

(2009) 04 DEL CK 0559

In the Delhi High Court

Case No : Writ Petition (Civil) Nos.1380-81 of 2006

The Divisional Personnel Officer

APPELLANT

Vs

Satish Chandra

RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2009) 04 DEL CK 0559

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Getanjali Mohan and Vaiishnavi, for the Appellant; Nemo, for the Respondent

Judgement

V.K. Shali, J.—The learned Counsel for the petitioner by virtue of the present writ petition has challenged the award dated 7th April, 2005 passed by the learned Industrial Tribunal cum Labour Court-II in LCA No. 5/1999 titled Sh.Satish Chandra v. The General Manager, Northern Railway and Anr. By virtue of the aforesaid award, the learned Tribunal has allowed the application of the respondent/workman u/s 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "Act") and awarded a sum of Rs. 59,000/- to the respondent /workman along with an interest @ 12% from 01.1.1999 to the date of payment apart from cost of Rs. 5,000/-.

2. I have heard the learned Counsel for the petitioner and perused the record. Nobody has been appearing on behalf of the respondent. The contention of the learned Counsel for the petitioner is that the award passed by the Industrial Tribunal is perverse and against the fact on record. The learned Tribunal has calculated the amount u/s 33-C(2) of the Act for two portions. The first portion pertains to the period 5.6.1998 to 17.7.1998 and the learned Tribunal has awarded a sum of Rs. 19,000/- or so being the remaining 50% of the suspension allowances to be paid to the respondent /workman.

3. It has been contended by the learned Counsel for the petitioner that actually

the aforesaid amount was the total emoluments which the respondent/workman would have earned for the suspension period which was for the period 29.4.1998 (wrongly recorded as 05.6.1998 in the order) till 17.7.1998.

4. The second component on which the money has been calculated and paid to the respondent /workman is for the period 24.8.1996 to 15.11.1996 apart from other short portions for a total length of three months and 19 days.

5. For this period, the amount which has been calculated and paid by the learned Tribunal is a sum of Rs. 40,000/- while as the counsel for the petitioner has drawn my attention to the additional affidavit as well as the averments made in the written statement to the effect that for the period from 24.8.1996 to 15.11.1996, the respondent/workman has indulged in acts of absenteeism for which he was proceeded domestically and visited with the punishment of stoppage/withholding of one increment for a period of one year without cumulative effect. It is further urged that against that said imposition of punishment, the respondent /workman had preferred an appeal and the aforesaid punishment was reduced for a period of one year to six months so far as the stoppage of increment is concerned.

6. It was contended by the learned Counsel that since the respondent/workman had admittedly been punished for being absent for the aforesaid period from 24.8.96 to 15.11.96, therefore, the award /order passed by the learned Tribunal awarding the monetary compensation in terms of Section 33-C(2) of the Act was totally perverse and unsustainable.

7. I have carefully considered the averments and gone through the record. The first portion of the calculation which has been done by the Tribunal and the respondent /workman awarding a sum of Rs. 19,000/- is ex facie not borne from the record. The petitioner in their written statement had specifically stated that for the suspension period i.e. 29.4.1998 to 16.7.1998, the respondent /workman was treated to be on duty and he was accordingly paid balance amount of emoluments on revocation of his suspension on 11.6.2000. The calculation of his emoluments has been placed on record which shows that the respondent /workman would have earned a total sum of Rs. 19,314/- out of which an amount of Rs. 9,658/- was paid during the suspension. Therefore, the balance amount was to be payable on account of suspension having been revoked. While as the learned Tribunal has erroneously awarded the total amount of Rs. 19,000/- for the aforesaid period of suspension and accordingly, to that extent, award is perverse and unsustainable and hence it is set aside.

8. The second portion of the award where a sum of Rs. 40,000/- has been paid deserves to be modified on account of the fact that admittedly for the period 24.8.1996 to 15.11.1996, the respondent /workman had indulged in acts of absenteeism for which he was proceeded departmentally and imposed punishment which was assailed by him and reduced to stoppage/withholding an increment for six months. Once the respondent /workman was visited with the

punishment, there was no question of payment of wages/emoluments to him for the period from 24.8.1996 to 15.11.1996 as he had not worked for this period but he was punished for being absent for the said dates. To this extent also, the amount of Rs. 40,000/- which has been arrived at by the learned Tribunal deserves to be set aside with the direction to the petitioner to recalculate the amount to be paid to the respondent/workman for the period from 03.6.1996 to 08.6.1996, 11.6.1996 to 14.6.1996, 24.8.1996 to 15.11.1996 and 15.5.1997 to 14.6.1997. The aforesaid calculation shall be done by the petitioner itself now and the said amount arrived at after calculation, shall be paid to the respondent/workman within six weeks from today failing which the same shall carry an interest as has been ordered by the learned Tribunal. To that extent, the award stands modified.

9. With these directions, the award dated 7th April, 2005 passed by the learned Tribunal in LCA No. 5/1999 stands modified to that extent.

The writ petition is disposed of.