

(2015) 10 DEL CK 0302
In the Delhi High Court
Case No : W.P.(C) No. 3681/2004

The Management of M/S Amalgamated Components (P) Ltd.	APPELLANT
Vs	
Radhey Shyam Sharma	RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 2(s), 25-F, 25-G

Citation : (2016) 148 FLR 918 : (2016) 1 LLJ 329

Hon'ble Judges : I.S. Mehta, J.

Bench : Single Bench

Advocate : Jeevesh Nagrath, Shobhit Phutela and Mayank Sapra, Advocates, for the Appellant; Som Dutt Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

I.S. Mehta, J.—The present petitioner, i.e., The Management of M/s. Amalgamated Components (P) Ltd. (hereinafter referred to as the "petitioner-management") has preferred the present Writ Petition under Articles 226 and 227 of the Constitution of India for setting aside the impugned Award dated 13.05.2003 passed by the Presiding Officer, Industrial Tribunal - II, Karkardooma Courts, Delhi (hereinafter referred to as the "learned Industrial Adjudicator") in I.D. No. 979/90.

2. The brief facts as stated are that the respondent-workman, i.e., Shri Radhey Shyam Sharma joined the petitioner-management as turner w.e.f. 18.03.1983 and was drawing wages of Rs. 1055/- per month as a skilled labour/worker. During his engagement with the petitioner-management, it is alleged that the respondent-workman was late in reporting for his duties and a letter dated 20.03.1989 was issued to the respondent levelling charges of late attendance. The respondent-workman demanded Hindi translation of the above-mentioned letter dated 20.03.1989 and it is alleged by the respondent-workman that instead of furnishing Hindi translation of the aforementioned letter dated

20.03.1989, the petitioner- management suspended the respondent-workman w.e.f. 31.03.1989 and issued a charge sheet vide letter dated 07.04.1989. The respondent- workman filed his reply dated 17.04.1989 denying the charges. The petitioner-management did not find the reply satisfactory and subsequently, an inquiry was initiated against him vide letter dated 21.04.1989 which was not completed. Thereafter, a compromise dated 19.05.1989 was reached between the worker's Union and the petitioner- management, to which the respondent-workman, i.e., Shri Radhey Shyam Sharma was one of the signatory. The respondent-workman has alleged that he proceeded on sanctioned leave from 29.06.1989 to 08.07.1989 to his native place after obtaining an oral permission from the management, as the petitioner-management had never adopted the practice of issuing sanction of leave in writing. The respondent-workman after availing leave was not allowed to resume his duties by the petitioner-management and the said matter was reported to the Assistant Labour Commissioner and on his intervention, the respondent-workman collected his wages on 10.07.1989. The respondent-workman allegedly reported for duty on 11.07.1989 and 13.07.1989 but he was not taken on duty by the petitioner-management. Thereafter, the respondent-workman vide demand letter dated 13.07.1989 demanded his reinstatement with full back wages and continuity of service. Subsequently, on failure of the conciliation proceedings, the dispute was referred by the Secretary (Labour), Government of NCT of Delhi, vide reference No. F- 24(1874)/90-Lab./18403-8 dated 08.06.1990, to the Industrial Tribunal for adjudication on the following terms of reference:

"Whether Shri Radhey Shyam Sharma has abandoned his services or the same have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?"

The respondent-workman filed his statement of claim before the learned Industrial Adjudicator, the petitioner-management filed its reply and thereafter, rejoinder on behalf of the respondent-workman was filed and after framing the issues, both the parties led their respective evidence on their behalf and thereafter, the learned Tribunal passed the impugned Award dated 13.05.2003 in favour of the respondent-workman.

Aggrieved by the aforesaid Award dated 13.05.2003, the petitioner, i.e., The Management of M/s. Amalgamated Components (P) Ltd., has preferred the present Writ Petition.

3. The learned counsel appearing on behalf of the petitioner- management has drawn the attention of this Court to the fact that the respondent-workman has committed misconduct by absenting himself from duty unauthorisedly from time to time and coming late on duty. The learned counsel for the petitioner-management has further submitted that the workman misconducted himself by damaging the machinery at the workplace and consequently, the workman was suspended for misconduct vide letter dated 31.03.1989. The learned counsel for the petitioner- management has further submitted that the worker's Union

entered into a compromise with the management on 19.05.1989.

