

Dtc Vs. Ram Avtar Sharma

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Court : Delhi

Decided On : Jul-19-2011

Judge : Rajiv Sahai Endlaw, J.

Appeal No. : W.P.(C) 7129/2008

Appellant : Dtc

Respondent : Ram Avtar Sharma

Advocate for Def. : Mr. Rakesh Kumar; Mr. Maneesh Arora, Adv.

Advocate for Pet/Ap. : Mr. Anand Nandan, Adv.

Judgement :

1. The challenge in the writ petition is to the award dated 2 nd May, 2008 of the Industrial Adjudicator on the following reference:- "Whether the removal from service of Sh. Ram Avtar Sharma is illegal and/or unjustified and if so, to what relief is he entitled to and what directions are necessary in this respect?" of reinstatement with 50% of the back wages, only insofar as the relief granted to the respondent workman of 50% of the back wages is concerned; else the respondent workman has in pursuance to the award been reinstated.

2. Notice of the writ petition was issued and the implementation of the award stayed. The pleadings have been completed and the counsels for the parties have been heard.

3. The Industrial Adjudicator has in the award, qua back wages held that the respondent workman in his statement of claim had stated that he has not been gainfully employed since the date of illegal termination and that he tried for job continuously but could not get the same and was being supported by his brother and elder son. The award further records that the respondent workman in his cross-examination reiterated that he tried for job in many private firms but could not get the job. The Industrial Adjudicator in the face of such evidence and holding that since the respondent workman had not done any work for the petitioner employer since termination / dismissal he could not be entitled to full back wages, awarded 50% of the back wages to the respondent workman.

4. The counsel for the petitioner employer has at the outset contended that the past service record of the respondent workman in the present case is bad and thus he should not have been awarded 50% even of the back wages. The counsel is however unable to show that any such plea was taken before the Industrial Adjudicator. In fact, no such plea has been taken in the writ petition also and has been taken for the first time in the rejoinder to the counter affidavit of the respondent workman. There is thus no basis whatsoever for the said argument. Even otherwise, I entertain serious doubts that the same can be a factor for depriving the respondent workman of back wages inasmuch as it is presumed that the consequences of the bad service record, if any have already been borne by the respondent workman.

5. The counsel for the petitioner employer has next contended that the award for back wages cannot be automatic; that the burden is on the respondent workman and since the period between the dismissal of the workman and the award directing the reinstatement is of nearly 13 years, the respondent workman ought not to be allowed even 50% of the back wages. Reliance in this regard is placed on:-

(i) Rajasthan Lalit Kala Academy v. Radhey Shyam (2008) 13 SCC 248;

(ii) Talwara Cooperative Credit And Service Society Ltd. v. Sushil Kumar (2008) 9 SCC 486;

(iii) General Manager, Haryana Roadways v. Rudhan Singh (2005) 5 SCC 591.

(iv) APSRTC v. B.S. David Paul (2006) 2 SCC 282.

(v) UP State Electricity Board v. Laxmi Kant Gupta (2009) 16 SCC 562.

6. On inquiry it is informed that the respondent workman in the present case was employed with the petitioner since the year 1978; he was charge sheeted on 25th January, 1994; was dismissed from service on 30th June, 1995 and the award directing reinstatement is of the year 2008. Though the counsel for the petitioner employer had at one stage also sought to argue that the dispute was raised belatedly but a perusal of the award shows that the dispute was raised immediately after dismissal and the reference came to be made in the year 1996 itself.

7. The judgments relied upon by the counsel for the petitioner employer also, lay down that the method and nature of appointment, qualifications, length of service, availability of alternative work are the myriad factors that have to be considered while deciding whether the workman is to be entitled to full or part back wages. In the present case, considering the long employment of the respondent workman with the petitioner employer and there being nothing to show that the long time of 13 years taken before the Industrial Adjudicator was attributable to the respondent workman, no unreasonableness / perversity can be found in the award of 50% of the back wages. The petitioner employer has thus not been able to make out any case for challenge to the same.

8. The Industrial Adjudicator had directed the petitioner employer to pay 50% back wages within two months of the award failing which the same is to incur interest at 18% per annum. Though under the award the petitioner employer has become liable for such interest also but in the facts and circumstances of the case and since there was an interim order of stay, it is deemed expedient to direct that in the event 50% of the back wages in terms of the award are released by the petitioner employer to the respondent workman within six weeks of today, the petitioner employer shall not be liable to pay any interest thereon. However, if the back wages are not so released within six weeks as aforesaid, the petitioner shall also

be liable for interest thereon in accordance with the award i.e. from two months after the date of the award till the date of payment.

9. Costs of `5,000/- of litigation have been deposited by the petitioner in this Court. The respondent workman is at liberty to withdraw the same. Copy of this order be given Dasti.

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