
(2006) 10 DEL CK 0110
In the Delhi High Court
Case No : Writ Petition (C) 8887 of 2004

Shri Om Prakash

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 05-10-2006

Acts Referred:

Citation : (2006) 10 DEL CK 0110

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

Bench : Single Bench

Advocate : Deepak Sinha, for the Appellant; Sanjeev Sachdev and Preet Pal Singh, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition the petitioner has challenged the Award dated 3.12.2003 passed by the Labour Court No. VII whereby the Labour Court answered the reference against the petitioner.

2. Briefly the facts relevant for the purpose of deciding this writ petition are that petitioner was working as a Driver with the Delhi Transport Corporation (DTC). He was medically examined in May 1993. By an inadvertent mistake a letter dated 19.5.1993 was issued to him prematurely retiring him on the ground that he is medically unfit as a Driver. However, this mistake was soon discovered by the respondent and respondent corrected its mistake and recalled the order dated 19.5.1993 and passed another order dated 31.5.1993 asking petitioner that he continues to be in service should and join the duty immediately. The period from 19.5.1993 to 31.5.1993 for which he had not worked was directed to be treated as leave. Petitioner alleged that after 31.5.1993 he was not allowed to join the duties and raised an industrial dispute which was referred for adjudication in the following terms of reference:

Whether the services of Shri Om Prakash have been terminated illegally and/or unjustifiably by the management, and if so, to what relief is he entitled and what

directions are necessary in this respect ?

3. The Labour Court after considering the statement of claim of the petitioner and written statement of the respondent found that there was no dispute that petitioner's services were terminated by mistake and the respondent after recalling mistaken order had been repeatedly telling the petitioner to join the duties but the petitioner did not join the duties. The respondent in the written statement had also stated that the petitioner was free to join the duties. On 3.12.2003 when the case was fixed before the Labour Court for evidence, both parties took the stand that facts were not in dispute. The Court heard arguments and decided the matter. The stand of the respondent had been that there was no termination of the services. The affidavit filed by the workman/ petitioner also showed that he was being continued on the rolls of the management, though he alleged that he was not given duties. The Tribunal observed that because of not joining duties by the petitioner, the management i.e. DTC was forced to start an enquiry against the petitioner for his absence. Even in that enquiry petitioner did not cooperate. Tribunal also observed that allegations of the workman that he went repeatedly to the office of the management but was not allowed to join duties could not be believed because the workman had not even once made a complaint to any higher functionary of the management and instead remained silent. He did not comply with the directions to join duties. Tribunal, Therefore, answered the reference against the workman, however, directed the workman to join management within a period of six days and the management was directed to deal with the absence period as per rules.

4. The Award has been challenged by the petitioner on the ground that Labour Court had not exercised jurisdiction properly. Petitioner was not subjected to cross examination and the Labour Court without evidence passed the Award. Labour Court arbitrarily held that there was no termination of the services of the petitioner. Hence, the award was bad in law.

5. I have heard the learned Counsel for the parties and perused the record.

6. It is apparent from the conduct and attitude of the petitioner that between 19.5.1993 and 31.5.1993, he found out some other job and instead of joining the DTC, as a Driver, just kept on avoiding DTC. There was no reason for him not to report for duties after 31.5.1993. If he was denied duty on or after 31.5.1993, he should have lodged a complaint with the General Manager of DTC or with some other senior officer but he did not lodge any complaint to any authority and kept silent from 1993 to 1999. A workman who is unemployed and needs job shall not sleep for six years to raise an industrial dispute. Where workman raises an industrial dispute after such a long time i.e. after six years, the only presumption that can be drawn is that he was not in need of the job and he was gainfully employed somewhere else and he raised industrial dispute only to get unjust enrichment. In DTC there are 18 unions which are active and each employee is a member of one or the other union. It is not that petitioner was not aware of his right. It is a case where petitioner deliberately did not join duties

and later on after six years raised an industrial dispute and joined duties only in 2003 under directions of Court hoping that he shall get back wages through litigation. He also took a plea that the period from 19.5.1993 to 31.5.993 could not be treated as leave so he did not join. If he was aggrieved about the treatment of period from 19.5.1993 to 31.5.1993, he could have raised a dispute about this period, but under no circumstances he could refuse to join duties, if he had intention to work with the respondent.

7. It is not necessary for a Tribunal to record evidence if the facts are not in dispute. The petitioner in this case in his affidavit has stated that he is still on the rolls of DTC. That simply showed that his services had not been terminated and the reference was bad in law. It seems reference was made by the appropriate government without considering basic facts and without application of mind. There are several references which are being received by the Labour Courts which are either not properly framed or made without application of mind. No reference of termination should be made by the appropriate government in a case unless there is a report from the conciliation officer or from Labour Commissioner that despite workman having presented himself for joining, he was not allowed to join the duties. A reference in this case was, obviously, bad in law.

8. The respondent has claimed back wages. Respondent was not entitled for back wages. He had not worked with DTC as Driver. It seems that he worked as a Driver out side. He raised industrial dispute after six years. The industrial dispute itself should not have been entertained after such a long time.

9. I find no merit in the writ petition. The same is hereby dismissed.