

(2014) 08 DEL CK 0025
In the Delhi High Court
Case No : W.P.(C) No. 5319/2014

USO International Centre

APPELLANT

Vs

Gobind Gidwani

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(a), 2(j), 2(k)

Citation : (2014) 08 DEL CK 0025

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Sanjeev Kumar, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Suresh Kait, J.

W.P.(C) No. 5319/2014

1. Vide the present petition, the petitioner has assailed the impugned award dated 29.03.2014 passed by the learned Labour Court, Karkardooma Court, Delhi, in DID No.03/10 (Old DID No.103/08).

2. Mr.Sanjeev Kumar, learned counsel appearing on behalf of the petitioner submits that learned Labour Court has erred in deciding the issue No. 1 holding the petitioner as an "industry" u/s 2(j) of the Industrial Disputes Act, 1947 (for short "ID Act"). Thus, the award on this issue is liable to be quashed.

3. Learned counsel submits that the learned Labour Court has also erred in not considering and discussing the oral and the documentary evidence produced by the petitioner before it, however, admitted functions and activities of the petitioner are not covered under the definition of Section 2(j) of ID Act.

4. Moreover, the learned Labour Court has wrongly considered the evidence of MW1 and MW2 and decided the issue No.1 on the basis of the judgments cited as Bangalore Water Supply and Sewage Vs. A. Rajjappa AIR 1997 SCC-548 and

A.I.I.M.S. Vs. Raj Singh, (Delhi) 2009 (1) LLJ 499, which are not applicable in this case.

5. Mr.Sanjeev Kumar, further submits that the respondent workman committed misconduct by acting against the interest of the petitioner has also been ignored by the learned Labour Court.

6. Brief facts of the case are that the respondent was appointed as Clerk w.e.f. 01.03.1990 with the petitioner management, however, made to work as an Accountant in which capacity the workman continued to work despite being designated as an Administrative Officer w.e.f. 24.07.2003. Thus, he was having neither administrative nor managerial power or duty which was in fact carried out by the Dy. Director or AFC or the Manager.

7. The workman has claimed that the petitioner management is an "industry" in terms of Section 2(j) of ID Act. The workman vide letter dated. 01.06.2007 represented to the President of management regarding opening of his office almirah as office papers, registers etc. were lying scattered about which the workman came to know only on 31.05.2007 at about 9.30 AM, when informed by Sweeper/Head Peon. Mr. Kamal Kishore Rohtagi, Administrative & Financial Controller opened the administrative office on 31.05.2007. He was searching for some papers and documents in the office.

8. Further stated that after death of Mr. Jiya Lal Jain, Secretary General and Director of USOIC, on 24.05.2007, his wife Mrs. Alleyamma Jain and Mr. Kamal Kishore Rohtagi became all powerful and harassed the workman as they did not consider him as their own favourite. Thereafter, workman sent a confidential letter dated 01.06.2007 to the President of USOIC, following which he was dismissed vide letter dated 30.11.2007.

9. The petitioner management in the written statement raised a preliminary objection that the management is not an industry, hence provisions of Section 2(a) of ID Act are not applicable, accordingly, the Labour Court has no jurisdiction to entertain the case. Further objection was that the workman's case has not been espoused by any Union or the Co-worker of the management. Hence, this dispute is not covered u/s 2(k) of ID Act.

10. Further objection was taken that the services of the workman have not been terminated but he has been discharged from service in terms of his appointment letter, thus, the reason mentioned in the discharge letter dated 30.11.2007 was legal and bona fide. It is further stated that the petitioner has tendered the complete dues of the workman in full and final for a sum of Rs.1,23,773/- but he refused to accept the same.

11. I note, the learned Labour Court framed issue No. 1, "Whether the management is an industry as defined u/s. 2(j) of the I.D. Act? "

12. The witness MW1 in his cross examination admitted that USOIC is a hostel containing 15 rooms and four conference hall rooms. He also admitted that

visitors stayed and paid the reasonable amount. He deposed that conference hall is provided on nominal charges. The hostel seminar rooms are being provided to Government Bodies, NGOs etc., who are conducting seminars and workshops. The participants in seminars and conferences are being provided meals etc. There is a kitchen, cooks and helpers etc. and the catering are managed by USOIC.

13. Keeping in view the above noted facts, the learned Labour Court opined that the petitioner management was doing systematic business activities.