The learned counsel for the petitioner-management has submitted that the respondent workman himself abandoned the services of the petitioner-management w.e.f. 29.06.1989 and further submitted that all the claims and dues of the respondent-workman were paid on 10.07.1989 in presence of the Labour Inspector and now, nothing is due in favour of the respondent-workman since the respondent-workman was requested many times to join the services of the petitioner-management but he abandoned the services of the petitioner-management and joined the services of M/s. Motief Components Pvt. Ltd. where he was gainfully employed during the relevant period.

The learned counsel for the petitioner-management has further submitted that the impugned Award dated 13.05.2003 is perverse, illegal and contrary to the facts on record.

The learned counsel for the petitioner has further submitted that, as on date, the workplace has already been closed down w.e.f. 30.06.2003, therefore, the plea of the respondent-workman for re-instatement loses its significance and placed reliance on the case titled as Ramrao and Others Vs. All India Backward Class Bank Employees Welfare Association and Others, .

The learned counsel for the petitioner-management has further submitted that since the workman himself abandoned the employment of the management and did not work during the relevant period, therefore, he is not entitled to back-wages.

The learned counsel further submitted that the respondent- workman is now dragging the management into undue litigation for his unlawful monetary gains and the impugned Award dated 13.05.2003 is liable to be set aside and has placed reliance on the following judgments:

- a) Syed Yakoob Vs. K.S. Radhakrishnan and Others, .
- b) Management of Madurantakam, Co-operative Sugar Mills Ltd. Vs. S. Viswanathan, .
- c) Atlas Cycle (Haryana) Ltd. Vs. Kitab Singh, .
- d) Ramrao and Others Vs. All India Backward Class Bank Employees Welfare Association and Others, .
- e) Pasupuleti Venkateswarlu Vs. The Motor and General Traders, .
- f) Purafile Engineers Vs. Shaikh Anwar Abdul Rahman, .
- g) R.K. Kitchen Equipments, Mumbai vs. Majid Yusuf Hurape & Ors. 2003 LLR 920 Bombay.
- h) Raju Sankar Poojary Vs. Chembur Warehouse Company and Another, .

i) State of Punjab vs. Jagbir Singh, 2004 LLR 1131 SC.

j) Sonal Garments Vs. Trimbak Shankar Karve, .

4. On the other hand, the learned counsel appearing on behalf of the respondent-workman has submitted that the workman was employed with the management as a skilled workman w.e.f. 18.03.1983. The learned counsel has further submitted that the management got annoyed due to the general demand raised by the workmen in the industry and the respondent-workman was one of them. The management consequently levied false charges against the respondent-workman of late attendance and of arriving late to the workplace. Subsequently, the management also suspended the respondent-workman by levying fresh charges of damaging the machinery at the workplace. The dispute pertaining to the general demand between the worker's Union and the petitioner-management was compromised on 19.05.1989 to which respondent-workman, i.e., Shri Radhey Shyam Sharma was one of the signatory. Thereafter, on 29.06.1989, the respondent-workman proceeded on sanctioned leave to his native place up to 08.07.1989 and when he reported for duty on 10.07.1989, the petitioner-management refused to take him on duty. Thereafter, the respondent-workman took the Labour Inspector to the workplace and the management paid him wages for the month of June, 1989 and asked him to report for work on 11.07.1989. On 11.07.1989, the respondent-workman reported for duty but the petitioner-management refused to take him on duty. The respondent-workman again on 13.07.1989 reported for duty but the management again refused to take him on duty. Consequently, the respondent-workman raised an industrial dispute on 21.07.1989 and further submitted that the respondent-workman is further ready to join his duty at the workplace run by the petitioner-management.

5. In the instant case, the petitioner-management has taken the plea that the respondent-workman had himself abandoned the services of the petitioner-management w.e.f. 30.06.1989. The petitioner-management further relied upon the compromise dated 19.05.1989 (Ex. WW1/M10) reached between the petitioner-management and the worker's Union pertaining to the general demand of the workers against the management in which the respondent-workman, i.e., Shri Radhey Shyam Sharma was one of the signatory.

6. Admittedly, the respondent-workman is in the employment of the petitioner-management w.e.f. 01.01.1984 as per Para 1 of the written statement, which is reproduced as under:

"1....The true fact is the claimant was working with the management from 01.01.1984..."

