005 passed by the Industrial Adjudicator by which he has been awarded an amount of Rs. 30,800/- as compensation. The Industrial Adjudicator has found the termination of the petitioner from the service of the management justified and the compensation has been awarded to him on account of gratuity etc. taking into account the service of 11 years rendered by him prior to his termination.

2. The petitioner in this writ petition is aggrieved by the decision of the Industrial Adjudicator by which termination of his services has been found to be legal and justified. According to the petitioner, his termination from the services of the management based upon the inquiry report dated 09.02.1996 is vitiated for non-payment of subsistence allowance to him during the period of his suspension when the inquiry into the charges against him was going on.

3. Briefly stated the facts relevant for the disposal of this writ petition are that the petitioner was appointed as a Salesman with the management (the respondent herein) w.e.f. 07.07.1984 and he was allegedly confirmed in the service of the respondent w.e.f. 01.09.1986. As he was allegedly not paid his salary for the period from October to December, 1995, he filed an application u/s

33(C)(2) in December, 1995 before the Labour Court for payment of wages to him for the aforesaid period. He also simultaneously filed a complaint for nonpayment of wages for the period from October, November and December, 1995 before the Labour Commissioner. On 20.03.1996, the Labour Inspector visited the factory premises of the management and found that the management was not taking any work from the petitioner and was making him to sit idle and despite the management being told by the Labour Inspector to pay the wages of the workman, the management refused to pay his wages. The Labour Inspector who had visited the factory premises of the management on 20.03.1996 submitted his report to the Labour Commissioner which is Annexure P-5 at page 33 of the paper book. In the meanwhile, the petitioner was charge-sheeted by the management vide charge-sheet dated 31.01.1996 which is Annexure P-3 at page 30 of the paper book. On 09.02.1996, Ms. Manjula was appointed as Inquiry Officer to inquire into the charges leveled against the petitioner. Since the management was not paying subsistence allowance to the petitioner, the petitioner filed a second complaint before the Labour Commissioner on 08.03.1996 and infuriated by that complaint, the management is alleged to have placed the petitioner under suspension w.e.f. 01.04.1996. The petitioner refused to participate in proceedings before the inquiry officer because he was not paid subsistence allowance by the management during the period of his suspension. As the petitioner did not participate in the inquiry proceedings, the Inquiry Officer conducted the inquiry against the petitioner ex-parte and submitted her report to the management on 23.07.1996. The report submitted by the Inquiry Officer to the management is Annexure P-10-A at pages 43 to 100 of the paper book. The management on the basis of inquiry report proposed to dismiss the petitioner from its services and vide show cause notice dated 09.08.1996 (Annexure P-11 at page 101 of the paper book) called upon the petitioner to show cause why he should not be dismissed from service. It seems that the petitioner did not give any reply to the said show cause notice and the management treated the said show cause notice itself as removal of the petitioner from its service. The petitioner under the circumstances treated himself to have been terminated from the service of the management w.e.f. the date of his suspension i.e. 01.04.1996.

4. Aggrieved by his termination from the service of the respondent w.e.f. 01.04.1996, he raised an industrial dispute which was referred by the appropriate Government for adjudication to the Labour Court. The Labour Court then presided over by Mr. S.N. Gupta decided the inquiry issue against the workman/petitioner vide order dated 07.03.2005 and vide impugned award dated 02.05.2005 held that the termination of the petitioner from the service of the management was justified and legal but gave an award of Rs. 30,800/- in his favour as compensation taking into account 11 years of service rendered by him with the management.

5. It is aggrieved by the aforesaid award of the Labour Court that the petitioner has filed the present writ petition challenging its findings relating to his

termination.

6. Notice of this writ petition was sent to the respondent but the respondent management refused to accept the service of the summons as recorded in the order dated 05.12.2006. The respondent, thereafter, was proceeded ex-parte vide order dated 09.08.2007.

7. As the respondent has not appeared to defend the present writ petition despite opportunity given to him, this Court is left with no option but to hear the counsel for the petitioner in his absence ex-parte.

8. Mr. Gajender Giri learned Counsel appearing on behalf of the petitioner has relied upon a Constitutional Bench judgment of the Hon'ble Supreme Court in *Ghanshyam Das Shrivastava v. State of Madhya Pradesh* (1973) 1 LLJ 414 and on the strength of this Constitutional Bench judgment of the Supreme Court, he has argued that since in the present case also the petitioner was not paid his subsistence allowance during the course of domestic inquiry, the inquiry against him is vitiated. It is also submitted by learned Counsel that the termination of the petitioner from the services of the respondent also cannot stand the test of judicial scrutiny because according to him the said termination is, based upon ex-parte inquiry conducted by the Inquiry Officer, contrary to law. Learned Counsel has taken me through the record of this case to show that the subsistence allowance as required under the Rules was not paid to the workman in the course of conduct of domestic inquiry against him. He has contended that the findings of the court below in the impugned award that the petitioner had refused subsistence allowance from the management on the plea that he wanted 100% salary as subsistence allowance instead of 50% offered to him by the management is totally perverse and is contrary to the observations of the inquiry officer in the inquiry report itself. He has drawn my attention to page 61 of the paper book to show that the Inquiry Officer herself has recorded that the petitioner was insisting for payment of Rs. 1,400/-per month as subsistence allowance which was 50% of the admitted wages of Rs. 2,800/-paid to him at the time of his suspension w.e.f. 01.04.1996.

9. It is clear from the finding on the point of payment of subsistence allowance contained in the report of the Inquiry Officer (at page 61 of the paper book) that the findings recorded by the Industrial Adjudicator relating to payment of subsistence allowance for 100% payment is contrary to material on record. From the same, it cannot be said that the petitioner had refused to receive subsistence allowance offered to him by the management. The management was not justified to make any deduction on any count from the subsistence allowance of the petitioner. The payment made to a workman under suspension on account of subsistence allowance is in the nature of maintenance and applying the analogy of principle contained in Section 60(1) of the Code of Civil Procedure, 1908, I am of the view that no deduction could have been made by the employer from the subsistence allowance admissible to the petitioner during the course of domestic inquiry.

10. In Ghanshyam Das Shrivastava's case (Supra) also the Constitutional Bench of Hon"ble Supreme Court quashed the dismissal of a forest ranger based upon the ex-parte inquiry into certain charges framed against him as he was also not paid the subsistence allowance during the course of domestic inquiry and therefore the Inquiry proceedings were held vitiated as violative of Section 311(2) of the Constitution. I feel myself bound by the Constitution Bench judgment of the Hon"ble Supreme Court which is directly applicable to the facts of the present case.

11. In the present case since the petitioner was not paid subsistence allowance during the course of the domestic inquiry held against him, the ex parte inquiry proceedings as well as the inquiry report is vitiated and the impugned termination of the petitioner based upon such inquiry proceedings also stands vitiated and, therefore, cannot be sustained.

12. For the foregoing reasons and having regard to the facts of the case, the impugned termination of the petitioner from service of the respondent is hereby quashed. This writ petition is allowed. The impugned award of the Industrial Adjudicator dated 02.05.2005 is hereby set aside. Liberty is, however, granted to the respondent to start a fresh inquiry in accordance with law against the petitioner.

13. In view of the above, this writ petition stands disposed of with no orders as to costs.