

D.T.C. Vs. Ram Bhaj

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Court : Delhi

Decided On : May-22-2007

Reported in : 148(2008)DLT47

Judge : Hima Kohli, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10 and 33(2)

Appeal No. : Writ Petition (C) No. 12110 of 2005

Appellant : D.T.C.

Respondent : Ram Bhaj

Advocate for Def. : Anil Mittal, Adv.

Advocate for Pet/Ap. : J.S. Bhasin, Adv

Disposition : Petition dismissed

Judgement :

Hima Kohli, J.

1. The present petition has been filed by the petitioner corporation praying inter alias for a writ of certiorari for quashing of the award dated 7th January, 2005 passed by the Presiding Officer, Labour Court whereunder it was held that the services of the respondent workman were terminated illegally and that he was

entitled to reinstatement with full back wages and continuity of service.

2. Briefly stated, the facts leading up to the present petition are as follows. The respondent workman was employed as a Conductor with the petitioner corporation. On 7th January, 1993, when the respondent workman was performing his duties on Bus No. 9794, the bus was checked at Sarai and he was challaned for issuing tickets of lesser denomination than what was the due fare. He was placed under suspension for the alleged misconduct. Thereafter, an enquiry followed, pursuant to which the services of the respondent workman were terminated w.e.f. 3rd October, 1994. As against this, the respondent workman raised an industrial dispute, which was referred to the Labour Court by the appropriate Government by reference dated 13th February, 1996. The respondent workman filed his statement of claim in which he alleged that the enquiry was vitiated for not following the principles of natural justice. The management filed its written statement, in reply to which the respondent workman filed a rejoinder. Meanwhile in the year 1996 itself, the petitioner corporation had filed an application under Section 33(2)(b) of the [Industrial Disputes Act, 1947](#) (hereinafter referred to as 'the Act'), for approval of its action in terminating the services of the respondent workman, which application was dismissed in default on 1st August, 1996. Taking into account the dismissal of the said application, the Labour Court while adjudicating upon the industrial dispute under Section 10 of the Act, held that the respondent workman was deemed to be in continuous service by virtue of the dismissal of the approval application of the petitioner corporation and therefore, by way of the impugned award, directions were issued to the petitioner corporation to reinstate the respondent workman with full back wages and continuity of service.

3. It is relevant to note that in pursuance of the directions contained in the award, the respondent workman was reinstated in service on 22nd June, 2005. The crux of the argument raised on behalf of the petitioner corporation is as regards the payment of full back wages. Learned Counsel for the petitioner corporation canvassed that it is unfair, unreasonable and against the mandate of law to grant full back wages to the respondent workman. It was further stated that keeping in view the fact that the respondent workman never approached the petitioner

corporation for reinstatement after 1st August, 1996, when its approval application filed under Section 33(2)(b) of the Act was rejected, the workman does not deserve to be paid full back wages for the period when he voluntarily chose not to pursue the matter with the petitioner corporation and did not make any representation for reinstatement. Thus, at best what was payable to the respondent workman were back wages from the date of the award, i.e. w.e.f. 7th January, 2005 to the date when the respondent workman was reinstated in service, i.e. up to 22nd June, 2005 in other words, for a period of about six months. Counsel for the petitioner corporation strongly relied on the judgment of a Single Judge of this Court dated 10th May, 2005 in the case of Shri. Rajbir Singh v. Delhi Transport Corporation, being C.W.P. No. 3008/2003, to state that the court in similar circumstances, while being mindful of the view taken in judicial pronouncement that upon rejection of an 'approval application', the workman would be deemed to be in service, held that as a long period had elapsed since the rejection of the application for approval filed by the management under Section 33(2)(b) of the Act, and the writ petition was filed by the petitioner therein after a number of years from the date of such rejection, thereforee such a case was not found to be fit for ordering grant of back wages in toto. Having referred to the aforesaid judgment, it was argued that in the present case also, the application for approval filed by the petitioner Corporation was rejected in August 1996, and thereafter the respondent workman did not claim reinstatement immediately. It was stated that in view of the said fact coupled with the fact that the impugned award was passed after a lapse of almost 9 years from the date of rejection of the application under Section 33(2)(b) of the Act, it was not appropriate for the Labour Court to grant back wages for such a long period during which the respondent workman had contributed nothing to the petitioner corporation.

4. On the issue of the grant of full back wages with continuity of service, counsel for the petitioner corporation heavily relied on a recent judgment of the Supreme Court in the case of J.K. Synthetics Ltd. V. K.P. Aggarwal, reported as : (2007)IILLJ128SC , to state that where the workman is reinstated in a case of misconduct, back wages do not follow as a natural or necessary consequence of such reinstatement and that the grant of consequential benefits and continuity in service is non-automatic in nature as granting several promotions as a

consequential benefit to a person who has not worked for several years may have disastrous effect and therefore courts and tribunals should apply their judicial mind to the facts and circumstances to decide whether continuity of service and/or consequential relief should also be directed.

5. On the contrary, learned Counsel for the respondent workman stated that the respondent workman was never informed by the petitioner corporation about the filing of the approval application under Section 33(2)(b) of the Act and that it also concealed the fact that the said application was dismissed in default on 1st August, 1996. It was stated that even when filing the amended written statement to the amended statement of claim in November, 2001, the petitioner Corporation did not divulge the information and that the respondent/workman gained knowledge of the said fact on 3.9.2004 and the said fact was admitted by the petitioner Corporation for the first time before the Labour Court on 29.10.2004. therefore the petitioner corporation cannot blame the respondent workman for not having reported for work or for not having applied for reinstatement to the petitioner management.

