
(2011) 04 DEL CK 0274

In the Delhi High Court

Case No : Writ Petition (C) 3532 of 2005 and CM No. 2750 of 2005 (for Stay)

State Bank of India

APPELLANT

Vs

Ram Pratap

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2011) 04 DEL CK 0274

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Rajiv Kapur, for the Appellant; L.K. Garg, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—Whether reporters of Local papers may be allowed to see the judgment? No 2. To be referred to the reporter or not? No 3. Whether the judgment should be reported No in the Digest? RAJIV SAHAI ENDLAW 1. Though writ petitions of prior to the year 2000 are pending consideration but this writ petition is taken up for hearing out of turn in the circumstances herein after appearing.

2. The challenge in this petition is to the award dated 1st October, 2004 of the Industrial Tribunal on the following reference:

Whether the action of the Management of the State Bank of India in dismissing Shri Ram Pratap from service w.e.f. 15.05.1991 was legal and justified? If not, to what relief(s) the workman is entitled to and from what date?

3. The Industrial Tribunal answered the reference as under:-

The action of the management of the State Bank of India in dismissing Shri Ram Pratap from service w.e.f. 15.05.1991 was neither legal nor justified. The workman is entitled to be restored to the position prior to the date of the award of punishment. The management may reopen the enquiry and conclude it after giving reasonable opportunity to the workman and following the principles of

natural justice.

4. Notice of the petition was issued. Even though a perusal of the order sheet does not disclose that there was any stay of the operation of the award but the counsel for the Respondent workman nevertheless filed application u/s 17B of the Industrial Tribunal Act, 1947 and which could be filed only in case where there was a stay of the award of reinstatement. The said application was allowed and the counsel for the Respondent workman states that he has been receiving 17B wages.

5. A perusal of the award shows that the only finding returned therein and on the basis of which the reference has been answered, is of the departmental inquiry conducted by the Petitioner prior to the order of dismissal of the respondent workman being vitiated. It has as such been enquired from the counsel for the Petitioner whether the Petitioner had not sought any opportunity to prove the alleged misconduct before the Industrial Tribunal. The counsel for the Petitioner invites attention to the reply/written statement filed before the Industrial Tribunal and in para 3 of the preliminary objections whereof the Petitioner had stated as under:

That though the enquiry was conducted free, fair and proper, the Bank reserves its rights to lead any evidence in case this Hon"ble Tribunal comes to the conclusion that the enquiry was not proper in any manner.

6. The counsel for the Petitioner contends that notwithstanding the aforesaid, the Industrial Tribunal after holding departmental inquiry to be vitiated did not grant any opportunity to the Petitioner to prove misconduct before the Tribunal.

7. It has next been enquired from the counsel for the Petitioner whether the Petitioner has taken such ground in the writ petition. The counsel for the Petitioner invites attention to para 6 of the writ petition at page 19 of the paper book where the ground to the said effect has been taken.

8. Though the Respondent workman has filed a reply to the petition but has not controverted the aforesaid paragraph of the petition.

9. The counsel for the Respondent workman however today contends that if the Petitioner was desirous of proving misconduct before the Industrial Tribunal, the Petitioner ought to have got the issue, regarding the inquiry treated as a preliminary issue and without the Petitioner pressing so before the Industrial Tribunal, the Industrial Tribunal was not required to grant any such opportunity to the Petitioner.

10. The record of the Industrial Tribunal requisitioned in this Court has been perused. The order sheet does not show that any issue whatsoever was framed. The Industrial Tribunal after giving an opportunity on 20th September, 1994 for admission/denial of documents, adjourned the matter straightway for affidavits by way of evidence. A perusal of the order sheet however does show that on 22nd October, 2002 the counsel for the Petitioner herein had pointed out to the

Industrial Tribunal that the preliminary issue regarding the fairness and validity of the inquiry had not been framed. However the Industrial Tribunal observed that since both the parties had adduced their evidence and the case was at the stage of final arguments, there was no justification for framing the preliminary issue at that stage.

11. Thus it cannot be said that the matter was not brought to the attention of the Industrial Tribunal. However the Industrial Tribunal after reserving orders on the arguments heard on the aspect of validity of the inquiry proceeded to answer the reference instead of giving an opportunity to the Petitioner to prove misconduct before the Industrial Tribunal.

12. The aforesaid would show that there has been an irregularity in the procedure before the Industrial Tribunal, sufficient to vitiate the award impugned in this petition. The Petitioner cannot be condemned unheard.

13. The counsel for the Respondent workman at this stage states that the award gives an opportunity to the Petitioner to again hold departmental inquiry and the Petitioner ought to have proceeded with the said inquiry.

14. However the right of the Petitioner to prove misconduct before the Industrial Tribunal could not have been taken away by so providing and the irregularity committed by the Industrial Tribunal cannot be overlooked for the said reason.

15. The counsel for the Respondent workman next contends that after such long lapse of time it would not be possible to lead evidence.

16. Though there may be some truth in the said submission but a perusal of the order sheet of the present proceedings also shows that not much anxiety has been shown by the Respondent workman himself. As aforesaid, the Respondent workman, notwithstanding the fact that there was no stay, did not approach the Petitioner for joining duty as directed by the Industrial Tribunal. The counsel for the Respondent workman however states that the Respondent workman could not have joined the duty because he was under suspension and as per the award would have remained under suspension. Even if that be so, the Petitioner ought to have then claimed suspension allowance and not 17B wages. Moreover, the delay occasioned in the aforesaid circumstances can be compensated by fixing the time for the Industrial Tribunal to now conclude the proceedings and by providing that the Respondent workman shall continue to be entitled to 17B wages till the conclusion thereof. To compensate the Respondent workman for the delay, it is further directed that the Respondent workman shall not be required to refund the difference if any between last drawn wages and minimum wages being paid to him under 17B order and is relieved of the undertaking filed by him in this Court.

17. The petition is accordingly allowed to the aforesaid extent only. The matter is remanded to the Industrial Tribunal for granting an opportunity to the Petitioner to lead evidence on misconduct. The parties to appear before the Industrial

Tribunal on 28th April, 2011. The file of the Industrial Tribunal requisitioned to this Court be sent back forthwith. The Industrial Tribunal to pass an award on or before 30th September, 2011. Needless to state that if any party remains aggrieved there from, shall have remedies in law. It is further clarified that the Petitioner shall be entitled to impugn the finding of the Industrial Tribunal regarding inquiry in a fresh challenge if any made to the award. The petition is disposed of in the aforesaid terms with no order as to costs.

18. The counsel for the Respondent workman at this stage has offered a settlement proposal to the counsel for the Petitioner. It is stated that the Respondent workman is ready for a punishment lesser than that of dismissal. The counsel for the Petitioner states that the business of the Bank being of trust and the charge against the Respondent workman being of fraud, there is no possibility. Reliance in this regard is placed on the judgment dated 6th April, 2011 of the Apex Court in CA No. 2957/2011 titled SBI v. Hemant Kumar.

19. In view of the aforesaid, no purpose would be served in adjourning the matter for the said reason also. Dasti.