
(2013) 01 DEL CK 0100

In the Delhi High Court

Case No : Writ Petition (C) 3339 of 2007

Shiv Bachan and Others

APPELLANT

Vs

Ayodhya Textile Mill and Another

RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0100

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Rama Shankar with Mr. Shivan Garg, for the Appellant; Sanjay Ghose, for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—By the present petition the Petitioners impugn the award dated 31st March, 2003 passed by the learned Presiding Officer, Labour Court in the ID No. 354/1995 wherein the learned Labour Court although held that the services of the workmen were terminated illegally and unjustifiably by the Management however, awarded a lump sum compensation of Rs. 40,000/- in favour of each Petitioner in lieu of reinstatement with full back wages. Learned counsel for the Petitioners contends that in similar industrial dispute involving other employees of the Respondent bearing ID No. 277/1993 the Labour Court had directed the Respondent to pay arrears of back wages to the workmen @ Rs. 950/- p.m. or minimum wages fixed for the post of weaver and not compensation. Learned counsel further contends that the services of the workmen were terminated in violation of Section 25F of the ID Act and no show cause notice or charge sheet was served upon the Petitioners at the time of their removal. Since the respondent was in a running condition till 31st January, 1997 the Petitioners are entitled to full back wages from the date of their termination till the respondent closed down its business. While granting the compensation to retrenched workmen, the provisions of Section 25F(b) Industrial Disputes Act (in short "ID Act") have not been complied with. The learned Labour Court has failed to

consider the fact that the Petitioners were working with the Management for a continuous period of 8-10 years and in such a case the amount of Rs. 40,000/- as compensation would not serve ends of justice. Reliance is placed on M.C. Mehta Vs. Union of India (UOI) and Others, . It is lastly contended that after passing of the award, the Petitioners contacted the union leader and handed over the file to him to file a case challenging the award. When the Petitioners inquired from him about the status of the case, the union leader kept on assuring that their case was being taken care of. However, when the Petitioners got suspicious and insisted on the leader to inform them about the next date of hearing in the matter, they were informed that the case was never filed and the case file was handed over to them. Thereafter the Petitioners contacted the present advocate and engaged him to file the present writ. This entire procedure led to the delay in the filing of the present case and the same is neither deliberate nor intentional.

2. Per contra learned counsel for the Respondent Management contends that the present petition is not maintainable as barred by inordinate and unexplained delay and laches. The impugned award was passed by the Labour Court on 31st March, 2003 and the Petitioners did not challenge it for approximately four years and only now have approached this Court without properly explaining the reason for such a delay. The Management industry was shut down as per the directions of the Hon''ble Supreme Court w.e.f. 31st January, 1997 therefore, the question of reinstatement of the workmen does not arise. This award already stands implemented by the Management. Otherwise also the workmen were engaged as casual labours and they were not entitled to be reinstated because their services were engaged on day to day basis. The Hon''ble Supreme Court in Karnataka State Road Transport Corporation and Another Vs. S.G. Kotturappa and Another, has held that badli workers have no right to appointment merely because their services were engaged from day to day. In the present case the workmen are not even badli workers as they were engaged as casual employees with the Management. It is further contended that at the time of closure of the industry, the Management has already paid the workmen six years salary as per direction of the Hon''ble Supreme Court in M.C. Mehta (Supra) and only substitute workers were paid compensation as per the said judgment and not casual workers. In industrial dispute ID No. 277/1993 the Labour Court while granting the relief with full back wages had observed that the workmen therein were working with the Management for a period of more than 240 days in a year and also that the Management had violated Section 25G ID Act in terminating the services of both the workmen. Since no finding to the similar effect was given by the learned Labour Court with respect to the present Petitioners, they cannot claim parity with the workmen in other dis-similar industrial dispute. Relief of reinstatement with full back wages is not automatic in a case of where termination is found to be illegal and it depends upon number of factors. Since in the present case the workmen were engaged as casual labours with the Management and the industry stands closed w.e.f. 31st January, 1997, compensation would itself be an appropriate relief. Reliance is placed on Madhya Pradesh Administration Vs.

Tribhuban, . Learned counsel lastly contends that no adverse inference can be drawn against the Management for non-production of the documents especially in a case where industry is closed down. Reliance is placed on Manager, R.B.I., Bangalore Vs. S. Mani and Others, . Relying on Surendranagar District Panchayat Vs. Dahyabhai Amarsinh, , it is contended that the onus is on the workmen to prove with necessary documents their continuous employment with the Management for a period of 240 days in a year preceding termination which they have failed to discharge.

