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The Management of Lrs Institute Vs. Devender Kumar

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Court : Delhi

Decided On : Jan-09-2013

Judge : Mukta Gupta

Appellant : The Management of Lrs Institute

Respondent : Devender Kumar

Advocate for Def. : Mr. R.S. N, Mr. Harmeet S. N

Advocate for Pet/Ap. : Mr. Ravi Sikri, Mr. Vaibhav Kalra

Judgement :
* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 137/2009 & CM 296/2009 (stay) Reserved on:

15. h October, 2012 Decided on:

9. h January, 2013 % THE MANAGEMENT OF LRS INSTITUTE ..... Petitioner Through: Mr. Ravi Sikri and Mr. Vaibhav Kalra, Advocates. versus DEVENDER KUMAR Through: ..... Respondent Mr. R.S. Nagpal and Mr. Harmeet S. Nagpal, Advocates. Coram: HON'BLE MS. JUSTICE MUKTA GUPTA 1 By the present petition the Petitioner seeks setting aside of the award dated 31st March, 2008 passed by the learned Presiding Officer, Labour Court in the Industrial Dispute ID No. 704/06/99 wherein the learned Trial Court granted a compensation of Rs. 1,50,000/- to the workman in lieu of reinstatement and full back wages.

2. Learned counsel for the Petitioner contends that the learned Trial Court has failed to appreciate that the reference was not made by the appropriate government. Petitioner is an autonomous body fully funded by the Ministry of Health and Family Welfare, Government of India, therefore, only Central Government was competent and authorized to refer the dispute for adjudication. Since in the present case the reference was made by the State Government, which was not a competent authority to make such a reference, the labour court should not have passed the impugned award. Learned counsel lastly contends that the Respondent was engaged with the Petitioner as a daily wager and has remained unauthorizedly absent as a result of which his extension was denied by the Management as such, he is not entitled to any relief.

3. Per contra learned counsel for the Respondent contends that the award of the learned trial court is well-reasoned and devoid of any illegality. It was passed after proper appraisal of the evidence/material on record and relying on the decision of the Apex Court. The High Court in the exercise of writ jurisdiction under Article 226 of the Constitution of India cannot interfere with the well reasoned award based on proper appreciation of evidence. Reliance is placed on Parshuram Shah vs. Government of NCT of Delhi and another, 2008 LLR 25.Delhi in support of this contention. It is further contended that the State Government is the appropriate authority to refer the dispute under the ID Act in terms of Rule 2(f) of the Industrial Disputes (Central) Rules, 1957.

4. I have heard learned counsel for the parties and perused the record.

5. Briefly the case of the Petitioner is that the Respondent was engaged as a plumber with the Petitioner on daily wages w.e.f. 6th June, 1997 and was granted extension on the basis of need of the work. Since his work was not found to be satisfactory and he was also found to be irregular, a warning was issued to him vide letter dated 5th January, 1998. The Respondent did not report for duty in the month of October, 1998, therefore, he was not granted extension and the same fact was made known to him vide letter dated 6 th November, 1998. A demand notice was sent by the Respondent to the establishment/society asking it to withdraw the letter declining the grant of extension on 22nd January, 1998.

Conciliation proceedings were initiated and on its failure, a reference was made by the State Government in the following terms of reference: Whether the services of Sh. Devender Kumar 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? 6. The question of competence of the Government of NCT of Delhi in making a reference of an industrial dispute in a case where the industry is under the control of Central Government was decided with reference to Rule 2(f) of Industrial Disputes (Central) Rules, 1957 in MCD vs. Mahavir, 2002 (95) FLR 97.by the Division Bench of this Court wherein it was held:

10. Section 38 of the said Act provides for rule making power. In exercise of the said power the Central Government has framed rules known as Industrial Disputes (Central) Rules which came into effect from March 10, 1957. These rules apply to Union Territories and States in relation to industries situated therein in respect whereof the Central Government may be the Appropriate Government. Rule 2 appears with the expression "in these rules". Rule 2(f) of the said Rules reads thus: "(f) in relation to an industrial dispute in a Union territory, for which the appropriate Government is the Central Government, reference to the Central Government or the Government of India shall be construed as a reference to the Chief Labour Commissioner (Central), Regional Labour Commissioner (Central) and the Assistant Labour Commissioner (Central) shall be construed as reference to the appropriate authority, appointed in that behalf by the Administrator of the territory;"

