

(1998) 11 DEL CK 0081

In the Delhi High Court

Case No : CWP No. 4327 of 1997 and CM 7193/98

University of Delhi

APPELLANT

Vs

Ram Sagar and Others

RESPONDENT

Date of Decision : 16-11-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (1999) 77 DLT 106 : (1999) 48 DRJ 251

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

Bench : Single Bench

Advocate : S.K. Luthra, for the Appellant; Ashok Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Jain, J.—This petition has been filed challenging the award of the Labour Court. The Delhi Administration referred the following dispute for adjudication to the Labour Court:

"Whether the service of Shri Ram Sagar has 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 regard?"

2. The Labour Court held that it was? not a case of willful abandonment of service by the workman and it went on further in holding that it was a case of termination of service without any show cause notice, pay in lieu of notice and compensation. Aggrieved by this award, the petitioner has filed the present writ petition. The award was stayed on 17th November, 1995 by this Court.

3. Mr. Luthra, learned counsel for the petitioner has vehemently contended that the award is perverse as the learned Labour Court has not taken into consideration the fact that respondent no.1-Ram Sagar was a daily wager and has not understood the true effect of letter of the petitioner dated 29.1.1986 which was merely a work experience certificate which was given at the behest of the respondent. He has further contended that the Labour Court has not taken

into consideration that the certificate was acquired by the respondent as the respondent wanted to get another job. The finding of the Labour Court that it was not the case of abandonment of the work by the workman but termination, was on the basis of wrong premises. The learned counsel for the petitioner has further contended that the Trial Court erred in granting full back wages and continuity, in service, even though the workman was a daily wager and there was no question of providing any continuity in service. The last submission of the learned counsel for the petitioner was that the finding of the Labour Court that in the absence of no letter for recalling the workman to join the duty, the presumption on the part of the Labour Court that it was obligatory on the part of the petitioner to have issued a letter to the respondent was not correct as no such practice operated in the department of the petitioner.

4. On the other hand, Mr. Aggarwal counsel for the respondent has contended that this Court while exercising its jurisdiction under Article 226 of the Constitution of India, will not go into the finding of the fact arrived by the Labour Court. He has further contended that in view of the well-settled principle of law that when the Court has come to conclusion that there was no willful abandonment of service by the workman and it was a case of termination of service simpliciter, the workman is entitled to reinstatement with compensation and full back wages. In support of his arguments, learned counsel for the respondent has cited Government of National Capital Territory v. Mrs. Kamlesh and Anr. [1996] 88 FJR 703 and G. T. Lad and Others Vs. Chemical and Fibres of India Ltd., .

5. I have heard the arguments advanced by learned counsel for both the parties. This Court while exercising its jurisdiction under Article 226 of the Constitution is not a Court of appeal to re-appraise question of facts which has been determined on the basis of evidence adduced before the Labour Court. The Labour Court in its order, on the pleadings of the parties, has observed that the allegation of the management was that it was the workman who had stopped coming w.e.f. 16.1.1986 as the workman might have got better prospects somewhere else and recorded the finding that no service record was produced by the management though admittedly it was maintained. No letter was served calling upon the workman to resume the work. Regarding the claim of the respondent that he worked with the respondent from 12.10.1982 to 15.1.1986 there is no denial in the pleadings that the workman was appointed in 1982.

6. I do not see any infirmity in the award of the Labour Court on this score. However, I find some force in the arguments of the counsel for the petitioner with regard to grant of full back wages and continuity in service. Admittedly the respondent was a casual worker and by no stretch of imagination, the Labour Court could have granted continuity in service if he was a daily rate worker. I also find support from the authorities cited by learned counsel for respondent i.e. Government of National Capital Territory Vs. Mrs. Kamlesh and another [1996] 88 FJR 703 a Division Bench judgment of this Court, wherein it was observed the

Court :-

"However, the third contention has to be upheld. Having adjudged the termination to be illegal the Labour Court could have directed the status quo ante to be restored but could not have also allowed relief which was beyond the scope of the terms of reference made to it. The question referred to the Labour Court was : whether the termination of the services of Smt. Kamlesh is illegal and unjustified and if so to what relief is she entitled and what directions are necessary in this respect? It is apparent that while answering the question and making the award the Labour Court could not have further entered into and decided the question whether the employee was entitled to regular pay-scale along with the clearness allowance and additional clearness allowance."

7. In view of the judgment of the Division Bench of this Court in Govt. of NCT v. Smt. Kamlesh (supra), I modify the order of the Labour Court to the extent that respondent No. 1 will be entitled to daily wage allowance subject to increase under the Minimum Wages Act. He shall also be entitled to be considered for regular appointment if the petitioner has framed a policy in that direction.

8. Writ petition stands disposed of in terms of above order. Interim order dated 17.11.1995 is vacated. Application no.7193/95 is dismissed.

9. There will be no order as to cost.