
(2010) 04 DEL CK 0362
In the Delhi High Court
Case No : WP (C) No. 7362 of 1999

Suresh Kumar

APPELLANT

Vs

Presiding Officer, Labour Court-IV and Others

RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 2, 25F

Citation : (2010) 04 DEL CK 0362

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Vinay Kumar Sabharwal, for the Appellant; Anil Mittal, for R-3, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner workman seeks a writ of certiorari with respect to the award dated 1st June, 1999 of the Labour Court on the following reference:

Whether the termination of services of Shri Suresh Kumar is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

2. The Labour Court answered the reference in favour of the workman and against the respondent No. 3 Uttar Pradesh Rajkiya Karyashala Sthapan Khand/ employer and held the termination to be illegal and unjustified. However in view of the plea of the respondent No. 3 employer that the U.P. Government which had taken up the fabrication work at Okhla Barrage and had set up the unit in which the petitioner was employed, had on completion of the work w.e.f. 31st March, 1985 closed the said unit, the Labour Court granted the relief only of payment of wages w.e.f. March, 1983 till 31st March, 1985 i.e. the date of closure of the unit, to the petitioner workman. Aggrieved therefrom this writ petition has been preferred.

3. The respondent No. 3 employer having not challenged the award, the finding of the Labour Court of the termination of the services of the petitioner workman being illegal and unjustified has attained finality. Even otherwise I may notice that it was the plea of the respondent No. 3 employer that the petitioner workman had not attended duties since 10th March, 1983 without intimation and had failed to join back inspite of communication and thus his services were terminated vide letter dated 2nd June, 1983. It was the case of the petitioner that he had fallen ill and had reported back for duty on 30th May, 1983 but was not allowed to join. It is the admitted position that no inquiry was held by the respondent No. 3 employer prior to termination of services of the petitioner. A Division Bench of this Court in Shakuntala's Export House (P) Ltd. Vs. Secretary (Labour) and Others has held that abandonment amounts to misconduct which requires proper inquiry. I have dealt with this aspect in detail recently in judgment dated 18th March, 2010 in W.P.(C) No. 3345/2000 titled Delhi Transport Corporation v. Arun Kumar and need is not felt to repeat the said discussion. Suffice it is to state that the finding of the Labour Court qua the termination being illegal, is even otherwise found to be correct.

4. The only question surviving in this petition is thus of whether the Labour Court was justified in declining the relief of reinstatement to the petitioner merely for the reason of the unit of the Government of U.P. in which the petitioner was employed having closed. The petitioner in this regard relies upon the award dated 28th September, 1987 of the Labour Court in another reference in a dispute raised by another employee namely Shri Satbir Singh of the same unit. The Labour Court had directed the relief of reinstatement with full back wages and continuity in service. It was inter alia held that closure of the unit did not justify the termination of services and the employee had to be given the option to work in another department of the Government of U.P. It is the uncontested plea of the petitioner that the said employee namely Shri Satbir Singh was re-employed pursuant to the award of the Labour Court. It is also the uncontested plea of the petitioner workman that the services of another employee Shri Mahender Pal Singh in the same unit were also terminated and he had also raised an industrial dispute and this Court vide order dated 18th March, 2003 in W.P.(C) No. 919/1999 titled Mahender Pal Singh v. State of U.P. had directed reinstatement of the said employee also and the said employee had also since been reinstated by the respondent No. 3 employer. It is thus the plea of the counsel for the petitioner that the petitioner is also entitled to the same relief and is willing to work at any workplace/unit/department of the respondent No. 3 employer in Delhi or in U.P. Reliance is placed on Mohan Lal Vs. Management of Bharat Electronics Ltd., laying down that where the termination is found to be illegal, there is no cessation of service and the workman is deemed to have continued to remain in service and there is no need to direct reinstatement. The counsel for the petitioner thus contends that the petitioner is thus deemed to be in employment and is entitled to back wages since after 31st March, 1985 till date also with all consequential benefits and is entitled to work and to further

payments. The present age of the petitioner was enquired. He is informed to be now about 55 years of age.