6. Counsel for the respondent workman submitted that the Labour Court rightly awarded back wages from the date of his illegal removal and that the respondent workman was entitled to back wages from the said date of termination of services, i.e., w.e.f. 3rd October, 1994 till the date of his reinstatement, i.e., up to 22nd June, 2005. It was contended that once the approval application filed by the petitioner corporation under Section 33(2)(b) of the Act was dismissed/rejected, the concerned workman is deemed to be in service for all effects and purposes and in this respect, counsel for the respondent relied on the following judgments rendered by the Supreme Court:

(i) M.D., Tamil Nadu State Transport Corporation v. Neethivilangan Kumbakonam : (2001)ILLJ 1706 SC

(ii) Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. V. Ram Gopal Verma and Ors. : (2002)ILLJ834SC

7. I have heard the counsels for the parties and have carefully examined the material placed on record including the impugned award.

8. It is pertinent to mention at the very outset that no one can be allowed to take benefit of his own fault. One who seeks equity must do equity. The factual position that emerges is that while the dispute raised by the respondent workman was referred for adjudication to the Labour Court on 13th February, 1996, coextensively, in the year 1996 itself, the petitioner corporation also filed an application for approval of its order terminating the services of the respondent workman. This application filed under Section 33(2)(b) of the Act by the petitioner corporation came to be dismissed by the Tribunal on 1st August, 1996 for non-prosecution. However, neither the fact of filing of the said approval application, nor that of its dismissal for non-prosecution was ever intimated to the respondent workman or for that matter, even to the Labour Court. It was only in November 2001, when the petitioner corporation filed its written statement to the amended statement of claim filed by the respondent workman before the Labour Court in the proceedings pending under Section 10 of the Act, wherein it was mentioned that an approval application under Section 33(2)(b) of the Act was filed. But even then, the fact of such application having been dismissed in default was not stated. In his rejoinder, the respondent workman specifically denied that any such application was filed by the petitioner corporation on the ground that no notice of the same was received by him in this regard. Accordingly, having regard to the pleadings of the parties, the Labour Court framed the following issue:

1. Whether the management had moved any approval application before the Industrial Tribunal and if not, its effect.

9. It was only on 3rd September, 2004 that the respondent workman having gained knowledge of the factum of dismissal of the approval of application on 1st August, 1996 brought the same to the notice of the Labour Court which fact was then verified by the AR for the petitioner corporation on 29th October, 2004 Having answered the issue framed in the positive, the Labour Court came to the conclusion that in view of the dismissal of the approval application of the petitioner corporation, the workman ought to be reinstated as the effect of rejection of the

approval application is to render the dismissal non-est.

10. It is no longer rest integra that if approval is not given to the order of termination passed by the management, it is deemed that such an order of dismissal was never passed and the workman would be deemed to be in service. Reliance in this regard was rightly placed by the Labour Court on the judgment rendered by the Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra), wherein it has been held as under:

Para 14: Where an application is made under Section 33(2)(b), Proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not etc.... .If approval is not given, nothing more is required to be done by the employee as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need for a separate or specific order for his reinstatement.

11. In view of the position of law as laid down by the Supreme court in the aforesaid case, there is no infirmity so far as the findings of the Labour Court in this regard are concerned. Moving on to the next contention of the counsel for the petitioner corporation as regards the relief granted to the workman is concerned, the same can also not be allowed to stand. The plea taken by the petitioner corporation that since the respondent workman never approached the petitioner corporation for reinstatement after its approval application got dismissed in August, 1996, thereforee it would be unfair to grant full back wages for the whole period for which the respondent workman did not work with the petitioner corporation, and that the he should only be granted back wages from the date of the award to the date of the reinstatement, i.e. from 7th January, 2005 to 23rd June, 2005 is taken note of only to be rejected. The said plea if accepted, shall amount to putting a premium on the dubious conduct on the part of the petitioner corporation in the present matter. As has been stated above, the petitioner

corporation not only concealed a very material fact from the Labour Court as also from the respondent workman when it intentionally maintained complete silence in its written statement in respect of its having filed an approval application at the first instance, but also for failed to disclose the fact that the said application had been dismissed for non- prosecution as long back as on 1st August, 1996. It was only when the respondent workman discovered the said fact in the year 2004 and brought the same to the knowledge of the Labour Court, that the AR of the petitioner corporation verified the said position before the Labour Court. In such circumstances, the petitioner cannot be permitted to blame the respondent workman for not having approached the petitioner corporation for reinstatement as soon as its approval application was dismissed. It does not lie in the mouth of the petitioner to take such a righteous stand, given the fact that material information was withheld by the petitioner from the Labour Court, as also the respondent causing him grave injury.

12. Reliance placed by the counsel for the petitioner corporation on the judgment rendered by a single judge of this Court in the case of Shri. Rajbir Singh (supra), is also misplaced, as the same is not applicable in the peculiar facts and circumstances of the present case. The present case is one, where the respondent workman had no knowledge of either the filing or the dismissal of the approval application filed by the petitioner corporation. Thus he could not be expected to have approached the petitioner corporation for reinstatement on dismissal of the said application. Similarly, the judgment of the Supreme court in the case of J.K. Synthetics Ltd. (supra), also has no application to the facts of the present case since in that case, the Labour Court had found that a charge against the employee in respect of a serious misconduct was proved and it was in this context that the Supreme court discussed the law on grant of back wages and consequential benefits. The said judgment, therefore can be distinguished both, on law, as well as on facts, from the present case.

13. In view of the aforesaid discussion, the impugned award is upheld. As the respondent/workman was reinstated on 22.6.2005, it is held that he shall be entitled to receive back wages with effect from the date of termination of his services, till the date of his reinstatement, i.e. till 22.6.2005. The petition is

dismissed, being devoid of merits with costs of Rs. 5,000/-.

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