

(2014) 03 DEL CK 0157

In the Delhi High Court

Case No : Writ Petition (C) 15493 of 2006

The Director All India Radio

APPELLANT

Vs

Ramesh

RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 17-B 2(ra) 25-F 25-G 25-H

Citation : (2014) LLR 404

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Vikrant Yadav, for the Appellant; Parul Singh, for the Respondent

Final Decision : Disposed Off

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition is to the Award dated February 24, 2006 passed by the Industrial Tribunal in I.D. No. 2/2004, whereby the Industrial Tribunal has directed reinstatement of the respondent with full back wages. Initially a reference was made with respect to two persons namely Ramesh & Shyam Lal. Shyam Lal had abandoned his claim before the Industrial Tribunal itself and accordingly the award of the Industrial Tribunal is with regard to Ramesh only. It was the case of the respondent that he was engaged by the petitioner for doing perennial nature of work. The petitioner has indulged in unfair labour practices and after his termination engaged fresh hands apart from retaining juniors in the service. The juniors who have been named by the respondent were Umesh, Deena Bandhu, Montu, Barsati Lal and Keshav. In other words, it was the case of the respondent that the action of the petitioner is in violation of Section 2(ra) and Section 25-G and 25-H of the Industrial Disputes Act, 1947 ("Act" in short) and Rules 76 & 77 of the Industrial Disputes (Central) Rules, 1957 ("Rules" in short).

2. The petitioner was proceeded ex-parte. Based on the evidence filed by the respondent, the Industrial Tribunal allowed the claim in the manner it is reflected above. It is the case of the petitioner that no effective service was made upon it.

In other words, it is the case that the petitioner was not aware of the proceedings pending before the Industrial Tribunal.

3. Mr. Vikrant Yadav, learned counsel for the petitioner has reiterated the stand of the petitioner in the writ petition. He states that no effective service was made on the petitioner. He states that the case need to be remanded back to the Industrial Tribunal by allowing the petitioner to file a reply to the claim petition and affording an opportunity to the petitioner to lead evidence, the Industrial Tribunal shall decide the industrial dispute on merit.

4. The Labour Court Record was called for. I have seen the same.

5. I note that a letter dated March 18, 2004 was written by one Mr. Geeta Ram, Senior Administrative Officer of the Division of All India Radio to the Directorate of All India Radio situated at Akashwani Bhawan, New Delhi, giving reference to the I.D. No. 2/2004, a copy of which was sent to the Secretary of the Industrial Tribunal. The contents of the letter are in vernacular whereby the Senior Administrative Officer has duly forwarded the notice received from the Industrial Tribunal, to the Directorate to look into the date of hearing. I note that on December 14, 2004 the Industrial Tribunal while proceeding ex-parte against the petitioner has passed the following order:

Present: None

The perusal of record show that the Respondent Director All India to whom notice was issued has sent a letter to this court informing that the concerned officer of the concerned department of AIR has been informed about the next date of hearing. The of respondent is dated 18/3/2004. But none has appeared on behalf of the Respondent despite such letter dated 18/3/2004. In my opinion the notice sent to the Respondent on 19/1/94 is duly served on the Respondent Director of AIR and as such no further notice is required to sent to respondent. It is 11.40 a.m. Hence, Respondent AIR is proceeded ex-parte and case posted for 22/2/2004 for appearance of the workman and his ex-parte evidence by way of affidavit

6. Hence from the above it is seen that the summons were duly received by division of All India Radio. The said summons were sent to the Directorate for further action. It appears that no action has been taken by the Directorate of All India Radio. On the said summons, no enquiries have been made with the Industrial Tribunal, otherwise the petitioner would have at least filed an application for setting aside of the ex-parte proceedings against it. Hence, it is not a case where service was not effected upon the petitioner. It is true that in the absence of petitioner, the Industrial Tribunal accepted the claim of Ramesh and granted the relief in the impugned award.

7. I note that while granting the relief the Tribunal had accepted the contention of the respondent that the termination is in violation of Section 25-G and 25-H of the Act. The law is well settled insofar as the violation of Section 25-F of the Act,

where in such cases this Court and the Supreme Court has held that it is not necessary that reinstatement must follow. In other words, the compensation in lieu of back wages would also be a proper relief. I find that the respondent had named workers who were junior to him, who have been retained in service while terminating the respondent. If it is a case that the juniors have been retained, a different consequence in lieu of compensation would follow. Unfortunately in the absence of any reply from the petitioner, it is not clear whether the persons named were actually junior to the respondent. That apart it is the case of the petitioner that the respondent had never worked with the petitioner organization. The respondent had relied upon a handwritten document, which is purported to be a "Day Actually Work (1999)", which purported to show the number of days worked by Ramesh in the month of February, March & April of the year 1992. The authenticity of the document has to be proved by the party relying on the same.

8. During the course of the submissions, learned counsel for the petitioner would submit that the respondent workman has received the benefit of Section 17-B of the Act from the date of award i.e. February 24, 2006 and the said benefits are continued to be paid even as on date. According to him, substantial amount has been paid to him.

9. I note that the order u/s 17-B of the Act was taken in appeal by the petitioner before the Supreme Court in SLP (Civil) No. 25081/2013 wherein the Supreme Court has directed that upon petitioner making request for expeditious disposal of the matter, the same shall be considered by this Court. Thereafter on February 03, 2014 the said SLP was dismissed as withdrawn.

10. Since the issue whether the respondent had actually worked with the petitioner and if worked whether his termination, retaining juniors and engaging fresh hands would have a bearing on the outcome of the Industrial Dispute, I am of the view that the issue need to be adjudicated by the Industrial Tribunal afresh.

11. I am conscious of the fact that the alleged termination relates back to the year 1999. Almost 15 years have gone by. Keeping in view the contentions raised by the parties, it would be appropriate that the disputed questions be decided by the Industrial Tribunal. Surely the litigation can be curtailed by directing the Industrial Tribunal to decide the industrial dispute within a time limit. I accordingly set aside the award of the Industrial Tribunal dated February 24, 2006 passed in I.D. No. 2/2004 and remand the case back to the Tribunal for a fresh adjudication by giving the petitioner an opportunity to file a reply to the claim petition. Once reply to the claim petition is filed, the respondent would also have an opportunity to file a response to the reply. On completion of pleadings, the parties shall lead their evidence. After oral arguments, the Tribunal would decide the case on merit, answering all the contentions raised by the parties. The final decision in the I.D. shall be rendered within 6 months from April 14, 2014. I accordingly dispose of the writ petition in terms of the above. The parties shall appear before the Industrial Tribunal on April 14, 2014 for further proceedings.

No costs.