

(2009) 07 DEL CK 0066

In the Delhi High Court

Case No : Writ Petition (C) No. 17860 of 2004

Smt. Santosh Sukheja and Others

APPELLANT

Vs

Women's Action for Development and Another

RESPONDENT

Date of Decision : 22-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2

Citation : (2009) 07 DEL CK 0066

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

Bench : Single Bench

Advocate : S.K. Tripathi, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—This writ petition filed by the five workmen (the petitioners herein) is directed against an award dated 05.09.2003 passed by Mr. D.C. Anand, POLC I, Delhi declining relief to them for alleged illegal termination of their services by respondent No. 1 w.e.f 12.08.1992. One of the petitioners namely petitioner No. 5 Smt. Chandrawati is reported to have expired during the pendency of the present proceedings and her legal heirs have not come forward for their substitution after her death.

2. Briefly stated the facts of the case relevant for the disposal of this writ petition are that 36 workers including the petitioners had raised an industrial dispute with regard to termination of their services by respondent No. 1 management w.e.f. 12.08.1992. The industrial dispute raised by them was referred by the appropriate Government for adjudication to the Labour Court.

3. Before the Labour Court statement of claim was filed on behalf of the workmen stating therein that they were employed with various projects of respondent No. 1 like Bal Baris, Sewing centres, adult education centres, health workers, helpers, REC teachers etc for the last 4-5 years on monthly salary of

Rs. 500/-to Rs. 1,200/-per month. They all alleged that their services were illegally terminated by respondent No. 1 and for that reason, they have prayed for their reinstatement with back wages.

4. Respondent No. 1/ management had contested the claim inter-alia on the ground that respondent No. 1 management is a voluntary organization set up in Delhi and as such is not an industry. It was further stated by respondent No. 1 in its written statement that the claimants were never employed on wages and most of them are teachers who are otherwise not workmen. As per the case set up by respondent No. 1 in its written statement, the activities which were extended by respondent No. 1 to the community for their self reliance were closed and the services of the volunteers including that of the claimants were dispensed with w.e.f. 12.08.1992 and their full and final payment was sent to them while majority of the volunteers accepted their dues from the office of respondent No. 1 organization.

5. On the pleadings of the parties, following issues were framed by the Labour Court on 26.07.1999:

1. Whether the management is not an industry as alleged in preliminary objection No. 1 of the W.S.?

2. Whether the claimants are not workmen as defined under Industrial Disputes Act?

3. Whether the management has been closed and the services of the claimants dispensed with vide notice dated 12.08.1992 and dues sent in full and final to the claimants, if so, its effect?

4. As per terms of reference.

6 On behalf of the claimants including the petitioners, only one witness was examined namely WW-1 Mr. Chunmun Singh. Respondent No. 1 management also examined one witness namely its Accounts Officer Mr. J.K. Sharma.

7. The court below after considering the evidence produced by the parties before it and noting the judgments of the Supreme Court reached to a conclusion in the impugned award that respondent No. 1 organization is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 and it also held that the claimants are not workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. Basically these two findings of the court below have been assailed by five out of 36 workers by filing the present writ petition.

8. I need not go into the correctness of the findings of the Labour Court on the point whether respondent No. 1 organization is an industry or not because the petitioners are not entitled to any relief in the present writ petition even if it is assumed that respondent No. 1 organization is an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. It is so because the only witness examined on behalf of the claimants including the petitioners before the

Labour Court is WW-1 Mr. Chunmun Singh who in his testimony has said that before impugned termination, he was working as a teacher with respondent No. 1 organization while other workers were sewing teachers, health workers, helpers, music and dance teachers. The petitioners admittedly did not examine either themselves or produce any other evidence before the Labour Court to show that they come within the purview of definition of "workmen" as provided u/s 2(s) of the Industrial Disputes Act, 1947. Once claim was filed on behalf of the petitioners before the Labour Court, the onus was on them to establish in what capacity they were employed as to whether they were teachers or working in some other capacity which brings them within the ambit of "workmen" as defined in Section 2(s). Absence of production of evidence by the petitioners on this crucial aspect disentitles them for any relief in the reference that was made by the appropriate Government to the Labour Court for adjudication. If a claimant fails to prove his/her case, then the relief as prayed for by him/her cannot be granted by the Court. In this backdrop, I do not find any perversity in the findings of the court below on the point that the petitioners are not workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. The impugned award of the court below does not call for any interference by this Court in exercise of its extraordinary discretionary writ jurisdiction under Article 226 of the Constitution of India. Hence this writ petition fails and is hereby dismissed.

At this stage, Mr. S.K. Tripathi learned Counsel appearing on behalf of the petitioners submits that liberty may be granted to the petitioners to approach respondent No. 1 organization for payment, if any, due to them under the rules. No such liberty is required to be granted because in law the petitioners are even otherwise entitled to ask for payment legally due to them from respondent No. 1 as per law.