
(2009) 10 DEL CK 0296

In the Delhi High Court

Case No : Writ Petition (C.) No. 6939 of 2001

Shri Trived Prakash

APPELLANT

Vs

Delhi Transport Corporation and Another

RESPONDENT

Date of Decision : 13-10-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 33(2)

Citation : (2009) 10 DEL CK 0296

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

Bench : Single Bench

Advocate : D.N. Vohra, for the Appellant; Hanu Bhaskar, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.

C.M. No. 10743/2009 and W.P.(C.) No. 6939/2001

1. The management of DTC (respondent herein) filed a miscellaneous application being C.M. No. 10743/2009 seeking dismissal of the present writ petition directed against the impugned order u/s 33(2)(b) granting approval to respondent No. 1 for removal of the petitioner from its service w.e.f. 02.08.1994.

2. Mr. Hanu Bhaskar, learned Counsel appearing on behalf of the respondent No. 1 management, has contended that after approval u/s 33(2)(b) for removal of the petitioner was granted by the Tribunal, the petitioner had raised an industrial dispute u/s 10 of the Industrial Disputes Act, 1947, with regard to his removal, which was referred by the appropriate Government in the Government of NCT of Delhi for adjudication to the Industrial Tribunal. The industrial dispute raised by the petitioner with regard to his removal from the service of respondent No. 1 was decided by the Tribunal against the petitioner vide award dated 06.01.2007 in I.D. No. 79/2002. The petitioner aggrieved by the said award of the Tribunal had filed a writ petition being W.P.(C.) No. 9140/2009 which was dismissed by this Court in limine vide order dated 03.07.2009.

3. Mr. Hanu Bhaskar, learned Counsel appearing on behalf of the respondent No. 1 management, contends that since the challenge to the award in the main industrial dispute has been rejected by this Court, this writ petition filed against the impugned order u/s 33(2)(b) is also liable to be dismissed.

4. The dismissal of the writ petition prayed for by the respondent No. 1 management is opposed by Mr. D.N. Vohra, learned Counsel appearing on behalf of the petitioner. Mr. Vohra has contended that since one month wages in terms of Section 2(rr) of the Industrial Disputes Act, 1947 was not paid by the respondent No. 1 management, the order granting approval u/s 33(2)(b) is liable to be set aside by this Court in the present writ petition. Mr. Vohra has drawn my attention to paragraph 23 of the impugned order (running page 33 of the Paper Book) which is extracted below:

The office order No. 22, the definition of wage as mentioned u/s 2(rr) and the FR-9 Ex. AW2/Z do not suggest that the special pay given to an employee for promoting the small family norms is part of pay even at the time of payment of notice pay as in the present case. The office order speaks that the concession will remain fixed during the entire service period. The respondent was paid notice pay only after he was removed from service. It was not denied to the respondent so long he was in the service of the petitioner. The special pay for promoting small family norms was not to be counted for retirement benefits if the respondent would have retired from service on attaining the age of superannuation. Consequently, such special pay cannot be part of the notice pay of a workman, who is removed from service. As per definition of wages u/s 2(rr) of I.D. Act "wages means all remuneration payable to a workman in respect of his employment or of work done in such employment. The special pay/incentive for adopting small family norms was not in respect to the employment of the respondent or the work done in the employment of the petitioner. It was incentive for adopting small family norms and the respondent was entitled for such incentive so long he was in the service of the petitioner. That benefit was not denied to him during his period of his service with the petitioner. Consequently, the petitioner was not entitled for Rs. 20/- as special pay/incentive for adopting small family norms at the time of payment of one month's notice pay. Hence, the petitioner remitted full amount of one month's wage to the respondent i.e. Rs. 2909/- by way of money order on the day of his removal from service. Issue is decided in favour of the petitioner.

5. Relying on the above paragraph, Mr. Vohra contends that since the petitioner was not paid the special allowance of Rs. 20/- for maintaining a small family norms in terms of office order No. 22, the impugned order u/s 33(2)(b) is bad and cannot be maintained.

6. I do not agree with this contention made on behalf of the petitioner. The petitioner was paid notice pay at the time of his removal from service. The special pay of Rs. 20/- for maintaining a small family norms, in the opinion of this Court, is not a part of allowance or wages as provided in Section 2(rr) of the

the Industrial Disputes Act, 1947. Even otherwise, this Court is of the view that the scope of inquiry u/s 33(2)(b) is different from the scope of inquiry in a reference u/s 10 of the Industrial Disputes Act, 1947. u/s 33(2)(b), the Court has only to make a strong prima-facie view at the time of granting or rejecting approval whereas in reference u/s 10 of the Industrial Disputes Act, 1947, the Labour Court or the Tribunal is under an obligation to examine all the contentions raised by both the parties on the merits of the case in detail. The reference u/s 10 has been dismissed against the petitioner and the challenge to the same has also been rejected by this Court in writ petition being W.P.(C.) No. 9140/2009 vide order dated 03.07.2009.

7. In view of what has been stated above, the instant application filed on behalf of the respondent No. 1 management is allowed and the writ petition being W.P. (C.) No. 6939/2001 is also dismissed. The parties are left to bear their own costs.