Ashok Kumar Vs. M.C.D.

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Court : Delhi

Decided On : Oct-03-2007

Reported in : 2007(98)DRJ669

Judge : Hima Kohli, J.

Acts : Industrial Disputes Act, 1947 - Sections 2, 11, 25B, 25F, 25G and 25H

Appeal No. : Writ Petition (C) No. 9385 of 2005

Appellant : Ashok Kumar

Respondent : M.C.D.

Advocate for Def. : Nandita Rao, Adv.

Advocate for Pet/Ap. : Varun Prasad, Adv

Judgement :

Hima Kohli, J.

1. The present writ petition has been filed by the petitioner workman, praying inter alias for modification of the impugned award dated 24th July, 2004 passed by the Labour Court whereunder it was held that the termination of the petitioner workman was illegal and unjustified, the same being not in compliance with Sections 25G and 25H of the Industrial Disputes Act, 1947 (hereinafter referred to

as `the Act') and accordingly, compensation of Rs. 10,000 was granted to him in lieu of reinstatement, back wages and all other legal benefits.

2. A brief narration of facts is necessary before recording the respective contentions of the parties. The facts as set up by the petitioner in his statement of claim before the Labour Court are that he was engaged as a Beldar on Muster Roll with the respondent Municipal Corporation of Delhi (for short `MCD') w.e.f. 6th February, 1995 and continued to work as such till 28th October, 1995, without any break, after which his services were terminated and two of his juniors, namely Prema Devi and Inder Jit were appointed. As against his alleged termination, the petitioner workman served the respondent MCD with a legal notice dated 14th November, 1996, but the same was returned by the respondent management. Consequently an industrial dispute was raised which was referred to the Labour Court in the following terms of reference:

Whether the services of Shri Ashok Kumar Muster Roll Beldar have been terminated illegally and/or unjustifiably by the management, and if so, to what relief is he entitled and what directions are necessary in this respect?

3. A statement of claim was filed by the petitioner workman against which the respondent MCD filed its written statement wherein it denied all the averments of the petitioner workman and stated that the workman had worked only for a period of 163 days and that there were breaks in his service. It was also stated that no persons junior to the petitioner had been retained by the respondent MCD. Subsequently, the petitioner workman filed his rejoinder. On 5th June, 2003 the respondent management was proceeded ex-parte as none appeared on its behalf. Thereafter evidence was adduced, where the petitioner workman appeared as WW1 and proved the averments made in his affidavit. On 3rd December, 2002, the respondent management was directed to produce the documents and the application filed by the petitioner workman under Section 11 of the Act. Thereafter it was held by the Labour Court that the respondent MCD had failed to prove the stand taken by it in its written statement and that the workman had stated that he had worked with the respondent MCD from 6th February, 1995 to 28th October, 1995, i.e., for more than 240 days. It was further held that since the services of the

workman were terminated in contravention of Sections 25G and 25H of the Act, thereforee the termination was illegal and unjustifiable. Accordingly the petitioner workman was granted compensation of Rs. 10,000 in lieu of back wages, reinstatement and all other legal benefits admissible to him. Aggrieved by the relief granted to him under the impugned award, the petitioner workman has approached this Court by way of the present petition, seeking modification thereof.

4. The plea of the counsel for the petitioner was that the award was erroneous to the extent that compensation of only Rs. 10,000 had been granted whereas in view of violation of Section 25G of the Act, the retrenchment itself is invalid, as a result of which, in the normal course, the workman is entitled to be reinstated in service. Counsel for the petitioner referred to the affidavit filed by the petitioner before the Labour Court to point out that a specific averment was made therein to the effect that the petitioner had completed 240 days of service with the respondent MCD and also that he had specifically named Smt. Premo Devi and Inder Jit to state that both of them were junior to him but had been retained in service. Reference was also made to para 4 of the written statement of the respondent MCD to state that as against the categorical averments of the petitioner workman, only bald denials were made which were not sufficient to discharge the onus placed on the respondent MCD and to disprove the contentions of the petitioner workman. Counsel for the petitioner referred to a judgment rendered by a Single Judge of this Court in the case of Amar Pal (Shri)and Anr. v. MCD reported as 2006 II AD (Delhi) 43 in support of his contention that the oral assertions and averment of the petitioner workman regarding the fact that his juniors were retained while his services were terminated, could have been repelled only by cogent evidence being led by the respondent MCD, and in the absence of the same, Section 25G of the Act is deemed to have been violated.

