Hotel Hans Pvt. Ltd. Vs. Delhi Administration and anr.

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Court : Delhi

Decided On : Nov-30-1990

Reported in : 43(1991)DLT176; [1991(62)FLR411]

Judge : S.B. Wad and; S.N. Sapra, JJ.

Acts : Industrial Disputes Act, 1947 - Sections 10(1) and 10(3)

Appeal No. : Civil Writ Petition No. 850 of 1989

Appellant : Hotel Hans Pvt. Ltd.

Respondent : Delhi Administration and anr.

Advocate for Pet/Ap. : Vinay Bhasin,; B.L. Wati,; Piyush Sharma and;

Judgement :

S.B. Wad, J.

(1) This writ petition is filed by M/s. Hotel Hans Pvt. Ltd. against the order of the Secretary (Labour), Delhi Administration dated 2'.3.1989, prohibiting the continuation of lock out under Section 10(3) of the Industrial Disputes Act as the dispute between the Management and the workmen, represented by Hotel Mazdoor Union, was pending adjudication before the Industrial Tribunal-III Delhi.

(2) 85 workmen of the petitioner had given a charter of their demands in December, 1989 for raising their remuneration, dearness allowance and similar monetary benefits. The actual demand was raised by them through a Statement of Claim dated 6.1.89 before the Conciliation Officer. Apparently a, there was a partial strike by the workmen by the end of December, 1988, resulting into the alleged stoppage of egress and ingress to the Hotel. The Management secured a restraint order from this Court on 9.1.1989, for holding demonstrations within the radius of 60 ft. from the building. According to the Management on 18 1.1989 the Workmen refused to join duty. According to the Workmen the Management refused to give them work. On the same day the workmen approached the Labour Authorities for refusal on the part of the Management to give them work and declaring illegal lock out. The Management was, thereforee, asked by the Labour Inspector to be present before the Assistant Labour Commissioner on 23.1.1989 for the resolution of the dispute.

(3) On January 21, 1989, in reply to the said letter, the Management informed that although the Hotel was running smoothly, the workmen had absented themselves and the factual position can be ascertained by the authorities by a visit to the Hotel. On the same day the Management purported to issue memos to the workmen for absenting from work. They allegedly sent a notice on 25.1.1989 to the workmen informing them that they were not interested in the jobs as they had abandoned the work and that they should contact the Accounts Department for the settlement of their accounts.

(4) The attempts for resolution of the dispute were being made by the Labour Department and the discussion was on. Since the Management was saying that there was no lock-out and that the workmen did not want to work, Labour Inspector R.K. Grover was making efforts to present the workmen in the Hotel so that the work could be allotted to them. But the Management was dithering. On 17.2.1989 the Labour Inspector informed the Management that he would be going to the Hotel, on 18.2,1989 at 11.00 a.m. with the workmen so that the duties could be allotted to them. In the said letter the Labour Inspector had stated that be had made a similar attempt for putting the workmen on duty by going to the Hotel, but none was present on behalf of the Management on 17.2.1989. The Inspector had referred to the termination of service in the said letter. In reply, the Management wrote on 22.2.1989 that they had not terminated the services of the employees, but instead the employees had absented without any intimation. As the Management was not cooperating in putting the workmen on duty, on 6.3.1989 the Under Secretary, Delhi Administration informed the Management of the various attempts made to resolve the disputes and the failure of cooperation by the Management. This further confirmed that the Management had expressed its inability to put the workmen on duty. The Management was informed that this amounted to resorting to lock-out and a Show Cause Notice was issued to the Management as to why further action should not be taken against them. On 15.3.1989 the Delhi Administration referred the original dispute regarding remuneration, dearness allowance, etc., which gave rise to the lock out, for adjudication to the Industrial Tribunal. Thereafter the impugned order was passed on 20.3.1989.

(5) The submission of the counsel for the petitioner is that by termination of service of the workmen, whether rightly or wrongly, the relationship of employer-employee had come to an end and, thereforee, there was no question of a Jock-out within the meaning of Section 2(L) of the Industrial Disputes Act. It was also submitted that the petitioner should have an opportunity to show that there was no lock-out or that the lock-out was not illegal and the said question can only be determined by a reference under Section 10(1) of the Act. Both the submissions are misconceived and untenable in law.

(6) All along the case of the petitioner before the Authority and before the workmen was one of abandonment of employment. It was not their case that the services of the workmen were terminated. The petitioners are merely trying to catch a straw in the form of one word termination used by Mr. R.K. Grover, Labour Inspector, in his letter dated 17.2.1989. That was not decisive of the legal meaning of the word termination. As a matter of fact, the Management itself by its letter dated 22.2.1989 denied that there was any termination and asserted that the employees had absented without intimation. Thus, factually there was no termination of service and it was only an after-thought by the petitioners to challenge the impugned order. Besides, it is no termination in the eye of law. The petitioners' submission that lock-out can only be declared by an adjudication on a reference under section 10(1) is clearly contrary to the scheme of the Industrial Disputes Act and, particularly. Section 10(3), 22 and 23 of the Act. Under Section 22(2) no lock-out can be declared unless the provisions of Section are complied with. Section 23 prohibits lock-out during the pendency and a period subsequent to it where the conciliation proceedings before the Labour Court/Tribunal or arbitration proceedings are going on. In furtherance of this scheme of the Act, a power is conferred on the Appropriate Government by Section 10(3) of the Act to prohibit continuance of lock-out in connection with the Industrial Dispute referred to a Labour Court or a Tribunal. In the present case the workmen had raised their demand in regard to remuneration, dearness allowance and other monetary benefits in December, 1988 and in January, 1989 the Conciliation proceedings had started. Eventually a reference was made to the Industrial Court.

(7) When the Industrial Dispute was, thus, pending resolution by machinery provided by the Industrial Disputes Act, it was not proper to permit the Management to create a situation whereby workmen are refused work. The object behind the said provisions of the Act is that neither the Management nor the Workmen should be permitted to take a unilateral action of lock out or strike so as to disturb industrial peace during the pendency of conciliation, adjudication or arbitration proceedings. There is a public interest vitally at stake in industrial peace and continuation of production of wealth. The Labour Authorities made several attempts to resolve the dispute and persuading the Management to take the workmen on duty. The

management failed to attend some meetings and when they attended they expressed their inability to allow any duty to the Workmen. In order to cover up their unilateral action they raised the unjustified plea of abandonment of work by the Workmen. This was clearly a situation of lock-out and the Labour Authorities were justified in coming to the conclusion that the Management had declared a lock-out. It may be that in a given case where prior industrial disputes are not pending before the Authorities, a lock-out is declared. In such a situation a reference under Section 10(1) to adjudicate whether the lock-out is legal or not may be possible and proper. But Sections 10(3) and 23 provide for a special situation where the machinery under the Industrial Disputes Act is already set in motion and where its effective continuation and conclusion is not only in the interest of Management and Workmen, but also in public interest. All the submissions of the petitioner are, thereforee, rejected.

(8) We hold that the Management had declared lock-out in regard to all the employees mentioned in the list annexed with the impugned order, except some workmen. In para 17.1 to 17.5 of the counter-affidavit workmen named at Seriall numbers 15, 17, 39, 42, 47, 65, 66 & 71 are workmen who have settled their claims prior to the impugned order. So also the workmen named at Seriall numbers 3,9, 14, 35 & 38 had ceased to be employees before the passing of the impugned order. We declare that there is no lock-out in regard to the said workmen. The writ petition is dismissed with costs. Counsel fee for the respondents Rs. 2,000.00 . Rule is discharged.