

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

Date of decision: 25th March, 2011

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W.P.(C) 11875/2005

DELHI CANTONMENT BOARD

..... Petitioner

Through: Mr. R. Nanavaty, Advocate.

versus

SH. BALWAN SINGH

..... Respondent

Through: Mr. Sandeep Sharma with Ms.
Kanika Singh, Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the award dated 4th March, 2005 of the Industrial Tribunal on the following reference:-

“Whether the demand of the Delhi Chhawni Board Karamchari Union for acceptance of the request for withdrawal of resignation of Shri Balwan Singh, ex-Malaria

Mazdoor is legal and justified? If so, what relief the workman is entitled to.”

2. The respondent workman was employed with the petitioner as a Malaria Mazdoor since 3rd January, 1985 and was confirmed to the said post on 18th December, 1987. The respondent workman vide letter dated 1st January, 1997 intimated to the petitioner that he wanted to contest the election for the post of Member of the petitioner Board and hence requested the petitioner to accept his resignation from his post w.e.f. 3rd April, 1997; the respondent workman vide the said letter also sought permission of the petitioner to contest the election.

3. The petitioner vide letter dated 3rd January, 1997 accepted the resignation of the respondent workman from the post of Malaria Mazdoor, w.e.f. 3rd January, 1997. However on the same day a corrigendum was issued intimating that the effective date of acceptance of the resignation would be 3rd April, 1997.

4. The respondent workman on 9th January, 1997 submitted another letter to the petitioner intimating that owing to changed circumstances, he

did not want to resign and sought to take back the resignation and also requested the petitioner to take him back on duty.

5. The petitioner vide letter dated 15th January, 1997 intimated to the respondent workman that the request of the respondent workman for withdrawal of resignation before the expiry of notice period was being examined and the decision as per Rules will be communicated to the respondent workman.

6. However upon no decision on the request of the respondent workman for withdrawal of resignation having been communicated, the respondent workman raised an industrial dispute and on which the reference aforesaid came to be made.

7. The respondent workman in his claim petition before the Industrial Tribunal sought an award holding that the withdrawal of the resignation by him was valid and legal and that he was entitled to the post which he was holding earlier, by way of reinstatement with full back wages.

8. The stand of the petitioner before the Industrial Tribunal was that the respondent workman had concealed the fact of his having contested the

elections held on 2nd February, 1997 and being declared unsuccessful therein. It was pleaded that the respondent workman had misrepresented in the letter aforesaid of withdrawal of resignation and also in the claim petition that he did not want to contest the election. It was further pleaded that the resignation submitted by the respondent workman having been accepted, the respondent workman had ceased to be in the employment of the petitioner.

9. From a perusal of the record of the Industrial Tribunal requisitioned in this Court it transpires that the respondent workman had filed his nomination for the election scheduled on 2nd February, 1997; that the last date for withdrawal of the nomination was 9th January, 1997 i.e. the same date on which the respondent workman applied for withdrawal of his resignation; that the respondent workman however did not withdraw his candidature from the election; that thus in the election held on 2nd February, 1997 the name of the respondent workman appeared as one of the contesting candidates and in whose favour 684 votes were polled.

10. The Industrial Tribunal in the award impugned in this petition held that as per the decision of the Government of India under Rule 26 of the CCS (Pension) Rules applicable to the employees of the petitioner “In case the resignation has been accepted by the appointing authority and Government servant is to be relieved from a future date, if any request for withdrawing the resignation is made by the Government servant before he is actually relieved of his duties, the normal principle may be to allow the request of the Government servant to withdraw his resignation”. The Industrial Tribunal also held that the respondent workman subsequent to his resignation letter was never relieved of his duties. It was thus held that the petitioner should have either accepted the request for withdrawal of resignation or rejected it but no order was passed and the silence on the part of the petitioner amounted to unfair labour practice. It was further held that the petitioner should have conducted an inquiry whether the respondent workman had contested the election or not and if the respondent workman was found to have contested the election, appropriate

punishment should have been awarded to him. Reference was accordingly replied as under:-

“The demand of Delhi Cantonment Board Karamchhari Union for acceptance of the request for withdrawal of resignation of Sh. Balwan Singh, ex-Malaria Mazdoor is neither absolutely legal nor justified. However the workman applicant is re-stored to the post prior to submission of his letter of resignation i.e; 01.01.1997 with all the consequential benefits until appropriate order is passed on his resignation letter or withdrawal of resignation letter. However, the respondents are at liberty to hold an inquiry regarding the fact of his contesting or non-contesting the election and take appropriate action against the workman applicant as per the rules of the Cantonment Board.”