5. It was further contended by the counsel for the petitioner workman that the case of the petitioner was not covered under Section 2(oo)(bb) of the Act and he has rendered 240 days of service in the year immediately preceding his termination from service, for which reason, the termination of his services without complying with the provisions of Section 25F, 25G and 25H of the Act, was illegal and

unjustified. Reliance in this regard was placed on the following judgments:

(i) Sonepat Cooperative Sugar Mills Ltd. v. Rakesh Kumar 2006 I AD (S.C.) 166.

(ii) Amar Pal (Shri) (supra)

6. It was stated that in view of the fact that the termination of the petitioner workman was illegal and unjustified on account of non-compliance with Sections 25F, 25G and 25H of the Act, the natural consequence thereof ought to have been reinstatement of the petitioner, with back wages and all consequential benefits. It was submitted that compensation in lieu of reinstatement and back wages is to be awarded only in cases in which there was loss of confidence, breach of trust etc., and not in a case like the present one, where the services of the petitioner were terminated for no fault of his. In this respect counsel for the petitioner sought to draw support from the judgments rendered by the Supreme Court in the cases of The Management of Panitole Tea Estate v. The Workmen reported as 1971 I LLJ SC 233 and Shri Sant Rajand Anr. v. Shri O.P. Singlaand Anr. reported as 1985 II LLJ SC 19.

7. Lastly, it was averred on behalf of the petitioner workman that despite the fact that the respondent MCD had a policy for regularization of daily wage workers, the services of the petitioner workman were not regularized and he was not given the benefit of the scheme for regularization.

8. Countering the contentions of the counsel for the petitioner workman, counsel for the respondent MCD submitted that since the petitioner workman had worked only for a period of 163 days in a period of eight months, for which limited period he had been engaged, thereforee there was no need to comply with the provisions of Section 25F of the Act.

9. On the issue of non-compliance with Sections 25G and 25H of the Act, it was stated that merely making a statement that two persons junior to the petitioner workman had been retained in service, while the petitioner had been thrown out, is not enough for the termination to be held illegal or unjustified, and the petitioner workman should have produced material information to prove the same. It was

asserted that no persons by the names of Premo Devi or Inder Jit were on the rolls of the respondent MCD.

10. Finally, it was urged that assuming but not conceding that the petitioner workman had worked for 240 days and that his termination was not valid for non-compliance with the mandatory provisions of Sections 25F, 25G and 25H of the Act, still it is not necessary that the Court should always reinstate the workman and that in appropriate cases, compensation may be granted to the workman in lieu of reinstatement and back wages. Reliance was placed on the judgments rendered by the Supreme Court in the following cases:

(i) Rolston John v. Central Government Industrial Tribunal- cum- Labour Court and Ors. : AIR 1994 SC131 .

(ii) Central P and D Inst. Ltd. v. Union of India and Ors. : (2005)ILLJ552SC .

11. I have heard the counsels for both the parties and have perused the documents placed on record including the impugned award.

12. The contention of the counsel for the respondent MCD that the petitioner workman was engaged only for specific work for a fixed period of 8 months, is not tenable, particularly in view of the fact that nothing was placed on record before the Labour Court to show that the petitioner workman was engaged only on contractual basis, so as to attract the exception clause of Section 2(oo)(bb) to the facts of the present case and justify the respondent MCD's action in dispensing with the services of the petitioner workman without complying with the provisions of Sections 25F, 25G and 25H of the Act. It is rightly stated on behalf of the petitioner workman that the provisions of Section 2(oo)(bb) do not have any application to the facts of the present case and as the case is one of retrenchment, the services of the petitioner workman could not have been terminated without complying with the mandatory provisions of Sections 25F, 25G and 25H of the Act.

