
(2004) 02 DEL CK 0104
In the Delhi High Court
Case No : Writ Petition (C) 1780 of 2003

Suresh

APPELLANT

Vs

M.C.D. and Others

RESPONDENT

Date of Decision : 17-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 112 DLT 596 : (2005) 1 SLJ 296

Hon'ble Judges : Madan B. Lokur, J

Bench : Single Bench

Advocate : Sanjay Ghose and Pragya, for the Appellant; Rakesh Mittal, for the Respondent

Judgement

Madan B. Lokur, J.—The only issue raised in this case by learned Counsel for the petitioner is that even though reinstatement has been ordered by the impugned Award dated 3rd January, 2000, back wages have not been awarded by the learned Labour Court.

2. The reason for not awarding back wages is mentioned in para 11 of Award which reads as follows:

"As an upshot of the above discussion, it follows that action of the management is unsustainable, workman is entitled to reinstatement. However, as regards back wages, it may be observed that workman had done no better than merely alleging that he is unemployed since terminated. He has disclosed as to what efforts he made to find alternative employment. It is difficult to believe that he sat idle throughout litigation. He had a duty to mitigate loss as per 1981(1) LJJ 385 SC. In 1994(2) LLN 925, Bombay High Court held that when workman has no regard for truth, 12 months" wages are sufficient. Similarly, in 1998(2) LLN Allahabad High Court ruled that Labour Dispute cannot be made source of unjust enrichment. Thus I deemed it fit not to award any back wages to the present workman."

3. The petitioner had filed an affidavit before the learned Labour Court on 22nd July, 1993 in which he had categorically stated in paragraph 16 that the deponent (the petitioner) was unemployed since 15th November, 1988. In his cross-examination which was conducted on 15th February, 1994 no question was asked about his unemployment except a suggestion given at the end of the cross-examination that the petitioner was gainfully employed elsewhere. The suggestion was denied by the petitioner.

4. By and large, it is not possible for a workman to prove his unemployment. When the management disputes the fact that the workman is unemployed, it has to lead evidence of gainful employment. The petitioner having stated that he was unemployed, he could not be expected to produce proof to show that he was without a job. In the absence of any effective cross-examination or any evidence having been produced by the respondent the statement given by the petitioner, on the facts of this case, ought to have been accepted by the, learned Labour Court.

5. I now propose to deal with the decisions referred to in the above quoted extract from the Award,

6. The judgment of the Bombay High Court that has been relied upon says that when a workman has no regard for truth, 12 months' wages are sufficient. There is nothing to suggest that the workman had no regard for the truth in this case. I do not see how this decision is applicable.

7. So far as the Allahabad High Court decision is concerned, it has been held that a labour dispute cannot be made a source of unjust enrichment. This also does not apply to the facts of the present case.

8. Insofar as the judgment of the Supreme Court is concerned, P. Kasilingam v. College of Technology 1981 (1) LLJ 358 SC, that case related to a college teacher who was said to have resigned from his post. That case did not relate to any industrial dispute. I, Therefore, do not see how it is applicable. Apart from that, the Supreme Court merely said that it cannot make a general order on a blanket order that in all cases back wages have to be paid. Having said that, the matter was remitted to the Government to decide on the facts of the case whether the appellant therein was entitled to arrears of pay and allowances on his reinstatement in service.

9. Ex facie, the decision rendered by the Supreme Court is not at all apposite.

10. In the present case, the workman had stated on oath that he was unemployed. There was no effective cross-examination on this aspect. Moreover, no evidence was produced by the management to show that the petitioner was gainfully employed elsewhere.

11. Under the circumstances, the Award rendered by the learned Labour Court to this extent is erroneous and is liable to be set aside.

12. Since the notice of demand in this case was made by the workman on 12th February, 1990, the petitioner will be entitled to back wages from the date till his reinstatement. Learned Counsel informs me that back wages have been paid to the petitioner from the date of the Award, that is, 3rd January, 2000 till the date of his reinstatement.

13. Consequently, the petitioner will be entitled to back wages only for the period from 12th February, 1990 up to 3rd January, 2000.

14. The petition is disposed of in the above terms.