Delhi Development Authority Vs. Sudesh Kumar and anr.

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Court : Delhi

Decided On : Jan-29-2009

Reported in : (2009)IILLJ641Del; 2009(2)SLJ266(Delhi)

Judge : A.P. Shah, C.J. and; Sanjiv Khanna, J.

Acts : Industrial Disputes Act, 1947 - Sections 2, 15, 18 and 18(3)

Appeal No. : L.P.A. No. 384/2008

Appellant : Delhi Development Authority

Respondent : Sudesh Kumar and anr.

Advocate for Def. : Rajiv Aggarwal and ; Neelam Tiwari, Advs.

Advocate for Pet/Ap. : Arun Birbal, Adv

Disposition : Appeal dismissed

Judgement :

A.P. Shah, C.J.

1. This appeal is directed against the order of the learned single Judge in W.P. (C) No. 677/1999 dated, February 12, 2008 challenging the award of the Industrial Tribunal dated July 30, 1998. The learned single Judge has dismissed the writ petition and affirmed the award of the Tribunal.

2. The appellant before us is Delhi Development Authority (for short 'DDA'). One Rajinder Kumar, who was an employee of the appellant-DDA, expired on April 3, 1990. After his death, his widow Kailashwati applied to DDA for appointment of his son Sudesh Kumar on compassionate ground with the DDA. The application came to be rejected on the ground that at the time of his death, late Rajinder Kumar was working on work charged basis and thus he had no right of employment with DDA.

On dispute being raised by the Municipal Employees Union, the Secretary (Labour) referred the following dispute to the Industrial Tribunal for adjudication:

Whether Sh. Sudesh Kumar is entitled to appointment on compassionate grounds and if so, what directions are necessary in this respect

On behalf of the workman, statement of claim was filed. However, no written statement was filed refuting the averments and pleas raised in the claim petition. The Tribunal; despite the fact that no one was appearing on' behalf of the appellant did not proceed ex parte and adjourned the matter to September 9, 1997, on which date also no one appeared on behalf of the appellant. No written statement was even, thereafter filed refuting the claim. The Tribunal, therefore, proceeded ex parte against the appellant-DDA and by award dated July 30, 1998 directed the DDA to offer employment to Sudesh Kumar.

3. The Tribunal upon consideration of the material placed on record, recorded a finding that Rajinder Kumar, who was employed with the management since 1978, was made work charge-Beldar in 1983 and he was a permanent workman of the appellant. His last posting was with the Engineering Division-IV, Dilshad Garden, Shahadara and he died on April 3, 1990 in harness leaving behind a number of family members including his son Sudesh Kumar and that the case of the workman's son was covered under the policy for employment on the compassionate ground. The finding of the Tribunal is confirmed by the learned single Judge by order under appeal.

4. Mr. Arun Birbal, learned Counsel appearing for the appellant-DDA strenuously contended that the dispute relating to compassionate appointment of a son of deceased employee is outside the scope of the Industrial Disputes Act, 1947 ('Act',

for short). He contended that a person who was never in the employment of the employer, cannot be a workman as would become clear from the definition of a 'workman' under Section 2(s) of the Act and his case is not one of an 'industrial dispute' under the Act and his case is, therefore, beyond the jurisdiction of the Tribunal and the Tribunal has no jurisdiction to grant relief to him. According to him son of an employee cannot be a person in whose employment or non-employment, the workman of an industrial establishment has a substantial interest, in absence of a settlement or prior award dealing with the eventuality.

5. We find no merit in the submission of the learned Counsel appearing for the appellant. The term 'Industrial Dispute' is defined under Section 2(k) of the Act, which reads as follows:

2(k) Industrial Dispute means any dispute between employers and employers or between employers and workman or between workman and workman which is connected with the employment or non employment or the terms of employment or with the conditions of labour of any person.

(emphasis supplied)

6. Section 2(k) came up for consideration before the Supreme Court in Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate : (1958)ILLJ500SC , wherein it was held that having regard to the scheme and objects of the Act and its other provisions, the expression 'any person' in Section 2(k) of the Act must be read subject to such limitations and qualification as arise from the context: the two crucial limitations are: (1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other, and (2) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Where the workman raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be strictly speaking a 'workman' within the meaning of the Act but must

be one in whose employment, non-employment, terms of employment or conditions of labour the workman as a class has a direct or substantial interest. Where the person was not a workman as he belonged to the medical or technical staff, a different category altogether from workmen, and the workmen of the establishment had no direct or substantial interest in his employment or non-employment, it cannot be said, even assuming that he was a member of the same Trade Union, that the dispute regarding his termination of service was an industrial dispute within the meaning of' Section 2(k) of the Act.

