

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.19227/2006**

% **Date of decision : 07.02.2008**

MCD

..... PETITIONER

Through: Mr.Gaurang Kanth, Advocate.

Versus

Late Smt.Mithilesh through LRs RESPONDENT

Through: Mr.Sanjay Ghosh, Advocate.

CORAM :-

HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J. (Oral)

Rule.

With the consent of the parties, the matter is taken up for final disposal.

The petitioner has impugned the award dated 1st December, 2004 passed by the Industrial Tribunal reinstating the respondent, Smt.Mithilesh, now deceased, with effect from 18th November, 2002 and granting back wages from 15th May, 1998 to 23rd February, 2000 and from 17th March, 2000 to 18th November, 2002.

The petitioner has impugned the award on the ground that the

workman/respondent had left the work on her own and, therefore, she is not entitled for back wages. It is also contended that the application for maternity leave of the respondent dated 15th May, 1998 was rejected and, therefore, the respondent ought to have remained on her duty whereas the respondent continued to remain absent unlawfully.

The contention of the respondent workman is that she was in continuous service for more than 240 days before her termination and consequently she was entitled to all the benefits of Section 25F of the Industrial Disputes Act, 1947.

Regarding back wages awarded to the respondent, the learned counsel for the respondent has relied on (2005) 8 SCC 314, Srikantha S.M. vs. Bharath Earth Movers Ltd. and (2007) 7 SCC 689, Commissioner, Karnataka Housing Board vs. C. Muddaiah to contend that since the respondent was willing to work but the petitioner/Corporation did not allow her to work, it will not be open to the petitioner to deny the monetary benefits to the respondent who was not permitted to discharge her duties. Learned counsel, Mr.Sanjay Ghosh, for the respondent has also contended that since the respondent was willing to work but she was illegally and unlawfully not allowed to do so, the court shall be justified in awarding her the back wages as if she had worked and consequently

the award of the Industrial Tribunal granting back wages for the period specified does not suffer from any illegality. It has also been pleaded that there is no such absolute proposition that if there is “no work there will not be any pay”.

I have heard learned counsel for the parties and have perused the pleadings, evidence and the award dated 1st December, 2004. The Industrial Tribunal had relied on the fact that the workman had applied for maternity leave on 15.03.1998 and her maternity leave was wrongly refused and thereafter she was not allowed to join her duties. The workman has established that she had applied for maternity leave and this was declined. This has been proved by the respondent by stating on oath about it which fact was not denied by the petitioner, rather it has been established that another person was appointed in place of her and, therefore, justifying her contention that she was entitled to continue for work and her term could not be terminated.

The Tribunal has also noticed that the workman had served a demand notice dated 21st March, 2001 which fact was accepted by the Management and in the circumstances the inference which is drawn by the Industrial Tribunal is that if the workman had made an application for grant of maternity leave which was not granted, therefore, she was not allowed to join her duties even after the period

when she became ready to attend her duties.

Learned counsel for the petitioner is unable to point out in the award such anomaly or perversity in the inferences which have been drawn by the Industrial Tribunal, which will entail interference by this Court.. The findings of the fact arrived at by the Tribunal holding that the respondent had applied for maternity leave which was not allowed and that she was ready to join her duties after the period of maternity leave but was not allowed to join the duties cannot be termed to have any manifest error. It was also held that though she failed to join her duties after the receipt of letter dated 23rd February, 2000, however, she raised a demand for reinstatement on 17th March, 2001 and she was reinstated only on 18th November, 2002 and, therefore, the back wages has been awarded from 17th March, 2001 to 18th November, 2002 and from 15th May, 1998 when she applied for maternity leave till 23rd February, 2000 when the workman received letter to join her duties.

Learned counsel for the respondent/workman had contended that these inferences which have been drawn by the Industrial Tribunal are plausible and cannot be termed perverse or suffering from manifest error. Learned counsel for the petitioner is also unable to show any perversity or such manifest error which should be corrected by this court in exercise of the jurisdiction under Article 226 of the Constitution of India.

While exercising powers of judicial review under Article [226](#) of the Constitution of India this Court is not to re-appreciate the evidence. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court is not to interfere with factual findings and should restrain itself from re-appreciating evidence while exercising powers of judicial review. Reliance for this proposition can be placed on the judgment of the Supreme Court, *Government of A.P. and Ors. v. Mohd. Nasrullah Khan* reported as (2006) 2 SCC 373. Reliance may also be placed on the following judgments rendered by the Supreme Court and this Court concerning the scope of judicial review by a writ court: *Harbans Lal v. Jagmohan Saran* (1985) 4 SCC 333; *B.C. Chaturvedi v. Union of India* (1995) 6 SCC 749; *Indian Overseas Bank v. I.O.B. staff Canteen Workers' Union* AIR 2000 SC 1508 ; *Municipal Corporation of Delhi v. Asha Ram and Anr.* 117 (2005) DLT 63 and *Filmistan Exhibitors Ltd. v. N.C.T. Secy. Labour and Ors.* 131 (2006) DLT. In all the above judgments, it has been held that a writ court should refrain from interfering with the orders of an inferior tribunal or subordinate court unless it suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law.

The objective of judicial review is that a person receives a fair

treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. The Apex Court in (1995) 6 SCC 749 B.C.Chaturvedi Vs Union of India at page 759 in para 12 had held as under:

“12 . Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/ Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

In the circumstances award of back wages for the period 15th May, 1998 to 23rd February, 2000 and from 17th March, 2001 to 18th

November, 2002 cannot be faulted and the award does not have any manifest error in respect thereof.

As to how much back wages are to be awarded has to be determined considering the nature of job and the willingness of the respondent to join the duties. Once the Tribunal has come to a finding that the respondent was willing to join, however, she was declined maternity leave wrongly, therefore, considering all the relevant factors, it is just and appropriate to award the back wages for the period as have been granted by the Industrial Tribunal.

The Supreme Court in the case of Srikantha S.M.(supra) had held that where a workman was willing to work but he was not allowed to work, the employee cannot deny monetary benefits to such a workman who was not permitted to discharge his duties. Relying on Shambhu Murari Sinha Vs. Project and Development India, (2000) 5 SCC 621 it was approved that where the employee had attained the age of superannuation, he would be entitled to full salary and allowances. In a recent judgment of the Supreme Court, Commissioner, Karnataka Housing Board (supra), it was held that there is no absolute principle that if there is no work there would not be any pay. It was held that where a person was willing to work and he was illegally and unlawfully not allowed to do so, the proposition that “no work no pay” cannot be applied absolute.

In the circumstances, the findings of the Tribunal awarding back wages to the respondent from 15th May, 1998 to 23rd February, 2000 and from 17th March, 2001 to 18th March, 2000 cannot be set aside on any of the grounds alleged by the petitioner. Learned Counsel for the respondent/workman has also contended that the respondent/workman has since died and the amount of back wages is also a paltry sum of few thousands rupees. In the totality of circumstances, there is no perversity or manifest error or denial of principle of natural justice or such other error which will require inference of this court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition is, therefore, without any merit and it is dismissed. Parties are however, left to bear their own costs.

February 7th, 2008
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ANIL KUMAR J.