3. I have heard learned counsel for the parties.

4. Briefly the facts of the case, according to the Petitioners, are that Petitioner Nos. 1 to 6 and 8 were appointed as weavers with Respondent Management with effect from October, 1981, 6th May, 1977, 27th April, 1977, 11th May, 1981, 23rd July, 1981 and 27th April, 1977 respectively on the monthly wages of Rs. 1000/- except Respondent No. 8 who was appointed on monthly wages of Rs. 1200/-. Respondent No. 7 was appointed on 27th April, 1981 as winder. During the entire tenure, the work was satisfactorily carried out by all the Petitioners and there was no occasion of any complaint against their work and/or conduct. However, the Respondents wrongfully and illegally terminated their services without giving any show cause notice, charge sheet or paying their benefits. On 15th September, 1988 a demand notice was issued by the Petitioners to the Management, which was neither replied to nor was there any compliance of the same. An industrial dispute was raised by the Petitioners praying for reinstatement with full back wages and a reference was sent for adjudication on the following terms of reference:

Whether the services of S/Sh. Shiv Bachan, Shiv Shanker, Ramesh Singh, Phool Chand, Shiv Dass and Sh. Dal Shingar, Suresh Kumar, Amrit Lal, Moti Lal and Lalman have been terminated illegally and/or unjustifiably by the Management and if so to what relief are they entitled and what directions are necessary in this respect?

5. In Karnataka Power Corporation Limited through its Chairman and Managing Director and Another Vs. K. Thangappan and Another, the Hon"ble Supreme Court held:

6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad Vs. Chief Controller of Imports and Exports, . Of course, the discretion has to be exercised judicially and reasonably.

6. In All India Institute of Medical Sciences Vs. Sanjay Kumar and Another, this

Court held:

13. In the case at hand, the workman, the Respondent No. 1 herein, chose to maintain silence from 1996 till 2005 for a period of almost more than nine years and two months. Thereafter, he woke up from slumber and raised a dispute. In our considered opinion, the workman could not have risen like a phoenix or awake like Rip Van Winkle as if the time was arrested. We are disposed to think so as the workman had not taken any steps whatsoever for a span of nine years and that makes the dispute extinct by efflux of time. It tantamounts to acceptance of the order by the workman. Thus, he cannot be allowed to remain idle for a long span of time and thereafter file an application and revive a cause of action unless a cause of action has accrued at a belated stage or there is a continuous cause of action. Therefore, we are of the considered view that the reference made by the Respondent No. 2 is totally unsustainable and, accordingly, the same is quashed.

7. In the present case the impugned award was passed on 31st March, 2003 and the instant writ petition was filed in the year 2007 after a delay of approximately four years. The reason for delay by the workmen is that they had contacted the union leader and handed over the file to file an appeal against the order. During the entire period, the Petitioners kept on inquiring about the status of the case to which the union leader assured the petitioners/workmen that the case has been filed however, he never informed them about the next date of hearing in the matter. When the Petitioners became suspicious and inquired about the matter, they came to know that the writ petition was never filed as a result of which they engaged the present counsel for filing this writ petition. In my opinion the reason given by the workmen for delay is not sufficient. There is no proper explanation or justification as to what steps were taken by the workmen during the said four years to see that their grievance has been properly addressed. The Petitioners at this stage are trying to put the entire blame on the union leader which they cannot be permitted to do. Workmen were expected to be vigilant about their own right and cannot take recourse in law by blaming someone else for their own negligence. As held in *Karnataka Power Corporation Ltd. (supra)*, the High Court may refuse to invoke its extra ordinary power if negligence or omission on the part of the applicant to assert his right is taken in conjunction with lapse of time and other circumstances, which causes prejudice to the other party. It is an admitted fact that the industry of the Management has been shut down since 31st January, 1997.

8. Further even on merits the Petitioners are trying to claim parity with another award passed by the Labour Court. No material has been placed on record that the workmen involved therein were placed identically like the Petitioner. The Hon'ble Supreme Court in *Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another*, has held that the award of back wages does not follow automatically pursuant to the setting aside of the order of retrenchment passed in violation of Section 25F ID Act. A number of factors such as manner and

method of appointment, nature of employment and length of service are to be considered while granting the relief of compensation. It was held:

14. It would be, thus, seen that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

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17. While awarding compensation, the host of factors, inter-alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances.

9. Thus, in view of the fact that the Management industry is shut down since 31st January, 1997 and the Petitioners were working as casual workers, I do not find any infirmity in the impugned award passed by the learned Labour Court granting the relief of compensation in lieu of reinstatement with full back wages. Petition is dismissed accordingly.