7. In Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate (supra) the workmen raised an industrial dispute in regard to dismissal of Dr. K.P. Banerjee, who was working as Assistant Medical Officer of the Tea Estate. He belonged to the medical or technical staff, a different category altogether from workmen. The Court, therefore, concluded that the workmen had no direct or substantial interest in his employment; or non-employment and that though he was also a member of the Trade Union, the dispute regarding his termination of service was not an industrial dispute within the meaning of Section 2(k) of the Act In the instant case, the non-employment of a son of the deceased workman in accordance with the regulations would be clearly covered by the definition of 'industrial dispute' as the 'workmen' have a direct and substantial interest in the employment of such a person. It is a part of their service condition, which is applicable to the workmen. Any adverse interpretation would affect the 'workmen' in future and affect their service terms. Therefore, 'there is no denying of the fact that the workmen raising the dispute have a nexus with the dispute because they have taken up the cause of another person in the general interest of labour welfare. The community of interest is clearly established in the present case. The failure to employ or the refusal to employ are actions on the part of the employer which would be covered by the terms 'employment or non-employment'. The refusal to grant compassionate appointment is connected with non-employment and is, therefore, within the words of definition. In this regard the observations of S.K. Das, J, who wrote the majority judgment, are pertinent;

We also agree that the expression 'any person' is not co-extensive with any workman, potential or otherwise. We think, however, that the crucial test is one of

community of interest and the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances.

8. Our attention was drawn to a direct decision on this point delivered by a single Judge of this Court in Delhi Municipal Worker Union (Regd.) v. Management of M.C.D. and Ors. : (1999)IILLJ856Del The facts were almost identical. In that case also a Beldar working in MCD had expired and his widow had applied for appointment of her son on compassionate grounds. The claim was rejected by the management and the matter was taken up by the Municipal Workers Union and the question arose as to whether the dispute falls within the definition of 'industrial dispute' within the meaning of Section 15. The Learned single Judge following a judgment of the Supreme Court in Kyas Construction Company (Pvt.) Limited v. Its Workmen 1958 II LLJ 660 has held that a dispute relating to the compassionate appointment raised by the son of a deceased employee was an industrial dispute within the meaning of said Section. In Kyas Construction Company (Pvt.) Limited v. Its Workmen (supra), the Supreme Court has reiterated that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression 'industrial dispute' is wide enough to cover a dispute raised by the employer's workmen with regard to non-employment of others who may not be employed workmen at the relevant time.

9. Our attention was drawn to the judgment of the Madras High Court in Management Southern Textiles Limited, Coimbatore v. United Textiles Labour, Association and Ors. : (1983)ILLJ435Mad , wherein it has been held that a dispute relating to fixation of a ratio between the heirs and the dependents of the workmen and the outsiders, in the matter of recruitment, would constitute an 'industrial dispute' because the workmen as a class have a community of interest in the employment of their heirs and dependents. The Court further held that heirs and dependents of the workmen would fall within the ambit of the expression 'any person' and, therefore, the dispute is an 'Industrial dispute.

10. Mr. Birbal, however, sought to rely upon a recent judgment of the Supreme. Court in Mukand Limited v. Mukand Staff and Officers' Association : (2004)IILLJ327SC . In that case, the order of reference was relating to the dispute between the company and the workmen employed under them. The question was whether the Tribunal could have adjudicated the issue of the salaries of the employees who were not workmen under the Act. The Court held that the award in favour of the non-workmen cannot be supported on the ground that the workmen can, in appropriate case, espouse the cause of non-workmen because under the definition of 'industrial dispute' under Clause (k) of Section 2, the dispute may not only be related to workmen but any person including non-workmen, provided that there should be community of interest between the workmen and the non-workmen; provisions, of Section 18 of the Act make the award not only binding on the workmen but also on the non-workmen, who may be in the employment on the date of the dispute or may have subsequently become employed in the establishment and that under Section 18(3)(b) the Tribunal has power to summon parties other than parties to the order or reference, to appear in the proceedings as parties to the dispute; as the employees in whose favour the award was passed by the Tribunal were admittedly belonging to the non-workmen category. Consequently, the Court held that the non-workmen were not necessary party to the dispute. The Court, however, clarified that the workmen, in appropriate cases, can espouse the cause of non-workmen if there is community of interest between the workmen and the non-workmen. We fail to appreciate how this judgment is applicable to the facts of the present case.

11. Mr. Birbal also submitted that the Tribunal ought not to have issued the mandate to the management to appoint the respondent on compassionate basis. At the most, it could have directed the management to consider the case of the respondent in accordance with the regulations. In any event, he contended that there was delay in approaching the Industrial Tribunal, which disentitled the respondent from claiming any equitable relief. The submissions of the learned Counsel are required to be stated only to be rejected. The appellant had failed to appear before the Tribunal in spite of several opportunities granted by the Tribunal and the contentions raised are only an afterthought. The workman has been fighting the case for last more than 15 years and the award of the Tribunal cannot

be overturned at such belated pleas raised on behalf of the appellant.

12. In our opinion, the Tribunal has the power, in the interest of industrial peace, to direct the appointment of a candidate on compassionate basis upon an industrial dispute espoused by the representative Trade Union. We find no merit in the present appeal and the same is hereby dismissed with costs quantified at Rs. 25,000/-. The appellant-DDA is directed to implement the award of the Tribunal within a period of four weeks from today.