11. By reason of the said rule the power which can be exercised by the Central Government has been delegated to the Lt. Governor. The Government of National Capital Territory of Delhi has appointed conciliation officers. An officer appointed by Administration as conciliation officer may also deal with such industrial disputes where for the Central Government would be the appropriate Government. It is also not in dispute that the Delhi Administration has constituted the Labour Courts and Industrial Tribunals. Section 4 of the Act authorises the Central Government to appoint Conciliation Officers. In the instant case virus of Rule 2(f) of the Rules is not in question. Rules, as is well known, when validly become part of the Act. By reason of the said Rules and Central Government only intended to create a

machinery for the purpose of enforcing the provisions of the Act having regard to definition of the Central Government as contained in Section3(8) of the General Clauses Act.

18. Section 2(f) of the Central Rules must be construed to be a valid piece of legislation and thus it can be inferred that thereby the only person authorised to act has been mentioned and no power as such has been delegated. Rule (f) also covers subject matters envisaged under Section 10(1) of the Industrial Disputes Act. In Goa Sampling case (supra), upon which counsel has relied upon was held that the administrator is not a Government and a UT does not satisfy the definition of State Government and as such the Central Government was the appropriate Government to refer the disputes.

7. Thus the effect of the judgment of this Court in MCD vs. Mahavir (surpa) read in consonance with Rule 2(f) of the Industrial Disputes (Central) Rules 1957 is that even if strictly speaking the appropriate government to make reference of an industrial dispute is a Central Government, a reference can be made by the administrator of Union Territory or his delegated authority. Hence in a case where reference was made by Government of NCT of Delhi as in the present case such a reference cannot be said to be a reference which was not made by an appropriate authority.

8. As regards the stand of the Respondent in the written statement that the Petitioner did not report for duty hence extension was denied, it may be noted that no evidence has been led by the management in this regard. It is not in dispute that the workman was engaged with the Petitioner as a daily wager from 6th June, 1997 and his services were terminated on 6th November, 1998. However, the Management while discontinuing his services has not complied with the provisions of Section 25F of the ID Act. It is well settled that Section 25F of the ID Act does not distinguish between a casual and permanent employee. Hence, as the services of the Respondent were terminated in violation of Section 25F ID Act he shall be entitled to relief under the ID Act. However, failure to comply with Section 25F will not automatically entail reinstatement with back wages and in a case where workman is a daily wager, compensation instead of reinstatement and back

wages is an appropriate relief. This view was expressed by the Honble Supreme Court in Jagbir Singh vs. Haryana State Agriculture Marketing Board and another, 2009 (15) SCC 32.wherein it was held:

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

15. Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and circumstances of the present case cannot be said to suffer from any legal flaw. However, in our view, the High Court erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages.

16. As a matter of fact, in all the judgments of this Court referred to and relied upon by the High Court while upsetting the award of reinstatement and back wages, this Court has awarded compensation.

17. While awarding compensation, a host of factors, inter alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances.

18. In a case such as this where the total length of service rendered by the appellant was short and intermittent from 1-91995 to 18-7-1996 and that he was engaged as a daily wager, in our considered view, a compensation of Rs 50,000 to the appellant by Respondent 1 shall meet the ends of justice. We order accordingly. Such payment should be made within six weeks from today failing which the same will carry interest @ 9% per annum.

9. In the present case the learned Trial Court awarded the compensation of Rs. 1,50,000/- considering the fact that the Respondent was a plumber working on daily wages and had worked for nearly two years, the compensation awarded cannot be said to be disproportionately higher so as to warrant interference by this Court.

10. I do not find any merit in the present petition. Petition and application are dismissed. The Registry is directed to release the amount deposited by the Petitioner in this Court in terms of order dated 13th January, 2009 to the Respondent along with the interest that has accrued thereon. (MUKTA GUPTA) JUDGE JANUARY 09 2013 vn

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