There is no plea taken by the petitioner-management that the respondent-workman was not in their employment during the relevant period, i.e., 01.01.1984 to 19.05.1989. There is no plea on behalf of the petitioner-management that the respondent-workman was not a signatory to the compromise taken place between the management and the worker's Union

leaders pertaining to the general demands of the workers. Here, even otherwise, if this Court notes, the date of employment, of the respondent-workman with the management as per the date of appointment admitted by the management in their written statement, i.e., 01.01.1984, the respondent-workman has acquired the status of a "workman" under Section 2(s) of the Industrial Disputes Act, 1947 prior to the compromise dated 19.05.1989 and worked for 240 days under the petitioner- management in the relevant year thereby attracting the mandatory provisions of Section 25-F and Section 25-G of the Industrial Disputes Act, 1947.

7. The aforesaid compromise dated 19.05.1989 reached between the petitioner-management and the worker's Union was pertaining to the general demand in the year 1989 and the respondent-workman, i.e., Shri Radhey Shyam Sharma's signature on the management document (Ex. WW1/M10) is an evidence of the fact that the respondent-workman was fighting against the petitioner-management for the rightful cause of the workers and the management was not pleased with the stand taken by the respondent-workman in the said general demand. It is further evident that the management's own document dated 20.03.1989 seeking explanation from the respondent-workman for his late attendance, notice dated 01.07.1989 issued against the respondent-workman for unauthorised absence and the charge-sheet dated 07.04.1989 are nothing but good pressure-building tactics adopted by the petitioner-management against the respondent-workman at the relevant period. Consequently, the same dispute between the parties ultimately resulted in the aforementioned compromise dated 19.05.1989 which means that the respondent-workman till 19.05.1989 was holding the status of a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. The services of the workman who had completed 240 days during the relevant year could only be terminated in accordance with Section 25-F and Section 25-G of the aforementioned Act.

8. Further, the plea of the petitioner-management is that the respondent-workman absented himself from duty without prior permission of the petitioner-management since 29.06.1989 and the respondent-workman, despite being issued notices dated 01.07.1989 and 07.07.1989, did not report for duty. Therefore, the respondent-petitioner abandoned the services of the petitioner-management. The petitioner- management has further contended that the respondent-workman is not entitled to back-wages as he himself has abandoned the services of the petitioner-management.

The said plea, i.e., abandonment of services, taken by the petitioner-management, does not seem to be correct in presence of documents available on record. The Division Bench of the Delhi High Court in the case of B.G. Saraswat Vs. Engineers India Ltd., , has made the observation that unless there is material available to show intention on the part of the workman to totally give up duties, it will not be possible to arrive at the conclusion that the respondent-workman would have abandoned the services of the petitioner- management.

The respondent-workman has specifically stated that after the aforementioned compromise dated 19.05.1989, he obtained oral sanction of leave w.e.f. 29.06.1989 to 08.07.1989. Thereafter, the aforesaid fact is also communicated to the petitioner-management by the respondent-workman through his letter dated 13.07.1989 (Ex. WW1/6). Moreover, the aforesaid plea taken by the petitioner-management, i.e., abandonment of services by the respondent-workman, loses its significance for want of inquiry pertaining to alleged misconduct. On the contrary, the plea of the respondent-workman that he reported for duty on 11.07.1989 and 13.07.1989 and the petitioner-management refused to take him on duty, has to be accepted in absence of any domestic inquiry to this effect.

9. So far as the question of merit on this point is concerned, it is the learned Industrial Adjudicator who has already adjudicated the plea on the basis of material evidence placed before him. The adequacy, inadequacy, sufficiency or insufficiency of evidence on this point and the inference of the fact to be drawn from the said finding is within the exclusive jurisdiction of the Industrial Adjudicator. Reliance in this regard is placed on *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, .

10. The next contention put forth by the petitioner-management that the respondent-workman is not entitled to back wages as he refused to work during the relevant period does not seem to be correct. The learned counsel for the petitioner-management has relied upon the following judgments in support of its contention:

- a) *R.K. Kitchen Equipments, Mumbai vs. Majid Yusuf Hurape & Ors.* 2003 LLR 920 Bombay
- b) *Raju Sankar Poojary Vs. Chembur Warehouse Company and Another*,
- c) *Purafil Engineers Vs. Shaikh Anwar Abdul Rahman*, .
- d) *State of Punjab vs. Jagbir Singh*, 2004 LLR 1131 SC
- e) *Sonal Garments Vs. Trimbak Shankar Karve*,

The aforementioned cases are relating to the facts where the workman has abandoned the services of the management. whereas in the instant case, the petitioner-management has illegally terminated the services of the respondent-workman.