5. Per contra, the counsel for the respondent No. 3 has contended that the petitioner was employed for the work only at the unit which has closed down and his services are not required at any other place. As far as the reference by the petitioner to the award/orders in the cases of other workmen are concerned it is contended that the petitioner is not entitled to the benefits thereof because the terms of employment of the other employees were different and they had built and made out a case for reinstatement and no such case has been made out by the petitioner. It is stated that in other cited cases the workman had requested for an offer for transfer to another place; no such request was made by the petitioner. It is further contended that the petitioner has not stated that his appointment was for working in any department of the Government of U.P. or that his job was transferable.

6. The counsel for the petitioner rejoins by contending that it was for the respondent No. 3 employer to plead and prove that the appointment of the petitioner was only for the unit at Okhla.

7. I have enquired from the counsels whether there is any document of appointment. There is none. The Labour Court also has held the termination of employment of the petitioner to be bad only for the reason that he had worked for more than 240 days in the preceding year.

8. Though Section 2(oo)(bb) exempts termination of the services of a workman as a result of non renewal of the contract of employment on its expiry or on termination of such contract but, "under a stipulation in that behalf contained therein". In the present case there is nothing to show that there was any stipulation in the appointment of the petitioner that his employment was to continue only till the completion of the work in the unit at Okhla in which the petitioner was employed. Thus at this stage, it is not open to the respondent No. 3 employer to take the said plea.

9. The next question which arises is whether the Labour Court was justified in granting wages from the date of illegal termination and till the date of closure of the unit only. The same cannot be held to be justified once it is held that Section 2(oo)(bb) did not apply.

10. The petitioner having now attained the age of 55 years, the question of this Court even while allowing this petition directing the reinstatement of the petitioner does not arise. The reinstatement of the petitioner now would disturb the harmony in the cadre. Even otherwise with the petitioner having remained out for the last over 27 years, it will not be beneficial to either of the parties for the petitioner to work with the respondent No. 3 employer till he attains the age of superannuation. The counsels were asked to address on the measure of compensation to be awarded in lieu of reinstatement. While the counsel for the petitioner contends that the said measure has to be the wages which the

petitioner would have drawn while continuing in employment, the counsel for the respondent No. 3 employer relies on the measure of damages in Section 25F. It is contended that the petitioner had admittedly worked for two years only and even in case of retrenchment, would have been entitled only to compensation equivalent to 15 days emoluments for every completed year of service.

11. In my view neither of the aforesaid can be accepted. An employer whose action of termination of an employee is found to be illegal cannot turn around and plead that no direction for reinstatement be made and the employee be deemed to have been retrenched u/s 25F of the Act. It is for the employer to in his wisdom choose the action against the employee. If he chooses to terminate the services and which termination is found illegal, he cannot avail the protection of retrenchment. He ought to have satisfied the conditions of retrenchment u/s 25F at the relevant time. Compensation has to necessarily follow a declaration of illegality. Similarly an employee who has not worked cannot claim full wages which were payable in consideration of the work to be done for the employer. In the present case the award being in favour of the employer, the petitioner workman did not even have the benefit of Section 17B of the Act. The petitioner workman in the last 27 years must have worked elsewhere and earned for the said work and cannot claim full wages from the respondent No. 3 employer also. However, since there is no plea of the respondent No. 3 of the petitioner working elsewhere it can safely be presumed that such work by the petitioner must not have been with any employer offering the same level of security of employment as provided by the respondent No. 3 Government of U.P. The compensation thus has to reflect the savings which the respondent No. 3 Government of U.P. would make by avoiding the reinstatement of the petitioner. In the event of reinstatement, the respondent No. 3 would be liable for all post retirement benefits also of the petitioner without the petitioner having worked for the respondent No. 3. Considering all the said aspects, I deem a further compensation of Rs. 2 lacs to be sufficient. While arriving at the said compensation I have taken into consideration that the compensation was payable 27 years ago and would be payable now.

12. The writ petition succeeds to the aforesaid extent. The respondent No. 3 is directed to pay to the petitioner within four weeks hereof a sum of Rs. 2 lacs, failing which the sum shall also incur simple interest at 9% p.a. from the expiry of four weeks hereafter and till the date of payment. The petitioner is also awarded costs of Rs. 10,000/- of these proceedings, payable along with the compensation aforesaid.

The petition is disposed of.