

N.D.M.C Vs. \$ Jai Ram

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Court : Delhi

Decided On : Jan-09-2012

Appellant : # N.D.M.C

Respondent : \$ Jai Ram

Advocate for Def. : Mrs. Inderjeet Saroop

Advocate for Pet/Ap. : Mr. P.C. Sen

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) NO. 8321 OF 2007
Date of Decision: 9th January, 2012 # N.D.M.C. Petitioner Through: Mr. P.C. Sen, Advocate Versus \$ JAI RAM Respondent ^ Through: Mrs. Inderjeet Saroop, Advocate CORAM: * HON'BLE MR. JUSTICE P.K.BHASIN JUDGMENT P.K.BHASIN, J: This writ petition was filed by the petitioner-management against the award dated 19.12.2005 passed by the Labour Court whereby the petitioner-management had been directed to appoint the respondent-workman (hereinafter to be referred as 'the workman') as LMV Driver-cum- Fitter on regular basis with continuity of service and 50% back wages after relaxing the educational qualification prescribed for this post..

2. This award was passed by the Labour Court while deciding the Reference received by it from the appropriate Government in respect of the industrial dispute raised by the workman regarding the W.P.(C) 8321/2007 *Page 1 of 7* termination

of his services by the petitioner-management. The term of reference was as under:- "Whether the services of Sh. Jai ram 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. The workman was admittedly employed with the petitioner- management as a muster roll driver and had worked in that capacity for about eight years when suddenly his services were allegedly terminated since he had demanded regular appointment as a driver. The workman had then raised an industrial dispute which, as noticed already, came to be referred to the Labour Court for adjudication. In the claim statement filed by him before the Labour Court the workman had pleaded all these facts and had made a prayer for passing of an award in his favour directing his re-instatement in service with continuity and full back wages. The petitioner-management had resisted the claim of the workman and claimed that it had not terminated the services of the workman and he himself had stopped coming on duty as a muster roll driver. And as far as the grievance of the workman that he had been illegally denied permanency of job is concerned, the stand of the petitioner- management was that even though he had passed the Trade Test for the post of driver as was being claimed by him but still he was not W.P.(C) 8321/2007 *Page 2 of 7* selected since he did not possess the necessary minimum educational qualification of being eighth class pass..

4. The Labour Court found that the services of the workman had been terminated illegally though he was entitled to be regularised and rejected the plea of the petitioner-management that he had in fact abandoned the job himself and consequently directed the management, as noticed earlier also, not only to appoint him as an LMV driver-cum- fitter but also directed the management to give that appointment to him as a regular driver and that too after relaxing the educational qualification as was found to have been done in the case of other employees some of whom were junior to the workman Jai Ram..

5. Feeling aggrieved, the petitioner-management filed the present writ petition. The award of the Labour Court was challenged in the writ petition as well as during the course of hearing before this Court by the learned counsel for the petitioner-

management only on the ground that the learned Labour Court had wrongly given the benefit of appointment of the workman as a regular driver-cum-fitter since that was not even the dispute referred to it for adjudication and also because admittedly the workman did not possess the minimum educational qualification prescribed under the recruitment rules for this post and the workman had failed to show that any other employee not possessing the requisite educational qualification had been given regular appointment by the petitioner-management while he was denied that benefit. Learned counsel for the petitioner-management W.P.(C) 8321/2007 *Page 3 of 7* had also contended that the Labour Court in any event could not have given a direction to the management to relax the qualification rule in the case of the workman and particularly when it was not even his case that the petitioner-management had relaxed the rule in the case of any other muster roll employees..

6. On the other hand, learned counsel for the workman supported the award of the Labour Court by placing reliance on an order passed by a Division Bench of this Court on 08.10.1996 in a writ petition of some workmen who had approached this Court directly under Article 226 of the Constitution of India (being Civil Writ Petition No. 646/96) wherein direction was given to the NDMC to give regular appointment as a driver, after relaxing the educational qualification, to one muster roll driver who had cleared the Trade Test and had been working as a driver for many years, though with some intermittent breaks, but did not possess the minimum educational qualification..

