
(2009) 02 DEL CK 0284

In the Delhi High Court

Case No : Writ Petition (C) No. 7018 of 2009

Union of India (UOI)

APPELLANT

Vs

Mr. Dev Karan and Others

RESPONDENT

Date of Decision : 20-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 02 DEL CK 0284

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Sewa Ram, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By way of the present petition filed under Article 226 and 227 of the Constitution the petitioner seeks to challenge the award dated 31.8.2000 passed by the Central Government Industrial Tribunal, New Delhi in I.D. No. 217/99.

2. Mr. Sewa Ram counsel for the petitioner submits that the petitioner has already regularized the services of the respondents w.e.f. 12.5.2006 when the vacancies arose. Counsel further submits that the decision of the petitioner regularizing the services of respondent Nos. 1 and 2 w.e.f 12.5.2009 needs to be declared as valid decision which is in conformity with the pronouncement of the Apex Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, . Counsel for the petitioner further submits that cause of action to file the present petition arose in the year 2007 when the vacancies arose. Counsel also submits that the respondents have accepted their regularization in terms of the directions given by the petitioner without any demur or objection.

3. I have heard learned Counsel for the petitioner and perused the impugned award.

4. Indisputably, the award by the CGIT was passed pursuant to the reference

made by the Central Government, Ministry of Labour and in the said award, directions were given to the petitioner to regularize the services of the respondents w.e.f. 16.6.98. It was also directed that the respondents workmen should be paid equal salary with that of the regular daily rater in the time scale with effect from their initial employment.

5. The operative para of the impugned judgment is as under:

both the workmen should be given regularization in their services w.e.f. 16.6.98 and they should also be paid equal salary with that of the regular daily rater in the time scale w.e.f. their initial employment. In the case of Shri Dev Karan he should be given time scale of Rs. 750-940 raised to Rs. 2550-3200 w.e.f the relevant dates

6. The said award was not challenged by the petitioner and infact vide office orders dated 6.6.2007 and 14.1.2008 the said impugned award dated 31.8.2000 was complied with by the petitioner. As per the counsel for the petitioner the vacancies arose only on 12th May 2006 and therefore, the award could not be complied with by the petitioner earlier. Counsel for the petitioner states that the respondents are now before the Regional Labour Commissioner (Central) New Delhi seeking enforcement of the said award. I am not inclined to issue any notice in the present writ petition as the present petition is bad on account of delay and laches. I am not convinced that simply because the respondents are now seeking enforcement of the said award that should have activated the petitioner to challenge the award after a lapse of a period of nine years. The petitioner cannot be allowed to take advantage of any recent pronouncement of the Apex Court as the position of law never remains static and keeps changing. The law being the developing field and based on changed position of law, no party can be allowed to challenge the validity of the order which was passed long ago. If the petitioner was serious to challenge the findings of the award based on the fact that no vacancies were existing, the petitioner was well within its right to challenge the said award within the reasonable time. There is no explanation much less the plausible explanation given by the petitioner to file the present petition after such a long and inexplicable delay. In this regard, the Hon'ble Apex Court in M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and District Board, Shahabad and others, , observed as under:

13. The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to

any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches.

7. The only ground taken by the petitioner is that since the vacancies arose w.e.f 12th May 2006, therefore, the petitioner has implemented the award based on the vacancy position. The delay and laches clearly stares on the face of the petitioner. Therefore, I am not inclined to interfere with the impugned award.

8. Dismissed.