14. Hence, while relying upon the judgment of this Court, titled as A.I.I.M.S. (supra) held that management is covered under the definition of "industry" as per Section 2(j) of ID Act. The relevant portion of the aforesaid judgment is as under:-

"7. It was submitted by Mr. Mukul Gupta, learned counsel for the appellant that the correctness of the decision of the Constitution Bench in the Bangalore Water Supply and Sewerage Board has been referred to a larger Bench of the Supreme Court and therefore, this Court should await the judgment of the larger Bench before deciding the present case. We are unable to accept this submission. The law declared in Bangalore Water Supply and Sewerage Board continues to be binding. This Court has to apply the law as it prevails. The reliance placed upon the decision of the Supreme Court in Physical Research Laboratory Vs. K.G. Sharma, is misconceived for the simple reason that the AIIMS does not cease to be a hospital merely because research is also carried on therein. Applying the law as explained in Bangalore Water Supply and Sewerage Board, AIIMS has to be held to be an industry within the meaning of the ID Act. ****

As regards the plea that management is not an industry, the law is well settled. It was held long back by Constitution Bench of the Hon"ble Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, that hospital, research institutes and training centre render valuable material services to the community qualifying for coming within Section 2(J) of Industrial Disputes Act. The same was followed in Dr V.P. Chaturvedi and Others Vs. Union of India (UOI) and Others, and Dr. V.L. Chandra and others Vs. All India Institute of Medical Sciences and others, . In view of the said authorities pronouncing I have no hesitation in holding that the management is an industry."

15. The learned Labour Court framed issue No.2, "whether services of workman were terminated illegally and/or unjustifiably by the management? "

16. The respondent workman in his statement of claim as well as in his evidence led by way of affidavit Ex.WW1/A has deposed that he was dismissed from the service vide letter dated 30.11.2007 illegally and unjustifiably, though he had not committed any misconduct of any nature. No enquiry of any nature has been hold against him by the management.

17. On the other hand, in order to prove the respondent workman had not been

terminated illegally and unjustifiably, the petitioner management relied upon testimony of Sh. C.B. Pandey, Manager, who was examined as MW1 and deposed that the workman just after the death of Mr. Jiya Lal Jain, founder member and Secretary General of USO/ management and Director of USOIC, started acting against the interest of the management in collusion with some Ex-officials of the institutions. He lodged a false complaint and issued a letter to the Labour Department, against the officials of the management which were rejected. The workman was several times advised by the management to stop his activities, which were against the interest of management but he did not care and continued to act against interest of the management.

18. The Authorized Representative for the petitioner management taken the ground before the learned Labour Court that the respondent has not been terminated but discharged from the service and same is lawful. However, the learned Labour Court opined that discharging a person in such manner after 17 year of service by giving just one month notice pay is unfair and against public policy especially when workman has completed 240 days in a year prior to termination.

19. It is evident from letter dated 30.11.2007, Ex.WW1/M4, that the workman has been discharged by the management on the ground that he lodged a false complaint to the Labour Department as well as to some officials of the institution. He sometimes stayed in office at about 12.00 midnight without permission of the management. However, it is an admitted fact that management had not issued any show cause notice nor conducted any departmental enquiry against the workman before discharging him. The management also failed to produce any rules and regulations to prove that writing a letter to the president levelling allegations against the management officials even if allegations are found to be false is a misconduct or over staying in the office is misconduct.

20. Moreover, the management did not led any evidence that workman has done any misdeed while over staying in office. It is admitted by MW1 that no memo has been ever issued to the workman giving him warning that he should stop such kind of activities as same is misconduct and attracts penalty of termination. Letter dated 30.11.2007 though has been given heading as discharge from service but it is not simplicitor discharge as serious allegations of misconduct has been levelled against the workman. Therefore, from the contents of letters, it become evident that workman has been terminated on the ground of misconduct though it has been given colour of discharge.

21. The Authorized Representative for the petitioner management contended before the learned Labour Court that the workman had himself resigned, however, no enquiry was conducted and on his request full and final settlement was prepared. It appeared that the resignation came into operation only when workman gave the same and did not withdraw the same till its acceptance. The workman had agreed to take payment as full and final settlement under compulsion.

22. Keeping in view the allegations and counter-allegations between the petitioner management and the workman, the learned Labour Court deemed it appropriate to grant a lump sum compensation in lieu of reinstatement. Accordingly, granted compensation for a sum of Rs.3,00,000/- (Three Lac) as compensation in lieu of reinstatement in service, back wages and other consequential benefits.

23. In view of the facts recorded above, I do not find any merit to interfere in the order dated 29.03.2014 passed by the learned Labour Court.

24. The same is accordingly dismissed in limine.

CMNo.10582/2014

With the dismissal of the petition itself, the instant application has become infructuous. The same is accordingly dismissed.