In the present case, the respondent-workman has already acquired the status of a "workman" as defined under Section 2(s) of the Industrial Disputes Act, 1947 and worked for 240 days during the relevant year and the petitioner-management failed to discharge the onus of proving the compliance of Section 25-F and 25-G of the aforesaid Act. Since, the element of misconduct and his subsequent refusal to join duties during the relevant period has not been proved against the respondent- workman in any domestic inquiry or before the Industrial Adjudicator, therefore, the right which has already accrued in favour of the

respondent-workman under Section 2(s) of the said Act cannot be abrogated by the petitioner-management by denying him back wages and reinstatement in service for no fault on the part of the respondent- workman. The Hon''ble Supreme Court of India, in the case titled as Jasmer Singh Vs. State of Haryana , made the following observations:

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter''s source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

(Emphasis Supplied)

11. The learned counsel for the petitioner-management has further submitted that the respondent-workman is gainfully employed with M/s. Motief Components Pvt. Ltd. and also submitted that the learned Industrial Adjudicator has incorrectly concluded that this fact has not been established. The learned counsel for the petitioner-management placed reliance on Management of Madurantakam Coop. Sugar Mills Ltd. vs. S. Vishwanathan (Supra) wherein the Hon''ble Supreme Court has held that the High Court can go into a question of fact while exercising a power under Articles 226 or 227 of the Constitution of the India if the finding of fact is perverse or if the same is not based on legal evidence. The petitioner-management has also placed reliance on the case titled as Atlas Cycles (Haryana) Ltd. vs. Kitab Singh, (Supra) wherein the Hon''ble Supreme Court has held that High Court may issue a writ of certiorari while exercising Writ jurisdiction under Article 226 of the Constitution of India if the finding of fact is

based on no evidence.

In the instant case, the respondent-workman in his statement of claim has specifically stated that he is unemployed since his termination as he could not get any alternative job and wants to serve the petitioner- management. This version is supported with his affidavit. The petitioner- management in rebuttal in its written statement failed to state before the Industrial Adjudicator, specifically the particulars or whereabouts of respondent-workman's gainful employment. The petitioner-management in its affidavit has stated that the respondent-workman joined the company M/s. Motief Components at Hyderabad. In this regard, the Industrial Adjudicator after appreciating evidence placed before him, on merits has specifically stated that the evidence led by the management does not establish the period of gainful employment of respondent- workman. Thus, this finding of the learned Industrial Adjudicator is based on appreciation of evidence placed before him and it does not lead to perversity.

12. It is apparent from the records that as per the petitioner- management's pleadings, the respondent-workman was in the employment of petitioner-management since 01.01.1984 and further, the petitioner-management admits that the salary of the respondent-workman for the month of June, 1989 was paid to him in presence of the Labour Inspector on 10.07.1989.

13. The onus of closure of unit or industry lies on the petitioner- management who would follow the principle of last come first go before closing the industry. Reliance is placed on Harjinder Singh Vs. Punjab State Warehousing Corporation, .

14. The contention of the learned counsel for the petitioner- management, that as on date, the industry has been closed down and therefore, the respondent-workman is not entitled to reinstatement is not convincing. The closure of the industry was not the issue before the Industrial Adjudicator. The petitioner-management for the first time is raising this issue in the present Writ Petition. The judgment, i.e., Ramrao and Others vs. All India Backward Class Bank Employees Welfare Association and Others (Supra) relied upon by the petitioner- management is not applicable to the present case. Therefore any new material placed before this Court under Articles 226 and 227 of the Constitution of India would certainly not amount to closure of industry without adjudicating the same before the Industrial Adjudicator. Reliance is placed on judgment rendered by the Hon"ble Supreme Court in the case titled as Raj Kumar Dixit Vs. Vijay Kumar Gauri Shanker .

15. Consequently, as discussed above, this Court while exercising its power of judicial review finds no illegality or perversity in the impugned Award dated 13.05.2003.

16. As such, the present Writ-Petition is dismissed. No order as to costs.