

N.D.M.C. Vs. Rajender

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Court : Delhi

Decided On : Feb-01-2005

Reported in : 117(2005)DLT424; 2005(80)DRJ358; [2006(106)FLR161];
(2005)IILLJ547Del

Judge : Mukul Mudgal, J.

Acts : Industrial Disputes Act - Sections 25G and 25H

Appeal No. : W.P.(C) 2980/2003

Appellant : N.D.M.C.

Respondent : Rajender

Advocate for Def. : Sanjoy Ghose, Adv.

Advocate for Pet/Ap. : Alpana Poddar, Adv

Judgement :

Mukul Mudgal, J.

1. Rule.

2. With the consent of the counsel for the parties the writ petition is taken up for final hearing.

3. This writ petition challenges the award dated 19th November, 2001 which inter alias upon finding that there was violation of Sections 25(G) & (H) of Industrial Disputes Act (hereinafter referred to as the Act), directed the reinstatement of the respondent/workman with 50% back wages from 1st July, 1988 till the date of reinstatement. Section 25G & H read as follows:-

'25G. Procedure for retrenchment. - Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25H. Re-employment of retrenched workmen - Where any workmen are retrenched, and the employer proposes to take into his employ any persons he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for reemployment shall have preference over other persons.'

4. The impugned award inter alias recorded the following findings :-

(a) No reason was disclosed by Management Witness No. 1 S. Kumar for deleting the name of the respondent workman from the muster roll.

(b) The admission of S. Kumar in cross-examination showed that even Beldar's employed as late as in 1989 were still working with the petitioner and the respondent first worked with the petitioner since 31.7.1985. Consequently, the principle of last come - first go set out in Section 25G of the Act is violated.

(c) Since the first offer was not made to the petitioner to re-employ and other juniors to the petitioner were retained/employed, Section 25H of the Act was also violated.

5. In coming to the aforesaid finding of the violation of Section 25(G) and (H) of the Act, the Labour Court in my view has rightly relied upon the judgment of the Hon'ble Supreme Court in Central Bank of India vs . S. Satyam and Ors., : (1996)IILLJ820SC and the judgment of this Court in Govt. of NCT of Delhi through its Medical Superintendent, G.T.B. Hospital, Shahdara vs. Sh. Balbir Singh and Ors. through Hospital Employees Union, 1997 LLR 628.

6. The mandate of Section 25G & H of the Act is clear and the above findings of the Labour Court cannot be faulted. In fact an additional affidavit was called for from NDMC, which disclosed that no list of seniority or muster roll has been maintained. In this view of the matter the impugned award of the Labour Court cannot be faulted. It is accordingly affirmed.

6. However, considering the public nature of employment, it is appropriate that direction of 50% back wages be reduced to 25% subject to reinstatement of the respondent on or before 2nd April, 2005. For this purpose, the respondent is required to report the Director (Personnel), NDMC, Palika Kendra, Parliament Street, New Delhi at 9.00 PM on 2nd April, 2005. It is ordered accordingly.

7. The writ petition stands disposed of with the aforesaid modification in the award. All pending applications also stand disposed of accordingly.

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