

(2001) 02 DEL CK 0165

In the Delhi High Court

Case No : Civil Writ Petition No. 3666 of 1997

The Management of DDA thr'' its Executive Engineer	APPELLANT
Vs	
The P.O., Industrial Tribunal No. 1 and Another	RESPONDENT

Date of Decision : 09-02-2001

Acts Referred:

Citation : (2001) 2 AD 861

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. Vinay Sabharwal, for the Appellant; Mr. Abraham N.A., for the Respondent

Judgement

A.K. Sikri, J.—Respondent No.2, Shri Mange Ram(hereinafter referred to as "Workman") is working with DDA. He was appointed w.e.f. 26th September, 1981 as Non-technical Supervisor on daily wage basis. Thereafter, order dated 13th March, 1984 was issued appointing him as Beldar. He started working as Beldar. However, in the year 1990 i.e. after a gap of six years after his appointment as Beldar, he made a grievance that his appointment as Beldar from the post of Non-technical Supervisor amounted to reversion. Industrial dispute was raised. Conciliation proceedings started and these culminated into reference of the dispute by the Secretary(Labour) Delhi Administration vide order dated 24th December, 1990 in the following terms:

"Whether the reversion of Shri Mangey Ram from the post of Non-technical Supervisor to Beldar is illegal and or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

2. The workman appeared and filed statement of claim in which apart from allegations of demotion from the post of Non-technical Supervisor to the post of Beldar without complying with the provisions of Section 9A of the Industrial Disputes Act, 1947, he also submitted that his colleagues who were junior to him were retained and were now senior to him. Prayer was made that order dated

13th March, 1984 be quashed and he may be taken in original position and given increment and promotion as he would have been entitled to on that basis.

3. The petitioner, DDA filed its written statement. Apart from taking preliminary objections to the effect that it was not an "industry" and respondent No.2 was not "workman" as defined under Industrial Dispute Act, on merits it was stated that the workman was initially appointed on daily wage basis on 16th September, 1981 as Non-technical Supervisor and he continued to work till 25th April, 1982 when his services were dispensed with. Thereafter he was again appointed as Work Charge Beldar w.e.f. 5th March, 1984 on a pay scale of Rs.196-232. Since it was a fresh appointment according to his qualifications, there was no demotion.

4. Issues were framed. The workman led his evidence by way of affidavit and also filed documents ex. WW1/1 to WW1/17. However, when the case was at the stage of his cross-examination, DDA stopped appearing and was proceeded ex-parte. The learned Industrial Tribunal, on the basis of evidence adduced by the workman proceeded to give the award and by impugned award dated 20th September, 1996 directed DDA to treat the workman as Non-technical Supervisor continuously w.e.f. 26th September, 1981 and refix his pay accordingly. It was also directed that payment of arrears be made to him within three months otherwise the workman would be entitled to claim 12 per cent interest. A perusal of the award shows that the Industrial Tribunal did not find favor with the contention of DDA that after the appointment of workman on daily wage basis on 26th September, 1981 his services were dispensed with w.e.f. 25th April, 1982. On the basis of extracts of muster roll of the management as produced by the workman, it concluded that the workman was in the employment of the management even during the period from 26th April, 1982 to 5th March, 1984. The relevant portion of the impugned award to this effect reads as under:

"So far as the contention of the management that workman was not in the service of the management from 26th April, 1992 to 5th March, 1984 is concerned, workman has filed extracts of muster roll of the management to show that he was in the employment of the management even during his intervening period. WW1/6 and WW1/7 show that workman was in the service from 26th December, 1982 to 25th January, 1983. Similarly WW1/8 and WW1/9 show that the employment of the workman with the management from 26th April, 1983 to 25th May, 1983. And documents WW1/10 and WW1/11 show that the employment of the workman with the management from 26th April, 1983 to 25th July, 1983. Similarly WW1/12 and WW1/13 show that the appointment of the workman with the management from 26th December, 1983 to 25th January, 1984. Similarly WW1/16 and WW1/17 show employment of the workman with the management from 26th March, 1984 to 25th April, 1984. These documents Therefore contradict the contention of the management that the workman was not in the employment of the management from 26th April, 1982 to 5th March, 1984. On the other hand these documents support the contention of the workman that he was in the continuous employment of the management from

26th September, 1981. Admittedly workman was initially appointed as Non-technical Supervisor and Therefore his re-appointment in May, 1984 to the post of Beldar is apparently illegal and unjustified. I, Therefore, hold that reversion of Shri Mangey Ram from the post of Non-technical Supervisor to Beldar is illegal and unjustified."

5. The DDA filed an application dated 17th December, 1996 before the Industrial Tribunal for setting aside the ex-parte award. This was dismissed by the Industrial Tribunal vide order dated 28th May, 1997 on the ground that the Industrial Tribunal had become functus officio after thirty days of publication of the award. Thereafter the present writ petition was filed by the DDA challenging the impugned award.

