

(2011) 02 DEL CK 0440

In the Delhi High Court

Case No : Writ Petition (C) 10654 of 2006 and CM No. 14317 of 2008 (for stay)

Union of India (UOI)

APPELLANT

Vs

Prem Kumar

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

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

Citation : (2011) 02 DEL CK 0440

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Kumar Rajesh Singh, for the Appellant; Prabhakant Varma, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the order dated 6th June, 2005 of the Labour Court on an application filed by the Respondent workman u/s 33C(2) of the Industrial Disputes Act, 1947 and directing the Petitioner Railways to pay a sum of Rs. 1,80,000/- to the Respondent workman.

2. Notice of the writ petition was issued. Vide order dated 20th October, 2008 the Petitioner directed to deposit the amount aforesaid of Rs. 1,80,000/- with the Registrar General of this Court and subject to the said deposit, the operation of the impugned order was stayed. The said amount is informed to have been deposited and kept in a fixed deposit.

3. The Respondent workman, before filing the application aforesaid u/s 33C(2) (supra), had filed a petition being OA No. 2646/1990 before the Central Administrative Tribunal (CAT) pleading that he was employed with the Petitioner Railways as a Fireman "C" and the Petitioner Railways were arbitrarily not taking him on duty and had also withheld his pay w.e.f. March, 1990. Reply was filed by the Petitioner before CAT pleading that the Respondent workman was granted leave and was to join duty on 15th February, 1990 but had remained away from

work and had absconded.

4. The CAT finding that the Petitioner Railways had neither taken back the Respondent workman on duty nor suspended him as would have been done had he been absconding, vide order dated 6th March, 1995 directed the Petitioner Railways to permit the Respondent workman to join duties and further directed that if in respect of any period of service the pay and allowances of the work were to be denied to him, it should be done only after giving a proper notice to show cause in this behalf within two months from the date of receipt of the said order of CAT and after considering his representation. It was further directed that if no such notice was sent, the Petitioner Railways should pay all the pay and allowances in accordance with law within four months of the receipt of the order.

5. It is not in dispute that pursuant to the aforesaid order of CAT the Respondent workman was made to join duty in the year 1995 itself. The Respondent workman in or about the year 2000 filed the application aforesaid u/s 33C(2) before the Labour Court for computation of the amount due for the period March, 1990 to March, 1995 i.e. for the period during which the Petitioner Railways claimed the Respondent workman to be absconding/ on unauthorized absence and the Respondent workman claimed to have been refused duty and the period of the pendency of the proceedings before CAT.

6. It is not in dispute that for the said period, a sum of Rs. 1,80,000/- was due. The Labour Court held that the witness of the Petitioner Railways had admitted that the order of CAT was received on 24th June, 1995; it was observed that in accordance with the order of CAT the notice for denying emoluments was to be served on the Respondent workman within two months i.e. by 24th August, 1995. It was found that no such notice had been sent; only on 17th October, 1995 a notice for disciplinary proceedings for unauthorized absence was served on the Respondent workman. The Labour Court being of the view that in terms of the order of CAT, show cause notice had not been given within two months, found the Respondent workman to be entitled to the said amount.

7. Aggrieved there from the present petition has been preferred.

8. I have enquired from the counsel for the Petitioner Railways as to what happened to the disciplinary proceedings if any initiated pursuant to the notice given on 17th October, 1995. The counsel is unable to answer. He however draws attention to the report of the Inquiry Committee annexed to the additional affidavit dated 5th November, 2007 filed on behalf of the Petitioner Railways in pursuance to the order dated 7th July, 2006 in the present proceedings. The counsel for the Petitioner Railways is however unable to state as to whether the disciplinary authority of the Petitioner Railways in pursuance to the said report passed any order against the Respondent workman or not. The counsel for the Petitioner Railways seeks adjournment to find out.

9. The writ petition has remained pending before this Court for the last four years and was today listed for final hearing. All requisite instructions ought to

have been obtained before the hearing and when after fully hearing the matter such adjournments are claimed, they derail the hearing and waste the time spent on hearing.

10. Else, there is no dispute that within two months of the receipt of the order of CAT no action for denying the Respondent workman the emoluments was initiated. Notice given on 17th October, 1995 also is for misconduct owing to unauthorized absence and which as aforesaid had already been the subject matter of the proceedings before CAT.

11. The counsel for the Respondent workman has rightly contended that the Petitioner Railways did not challenge the order of CAT and which has attained finality and all that the Labour Court has done is to implement the same. Reliance in this regard is placed on D. Krishnan v. Special Officer, Vellore Cooperative S.M. 2008(6) SLR 786.

12. The counsel for the Petitioner has argued that the application u/s 33C(2) was filed after five years from the order of the CAT. The Labour Court for this reason has denied any interest to the Respondent workman. No error capable of interference is found in the order of the Labour Court on this ground also.

13. The petition is therefore without any merit and is dismissed. However in the peculiar circumstances, no order as to costs. The amount of Rs. 1,80,000/- deposited in this Court together with interest accrued thereon be released to the Respondent workman after six weeks of today.