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Court : Delhi

Decided On : Apr-22-2010

Judge : Rajiv Sahai Endlaw, J.

Acts : Industrial Disputes Act - Section 33(2)

Appeal No. : W.P. (C) 15225/2004

Appellant : Complete Dewatering Systems Pvt. Ltd.

Respondent : Govt. of Nct of Delhi and anr.

Advocate for Def. : None

Advocate for Pet/Ap. : Aditya Madan, Adv.

Disposition : Petition allowed

Judgement :

Rajiv Sahai Endlaw, J.

1. The petitioner employer, by this writ petition impugns the order dated 20th May, 2004 of the Industrial Tribunal rejecting the application of the petitioner employer under Section 33(2)(b) of the Industrial Disputes Act seeking approval of its order dated 13th February, 2003 of discharging the respondent No. 2 workman from employment. The Industrial Tribunal held that the petitioner employer had

conducted a valid and proper inquiry before discharging the respondent No. 2 workman from employment. Though upon returning such finding, the application under Section 33(2)(b) ought to have been allowed but the Industrial Tribunal still held the petitioner employer to be not entitled to the relief for the reason that the application under Section 33(2)(b) had been filed by the petitioner employer after about 9 months of the date of the order of discharge of the respondent No. 2 workman from employment. The Industrial Tribunal held that though there is no limitation prescribed for filing the application under Section 33(2)(b) of the Act but since a discharge order is void ab initio and non est unless and until the approval sought for is applied and granted, non applying for the approval for a long time will mean that the discharge order will not come into force. Though the Industrial Tribunal found that the petitioner employer had applied for condonation of delay but held that the delay cannot be condoned. The application under Section 33(2)(b) was thus not found to be a part of the transaction of passing of order dated 13th February, 2003 of discharge of the respondent No. 2 workman and was accordingly dismissed.

2. Aggrieved therefrom the present petition was filed. Notice thereof was issued on 11th October, 2004. The respondent No. 2 workman appeared in person before this Court on 6th December, 2004 and sought time. The respondent No. 2 workman on 12th May, 2005 stated that he was not in a position to engage a counsel. This Court appointed an amicus curiae to assist the court and to represent the respondent No. 2 workman. The petitioner was also directed to pay litigation expenses to the respondent No. 2 workman. However, in spite of payment of litigation expenses and repeated opportunities, no counter affidavit was filed by the respondent No. 2 workman and the right to file the counter affidavit was closed on 27th September, 2006. The amicus curiae appointed by the court also stopped appearing. Court notice was issued to the amicus curiae. The amicus curiae appeared on 17th July, 2007 and informed that the respondent No. 2 workman was not in touch with him. The matter was still adjourned. However, none has been appearing for the respondent No. 2 workman thereafter. In the circumstances, the respondent No. 2 workman is proceeded against ex parte. The counsel for the petitioner has been heard.

3. I may notice that the respondent No. 2 workman though had initially filed a reply to the application under Section 33(2)(b) before the Industrial Tribunal but was proceeded ex parte before the Tribunal also. The order of the Tribunal impugned in this petition is also an ex parte order.

4. The counsel for the petitioner has drawn attention to the order of the Tribunal where it has been observed that because of the delay of the petitioner in applying under Section 33(2)(b) it ought to have paid wages to the respondent No. 2 workman from the date of passing of the discharge order and till the date of applying for the approval. The counsel contends that inspite of holding so, the Tribunal instead of granting the approval subject to payment of the said wages to the respondent No. 2 workman, erred in dismissing the application. Reliance is also placed on *Strawboard Manufacturing Co. v. Gobind* : 1962 I LLJ 420. The Supreme Court in the said judgment held that the application under Section 33(2)(b) seeking approval of an action by dismissing or discharging an employee should be made simultaneously with the offer to pay wages to the employee. It was however clarified that the same did not mean that the filing of the application should be on the same date as the date of the payment of wages but the employer's conduct should be such, so as to make the filing of the application a part of the same transaction i.e., of dismissal/discharge of the employee and the payment of wages. It was further held that it depends upon the facts of each case whether the application had been made at once and without delay.

5. In the present case, the order of the Industrial Tribunal does not record any event/happening between the date of the order of discharge and the date of the filing of the application under Section 33(2)(b) which would make the two disjoint and/or so separate the two events as to lead to the conclusion that the petitioner employer had given up its right under the order of discharge of the respondent No. 2 workman, by not applying for the approval thereof. It is significant that the petitioner employer had filed before the Industrial Tribunal an application for condonation of delay in which it was inter alia stated that the consultant/advisor of the petitioner employer had initially advised that approval application can be filed at any time and which led to the delay. This Court is of the opinion that in the absence of any rebuttal on the part of the respondent No. 2 workman, the said

explanation of the petitioner employer ought to have been accepted and it ought to have been held that in the circumstances there was no delay in applying for the approval.

6. The reasoning of the Industrial Tribunal rejecting the application thus cannot be sustained. The Industrial Tribunal has otherwise found the petitioner employer to have conducted a valid inquiry.

7. The petition is therefore allowed. The order dated 20th May, 2004 of the Industrial Tribunal rejecting the application of the petitioner employer under Section 33(2)(b) is set aside. The application of the petitioner employer under Section 33(2)(b) is allowed. The petitioner employer is however directed to tender to the respondent No. 2 workman wages from the date of order of dismissal i.e. 13th February, 2003 till the date of the filing of the application under Section 33(2)(b) of the Act. The respondent No. 2 workman having failed to contest the petition and litigation expenses having already been paid, no order as to costs.

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