6. Various contentions were raised by the learned counsel for the DDA to challenge the impugned award. It was submitted that reference was belated as the dispute was raised only in the year 1990. Workman had in fact, after his appointment as Beldar in the year 1984, accepted the said position and continued to work in that position for almost six years and he could not have raised a dispute thereafter. It was also submitted that there was error apparent on the fact of the record in holding that the workman continuously worked even during the intervening period i.e. from 26th April, 1982 to 5th March, 1984 inasmuch as award would show that there were significant breaks in between and particularly from 25th January, 1983 to 26th April, 1983 and thereafter from 25th July, 1983 to 26th December, 1983. It was also the submission of learned counsel for the petitioner that the Industrial Tribunal could not direct the regularisation of the workman to the post of Non-technical Supervisor as DDA, being a statutory body, was under obligation to make the recruitment in accordance with statutory rules as held by the Supreme Court as well as this Court in so many cases. The learned counsel referred to the judgments of the Supreme Court in the cases of Ashwani Kumar and Others Vs. State of Bihar and Others, and State of Haryana and others Vs. Piara Singh and others etc. etc., and the Division Bench judgment of this Court in the case of Mangat Ram & Ors. Vs. Vice Chairman, DDA reported as 1996 (2) CLR 412. It was also submitted that the very reference was incompetent inasmuch as reference order would show that a dispute between DDA and the individual workman was referred and the dispute of reversion could not be raised by the individual workman without espousal by the union having representative character. It was submitted that although this point was not raised, it being a pure legal question could be raised by the petitioner even before this Court.

7. On the other hand, learned counsel for the respondent workman made his submission justifying the impugned award and also highlighted the conduct of the DDA being negligent in pursuing the matter before the Industrial Tribunal. It was also submitted that many of the arguments raised now were even raised before the Industrial Tribunal.

8. I have considered the respective submissions of the parties and have also

gone through the pleadings. It is not necessary to deal with these submissions because of the view which I am taking, I feel that the matter needs a remand to the Industrial Tribunal for proper adjudication inasmuch as certain aspects are not dealt with by the Industrial Tribunal in the impugned award. The petitioner had specifically submitted that initial appointment of the workman as Non-technical Supervisor was on daily wage basis which did not confer upon him any right and on the other hand, he was appointed substantively, as work charge Beldar w.e.f. 6th March, 1984 on a pay scale of Rs.196-232 and usual allowances. It was also submitted that the respondent workman gave joining report on 6th March, 1984 on new terms and continued to work on this post for almost six years before he raised the alleged dispute. He was, Therefore, estopped from backing out from terms and conditions of his appointment w.e.f. 6th March, 1984. Whether such fresh appointment would amount to reversion at all would be a matter for consideration. Even in an ex-parte award, the Industrial Tribunal was supposed to advert to these aspects which were specifically raised in the written statement filed by the DDA.

9. Whether the Industrial Tribunal becomes functus officio after thirty days of the publication of the award, was subject matter of great controversy which resulted even after the judgment of Supreme Court in the case of Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, . In the case of V.P.Sharma Vs. P.O. L.C. -X & Ors. reported as 2000 (1) AD 204, I had occasioned to deal with this aspect in detail and it was pointed out that probably the Labour Court/Industrial Tribunal does not become functus officio as per the law laid down in Grindlays Bank Ltd. (supra). However, in view of the contrary opinion of two Division Benches of this Court, I left the matter at that, more so when this very question was pending consideration before the Apex Court. In Anil Sood Vs. Presiding Officer, Labour Court II (Civil Appeal No. 7092/2000 decided on 1st December, 2000), the Supreme Court has now set the controversy at rest by holding that the Labour Court/Industrial Tribunal does not become functus officio and has jurisdiction to deal with the application for setting aside the ex-parte award. The relevant portion of the judgment reads as under:

"The aspect that the party against whom award is to be made due opportunity to defend has to be given is a matter of procedure and not that of power in the sense in which the language is adopted in Section 11. When matters are referred to the Tribunal or Court they have to be decided objectively and the Tribunals/Courts have to exercise their discretion in a judicial manner without arbitrariness by following the general principles of law and rules of natural justice.

The power to proceed ex parte is available under Rule 22 of the Central Rules which also includes the power to inquire whether or not there was sufficient cause for the absence of a party at the hearing, and if there is sufficient cause shown which prevented a party from appearing, then if the party is visited with an award without a notice which is a nullity and Therefore the Tribunal will have no jurisdiction to proceed and consequently, it must necessarily have power to

set aside the ex parte award. It this be position in law both the High Court and the Tribunal fell into an error in stating that the Labour Court had become functus officio after making the award though ex-parte."

10. Therefore, the Industrial Tribunal was not right in dismissing the application of the DDA for setting aside ex-parte award.

11. Accordingly the impugned award is set aside. The matter is remanded back to the Industrial Tribunal for fresh adjudication after giving opportunity to both the parties. Parties shall appear before the Industrial Tribunal on 26th February, 2001. As the matter is old, it is expected that the Industrial Tribunal would dispose of the reference within six months.

12. Keeping in view the conduct of DDA in prosecuting the matter before the Industrial Tribunal and remaining ex-parte twice which also resulting in delay, it is directed that the petitioner shall pay cost of Rs.15,000/- to the respondent No.2 workman.