7. In respect of the directions passed by this Court in other writ petitions for the regularization of those muster roll drivers who did not possess the minimum educational qualification the submission of the learned counsel for the petitioner-management was that those were the directions given by this Court in the writ petitions filed directly before this Court and this Court had given the directions in exercise of its writ jurisdiction while in the present case the directions for regular appointment has been given by the Labour Court which it had no jurisdiction to pass since there was no such dispute referred to it for W.P.(C) 8321/2007 *Page 4 of 7* adjudication and also since the same was not even incidental to the real dispute referred to it. So, the Labour Court could only adjudicate the dispute about

the termination of the services of the workman and order his re-instatement as a muster roll employee only, with or without back wages, after arriving at the conclusion that his services had actually been terminated illegally and unjustifiably by the petitioner-management and nothing beyond that. Counsel concluded, his arguments by stating the award of the Labour Court to the extent it directs the petitioner-management to regularize the workman as a driver-cum Fitter cannot be sustained..

8. After giving my due consideration to the rival submissions, I have come to the conclusion that as far as the relief of re-instatement in service granted to the workman by the Labour Court with 50% back wages is concerned, same does not call for any interference by this Court since there is no challenge made by the petitioner in that regard and it has been the petitioner's own case that it never wanted to discontinue the services of the respondent - workman as a muster roll employee. However, I am in full agreement with the submission of the learned counsel for the management that the Labour Court was not at all justified in giving the relief of regularization to the respondent - workman since that was not the dispute referred to it by the appropriate Government and, in fact, in the claim statement even the workman himself had not made any prayer for grant of relief of regularization to him. It is now well settled that the Industrial W.P.(C) 8321/2007 *Page 5 of 7* Tribunal or the Labour Court cannot travel beyond the terms of reference and give any relief to the workman. It has to confine the adjudication to the point(s) referred to it for adjudication or any matter incidental thereto. In the present case, as per the respondent's own case his services had been terminated and so he was entitled to be re- instated in service. Therefore, unless he was in service there was no occasion for any authority to direct his regularization and that matter cannot be said to be in any way incidental to the dispute raised by the respondent - workman regarding termination of his services by the petitioner - management. In this regard a useful reference can be made to a decision of the Supreme Court in "Delhi Cloth General Mills Company Limited vs. The Workman and Others", AIR 1967 SC 469 wherein it had been held that an Industrial Tribunal must confine its adjudication to the dispute referred to it and matters incidental thereto and the Tribunal is not free to enlarge the scope of the dispute. In another judgment of the Supreme Court in the case of "Municipal Committee Tauru Versus

Harpal Singh and Anr.", AIR 1999 SC 843 it was observed by the Supreme Court as under: "9. Even in labour matters a claimant goes before the court or tribunal with a case and it is upon the merits of that case that relief is to be granted or refused to him. To look to his case is not to look at technicalities. There is no substantial justice when the court or tribunal gives relief to a workman which is on a basis that is totally contrary to the basis upon which he approached it; which, indeed is the employer's case. Substantial justice must be done both to the employer and the employees." W.P.(C) 8321/2007 *Page 6 of 7* Therefore, the direction of the Labour Court in the present case given to the petitioner - management to appoint the respondent - workman as a regular driver-cum-fitter while re-instating him cannot be sustained..

9. This writ petition is accordingly disposed of by modifying the Award of the Labour Court to the extent that the only relief which the respondent - workman would now get is his reinstatement in service with 50% back wages as a muster roll employee and not as a regular employee. However, in case the respondent - workman approaches the petitioner - management with a request for his regularization relying upon the decision of the Division Bench of this Court in CWP 646/1995 (referred to already) wherein the petitioner - management had been directed to regularise one workman even though he did not possess the requisite educational qualification of being 8th pass considering the fact that he had cleared the trade test for the post of a driver and had worked without any complaint for many years, that request shall be considered uninfluenced by the denial of the relief of regularization to the respondent - workman in the present proceeding. P.K. BHASIN,J January 9, 2012/sh W.P.(C) 8321/2007 *Page 7 of 7*

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