13. Coming to the plea of the petitioner workman as regards non- compliance of Section 25F of the Act before terminating his services, a perusal of the impugned award reveals that vide order dated 3rd December, 2002, the respondent MCD

was directed to produce certain documents, including the date of appointments of the said Premo Devi and Inder Jit and the muster rolls, as requested for by the petitioner workman by way of his application under Section 11 of the Act. However, the same were not produced by the respondent MCD before the Labour Court and vide order dated 5th June, 2003 the management was proceeded ex-parte. Since the workman had reiterated time and again, in his statement of claim, his affidavit, as also in his deposition that he had worked for 240 days in the year preceding the date of his termination, and since the respondent MCD had failed to place anything on record to disprove or contradict the averments of the petitioner workman, accordingly it was held that he had been able to establish his service for 240 days with the respondent MCD.

14. It is no longer rest integra that the onus to prove that a workman had worked for a period of 240 days, lies on the workman himself and that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. However, in the present case, the workman had not only stated so in his statement of claim, affidavit and his evidence, but he had also filed an application under Section 11 of the Act, requesting the Labour Court to direct the respondent MCD to produce the muster rolls, that were in its possession. Despite directions given by the Labour Court to the respondent MCD calling upon it to produce the relevant documents, if the respondent MCD failed to produce the same, in such circumstances, an adverse inference was rightly drawn against it and in favor of the petitioner workman.

15. It has been held time and again that even if the petitioner workman was merely a daily wager, still he would be entitled to the protection of Section 25F of the Act as soon as he completes 240 days of service in the year immediate preceding the date of his termination from service. Support in this regard is drawn from the following judgments of the Supreme Court:

(i) Rattan Singh v. Union of India reported as : (1997)11SCC396 .

(ii) Municipal Corporation of Delhi v. Praveen Kumar Jain reported as : (2000)ILLJ614Del .

16. A perusal of the affidavit filed by the petitioner workman before the Labour Court makes it evident that a specific statement had also been made therein to the effect that no notice, notice pay, compensation or gratuity notice was given to him by the respondent MCD on the day his services were terminated, which averment the respondent MCD could not disprove before the Labour Court. In this view of the matter, this Court has no hesitation in holding that the mandatory provision of Section 25F of the Act were violated by the respondent MCD in the present case, inasmuch as it terminated the services of the petitioner workman who had completed 240 days of service in the preceding year, without giving him a notice in writing, or forwarding one month's wages in lieu of notice and retrenchment compensation.

17. Before discussing the law as regards the applicability of the provisions of Sections 25G and 25H of the Act, it is pertinent to note, that inspire of arriving at the conclusion, and rightly so, that the petitioner workman had completed 240 days of service, there is no mention in the impugned award to any violation of the provisions of Section 25F of the Act. On the other hand, the findings of the Labour Court are that since the workman had completed 240 days of service, thereforee he can take shelter under Section 25G and 25H of the Act which are also erroneous, since completing 240 days of continuous service is not a prerequisite for the application of Section 25G and 25H of the Act.

18. The provision of Section 25G of the Act introduces the rule of 'last come first go'. Section 25H provides for re-employment of retrenched workman, which will apply in circumstances where if the employer proposes to take into employment any person, an opportunity has to be given first to the retrenched workman to offer himself for re-employment. There are a catena of judgments enunciated on the point that continuous service is not a requirement for making the provisions of Section 25G and 25H of the Act applicable. The Supreme Court in Jaipur Development Authority v. Ram Sahai and Anr. reported as : (2006)11SCC684 , after referring to a number of its earlier decisions on the issue, has held as under:

10. Mr. Jain appears to be right when he submits that continuous work in terms of Section 25B of the Act is not necessary in so far as statutory requirements under

Sections 25G and 25H are concerned. The said question appears to have been considered by this Court in some decisions.

11. In Central Bank of India v. S. Satyam and Ors. : (1996)IILLJ820SC , this Court opined:

The next provision is Section 25H which is couched in wide language and is capable of application to all retrenched workmen, not merely those covered by Section 25F. It does not require curtailment of the ordinary meaning of the word 'retrenchment' used therein. The provision for reemployment of retrenched workmen merely gives preference to a retrenched workman in the matter of re-employment over other persons. It is enacted for the benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman. 12. Yet again in Samishta Dube v. City Board, Etawah and Anr. : (1999)ILLJ 1012 SC , this Court held:

We shall next deal with the point whether, in case employees junior to the appellant were retained, the directions issued by the Labour Court could be treated as valid. Section 6-P of the U.P. Act (which corresponds to Section 25G of the Central Act of 1947) states that where any workman in an industrial establishment 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 workmen in this behalf the employer shall ordinarily retrench the workmen who was the last person to be employed in that category, unless for reasons to be recorded, the employer retrenches any other person. Now this provision is not controlled by conditions as to length of service contained in Section 6-N (which corresponds to Section 25F of the Industrial Disputes Act, 1947). Section 6-P does not require any particular period of continuous service as required by Section 6-N. In Kamlesh Singh v. Presiding Officer in a matter which arose under this very Section 6-P of the U.P. Act, it was so held. Hence the High Court was wrong in relying on the fact that the appellant had put in only three and a half months of service and in denying relief. (See also in this connection Central Bank of India v. S. Satyam.)

Nor was the High Court correct in stating that no rule of seniority was applicable to daily-wagers. There is no such restriction in Section 6-P of the U.P. Act read with Section 2(z) of the U.P. Act which defines workman.

It is true that the rule of first come, last go in Section 6-P could be deviated from by an employer because the section uses the word ordinarily. It is, thereforee, permissible for the employer to deviate from the rule in cases of lack of efficiency or loss of confidence, etc., as held in Swadesamitran Ltd. v. Workmen. But the burden will then be on the employer to justify the deviation. No such attempt has been made in the present case. Hence, it is clear that there is clear violation of Section 6-P of the U.P. Act.

Yet again recently in Regional Manager, SBI v. Rakesh Kumar Tewari : (2006)ILLJ748SC , this Court followed Central Bank of India (supra), stating: Section 25G provides for the procedure for retrenchment of a workman. The respondents have correctly submitted that the provisions of Sections 25G and 25H of the Act do not require that the workman should have been in continuous employment within the meaning of Section 25B before he could said to have been retrenched.

19. thereforee even assuming that the petitioner workman had not rendered 240 days of continuous service in the preceding one year with the respondent management, still the termination of his services without complying with the provisions of Sections 25G and 25H of the Act, renders the termination illegal and unjustified.

20. It is also to be kept in mind that the petitioner workman had provided some information about the persons who he claimed, were junior to him in service, but had been retained in service by the respondent MCD, and the respondent management not having appeared in the proceedings before the Labour Court, the said averment of the petitioner workman remained unrebutted.

21. So far as the burden to prove that two of his juniors had been retained in service is concerned, it may be stated at the cost of repetition that once the petitioner workman had specifically named two persons who he claims were

retained in service, and had maintained his stand in his affidavit as also in his deposition, the onus passed on the respondent MCD who ought to have produced cogent evidence to rebut and disprove the case of the petitioner workman. Having failed to do so, despite the order of the Labour Court dated 3rd December, 2002 passed on the application of petitioner workman under Section 11 of the Act, and having thereafter been proceeded ex-parte, the respondent MCD cannot be allowed to plead at this late stage that the petitioner workman had not provided any material information in support of his claim, especially in view of the fact that the respondent has not challenged the impugned award at all. thereforee, the Labour Court was right in holding that since there was a contravention of the provisions of Sections 25G and 25H of the Act, thereforee the termination of the petitioner workman's services was illegal and unjustified.

22. Having held that the termination of the services of the petitioner workman by the respondent MCD was illegal and unjustified, not being in conformity with the provisions of the Sections 25F, 25G and 25H of the Act, it is now for this Court to address his basic grievance, which is regarding the insufficiency of relief granted to him by way of the impugned award i.e., a sum of Rs.10,000/- as compensation in lieu of reinstatement and back wages. The petitioner workman claims entitlement to reinstatement and backwages on the ground that his services were terminated for no fault of his.

23. The Labour Court granted compensation in lieu of reinstatement and back wages taking into consideration various factors such as the nature of engagement of the workman, his tenure of work etc. As contended by the counsel for the respondent MCD, in every case of discharge that is held to be illegal and unjustified for the reason of non-compliance with the provisions of Section 25F, 25G and 25H of the Act, it is not mandatory to grant reinstatement with consequential benefits. Compensation in lieu of reinstatement and back wages may be granted by assigning cogent reasons thereforee. At the same time, it is not in cases of loss of confidence and breach of trust alone that compensation can be granted in lieu of reinstatement or back wages, but there may be various other such circumstances which permit grant of such relief.

