

Chander Bhan Vs. Dtc

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Court : Delhi

Decided On : May-24-2011

Judge : Rajiv Sahai Endlaw, J.

Acts : Industrial Disputes Act - Sections 33(2)(b), 10

Appeal No. : W.P.(C) 3358/2011

Appellant : Chander Bhan

Respondent : Dtc

Advocate for Def. : Ms. Latika Chaudhary; Ms. Urvashi Malhotra; Mrs. Avnish Ahlawat, Advs.

Advocate for Pet/Ap. : Mr. A.K. Sharma; Mr. Pappu Singh, Advs.

Judgement :

1. The writ petition impugns the order dated 18 th August, 2007 of the Industrial Adjudicator allowing the application of the respondent DTC under Section 33(2)(b) of the I.D. Act and thereby granting approval to the action dated 13th December, 1991 of the respondent DTC of removal of the petitioner workman from service.

2. The writ petition has been preferred after three and a half years of the order impugned; there is no explanation whatsoever in the writ petition for the unusual long delay in preferring the same. Upon being quizzed in this regard, the counsel

for the petitioner workman states that the petitioner workman has contacted him now only. Upon enquiry as to why the petitioner workman did not contact earlier, it is generally stated that he had settled down in his native village and did not have money to contest the proceedings and has filed the present writ petition only after mustering up the expenses required to be incurred therefor.

3. Without such pleas being taken on oath, the same cannot be entertained. Even otherwise, the respondent DTC has a recognized workers union and it is found that most of the disputes are pursued by the union representatives and in the circumstances the explanation given does not inspire confidence.

4. The matter has even otherwise be examined on merits. The petitioner was removed from service on the charge of unauthorized absence of 92 days between 1st January, 1990 to 31st March, 1991. Owing to the pendency then of the general dispute between DTC and its workmen, the application under Section 33(2)(b) was necessitated. It appears that the said application under Section 33(2)(b) was dismissed on 20th November, 2001. The respondent DTC preferred W.P.(C) No.1020/2002 in this Court against the said order which was allowed on 3 rd February, 2005 and the order of the Industrial Adjudicator set aside and the matter remanded to the Industrial Adjudicator for decision of the application.

5. The petitioner workman has chosen not to place the order dated 3 rd February, 2005 in the earlier writ petition before this Court and the counsel is not in possession of the same today also.

6. It is the case of the petitioner that the respondent DTC pursuant to the order of remand, did not lead any evidence whatsoever.

7. The Industrial Adjudicator found that the petitioner had admitted the charge against him of unauthorized absence for 92 days during the period of 1st January, 1990 to 31st March, 1991 but had stated that he had taken 76 days leave and not 92 days leave he was charged with; it was also the case of the petitioner workman that he had filed applications for leave but the officials of DTC did not consider those applications. The Industrial Adjudicator on perusal of records held that the petitioner workman had examined only one witness and whose evidence was

found to be not trustworthy; the case of the petitioner workman of having applied for leave was disbelieved and the charge of unauthorized absence held to have been made out and in accordance with DTC v. Sardar Singh 2004 (6) SCALE 613 the action of the respondent DTC of removal of the petitioner workman from service was approved.

8. I have enquired from the counsel for the petitioner workman whether the petitioner workman has raised any dispute qua the termination of his services. The answer is in the negative.

9. The scope of a proceeding under Section 33(2)(b) has been discussed in detail in DTC v. Shyam Lal ILR (2010) V Delhi 431. It has been held that only inquiry to be made under Section 33(2)(b) is as to whether the action (of which approval is sought) has been taken against the workman to derive any advantage in the pending legal dispute; else the proceedings under Section 33(2)(b) cannot be substituted for the adjudication of a dispute under Section 10 of the Act.

10. In the present case neither before the Industrial Adjudicator nor before this Court there is any plea of the respondent DTC having taken action of which approval was sought, against the petitioner workman to derive any advantage in the then pending dispute and owing whereto the application under Section 33(2)(b) was necessitated.

11. Even if there had been any justification for the petitioner not raising any dispute till the earlier order dismissing the application under Section 33(2)(b), at least after the said order was set aside by this Court in the earlier writ petition aforesaid, the petitioner workman ought to have raised the industrial dispute qua his termination. Similarly, even if it were to be presumed that the petitioner was not required to raise a dispute till the time of the pendency of the application under Section 33(2)(b), at least when the same was allowed about three years ago, the dispute ought to have been raised.

12. It would not be expedient to entertain this writ petition against an order under Section 33(2)(b), to make an inquiry as is required to be done under Section 10 of the Act.

13. There is no merit in the writ petition; the same is dismissed.

14. The counsel for the petitioner workman seeks liberty to raise the industrial dispute. Liberty is granted, in accordance with law. No order as to costs.

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