24. In the present case, the services of the petitioner workman were terminated in October, 1995 and a long period of almost 12 years has since elapsed. Thus for all effects and purposes, the petitioner workman has failed to contribute to the respondent MCD in any material way for the past 12 years. Also, it is the petitioner workman's own case that he worked with the respondent MCD from February 1995, to October 1995, i.e. for a period of about 8 months only. There is no denial to the fact that he was a daily wager and was not appointed as per the constitutional framework for appointments. It is also to be kept in mind that the nature of job performed by the petitioner workman is such that it is difficult to perceive that he must have been sitting idle all this while. Reliance may be placed on the judgment rendered by the Supreme Court in the case of Rattan Singh v. Union of India and Anr. reported as (1997) 11 SCC 396, wherein termination of services of the workman was made without complying with the provisions of Section 25F of the Act, and after considering the facts of the case, the Court ordered payment of compensation in lieu of reinstatement and back wages by observing as below:

3. We find merit in the said submission of Shri Ashri. From the date mentioned in the judgment of the first appellate court dated 22-1-1985, it appears that the appellant had continuously worked for more than 240 days in a year. Since he was a workman, he was entitled to the protection of Section 25F of the Act and the said protection could not be denied to him on the ground that he was a daily-rated worker. It is not the case of the respondents that the provisions of Section 25F of the Act were complied with while terminating the services of the appellant. In these circumstances, the termination of services of the appellant cannot be upheld and has to be set aside. The services of the appellant were terminated in the year 1976. Nearly 20 years have elapsed since then. In these circumstances, we are not inclined to direct reinstatement of the appellant. But having regard to the facts and circumstances of the case, we direct that a consolidated sum of Rs. 25,000 be paid to the appellant in lieu of compensation for back wages as well as reinstatement.

25. In this case support is also drawn from the judgment of the Supreme Court passed in Gujarat State Road transport Corporation and Anr. v. Mulu Amra

reported as 1995 Supp (4) 548 and the judgment rendered by a Division Bench of this Court in Murari Lal Sharma v. Nehru Yuva Kendra Sangathan reported as : 96(2002)DLT412 . In both these cases, it was not considered appropriate to direct reinstatement with back wages after long period of 20 years and 13 years respectively, had passed from the date of termination from service.

26. Even in Jaipur Development Authority (supra), where the question pertained to the termination being illegal for non-compliance with the provisions of Sections 25G and 25H of the Act, inspire of arriving at the conclusion that Sections 25G and 25H of the Act had not been complied with and thereforee the termination order was illegal and unjustified, the Supreme Court still held that reinstatement of the workman would not be the appropriate relief considering that he was only a daily rated workman, and that he was not appointed in accordance with the constitutional scheme of appointment, neither was his work of perennial nature, nor did he prove that when his services were terminated any person junior to him in the same category, had been retained. Accordingly, payment of a lump sum compensation was deemed to be an appropriate remedy. The judgments relied on by the counsel for the petitioner workman are specific to their own facts and thereforee inapplicable to the facts of the present case.

27. In view of the aforestated facts and circumstances, as also the position of law as discussed above, this Court is not inclined to interfere with the decision to the Labour Court to award compensation to the petitioner workman in lieu of reinstatement and back wages. At the same time, the Court can not lose sight of the fact that while calculating and quantifying the consolidated amount held due and payable to the petitioner workman, the Labour Court lost sight of the fact that not only had the respondent MCD violated the provisions of Sections 25G and 25H of the Act in the case of the petitioner workman, but his termination order also suffers from the vice of non-compliance of the provisions of Section 25F of the Act, as a result of which the petitioner workman has been deprived of his right to notice, notice pay and retrenchment compensation. thereforee, it is deemed just, fit and appropriate to enhance the compensation payable to the petitioner workman by the respondent MCD from Rs.10,000/- as granted in the impugned award, to Rs. 40,000/-.

28. The impugned award dated 24th July, 2004 stands modified to the aforesaid extent. The writ petition stands disposed of with no orders as to costs.