11. Aggrieved from the aforesaid award the present petition was filed. While issuing notice of the petition, the effect and operation of the award was stayed. Counter affidavit and rejoinder have been filed. The respondent workman filed an application under Section 17B of the Industrial Disputes Act, 1947 pleading that he was not in employment in any establishment since 1st January, 1997. The said application was dismissed vide order dated 31st October, 2006 on the ground that the respondent workman having chosen to contest the election and which could be contested only with a sound financial background, he could not be

presumed to be unable to get alternative employment. LPA No.2334/2006 was preferred by the respondent workman against the said order and which was allowed on 21st April, 2008 and the application under Section 17B of the Act directed to be decided afresh. However in the meanwhile the respondent workman died and his legal heirs were substituted. The counsel for the legal heirs of the respondent workman has today stated that he is not pressing the application under Section 17B of the Act and the writ petition itself may be decided. The counsels have been heard.

12. The counsel for the petitioner has argued that the respondent workman having resigned and his resignation having been accepted, the award of back wages could not have been made. Reliance in this regard is placed on:-

- i. ***Reetu Marbles v. Prabhakant Shukla*** (2010) 2 SCC 70 – laying down that full back wages cannot be granted mechanically and a direction for reinstatement is not automatically accompanied by payment of full back wages and without inquiry into whether the workman was gainfully

employed when he was out of service with the employer or not;

- ii. ***U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey*** (2006) 1 SCC 479 – to the same effect;
- iii. ***Metropolitan Transport Corporation v. V. Venkatesan*** (2009) 9 SCC 601 – noticing the change in legal approach regarding automatic directions for reinstatement and payment of full back wages on dismissal order having been found invalid.

13. Per contra, the counsel for the legal heirs of the respondent workman has argued that though the respondent workman before the Industrial Tribunal had deposed that he was unemployed, was neither cross examined nor did the petitioner lead any evidence of the respondent workman being employed elsewhere; in the synopsis of submissions filed, reference is also made to ***J.K. Synthetics Ltd. v. K.P. Agrawal*** (2007) 2 SCC 433 - laying down that an employee cannot be asked to prove the negative and the assertion that he was unemployed is enough to shift the burden on the

employer. Reliance is also placed on *Nirmal Verma v. MCD* 118(2005) DLT 665 where a Single Judge of this Court on the basis of Rule 26(4) (supra) of CCS (Pension) Rules held that unsuccessfully contesting elections after resignation cannot be a ground for rejecting the request for withdrawal of resignation in accordance with the said Rule. The counsel for the legal heirs of the respondent workman has argued that the present case is fully covered by the said dicta.

14. Though the counsel for petitioner has not expressly argued but a perusal of the writ petition as filed shows that the challenge to the award is mainly on the ground that the award in so far as restoring the respondent workman to the post prior to submission of resignation, with all consequential benefits until appropriate order is made on the letter of withdrawal of resignation, is beyond the reference.

15. It may be noticed that the award holds that the withdrawal of resignation by the respondent workman was neither legal nor justified. Thus the reference made to the Industrial Tribunal stood answered in favour of the petitioner. The second part of the reference, as to the relief to

which the respondent workman was to be entitled to, was to follow only in the event of the reference being decided in favour of the respondent workman. Once the Industrial Tribunal decided the reference in favour of the petitioner, the question of granting the relief to the respondent workman did not arise.

16. The question which thus arises is whether the Industrial Tribunal inspite of deciding the reference against the respondent workman, could have granted the relief to the respondent workman. In my opinion, no. A three judge Bench of the Supreme Court in ***National Engineering Industries Ltd. Vs. State of Rajasthan*** AIR 2000 SC 469 has held that an Industrial Tribunal is the creation of a statute and it gets jurisdiction on the basis of reference, it cannot go into the question of validity of reference. Similarly in ***State Bank of Bikaner and Jaipur Vs. Om Prakash Sharma*** (2006) 5 SCC 123 also it was held that the jurisdiction of Labour Court emanates from the order of reference, it could not have passed an order going beyond the terms of reference and if the Labour Court exceeds its

jurisdiction, the order suffers from a jurisdictional error capable of being corrected by the High Court.

17. As per the reference made to the Industrial Tribunal, the Industrial Tribunal was to decide the relief to which the respondent workman was entitled to only if finding the request for withdrawal of resignation to be legal and justified. There was no reference as to the relief if any to be granted to the respondent workman even if the request for withdrawal of resignation was not legal and justified, as found by the Industrial Tribunal. The petition is thus entitled to succeed on this ground alone.

18. However for the sake of complete adjudication, I have even otherwise considered the legality and validity of the reply to the reference. The respondent workman has not challenged the reply to the reference in so far as holding his request for withdrawal of resignation to be not legal and not justified. I am even otherwise of the opinion that in the facts as have emerged, no perversity or error capable of interference in judicial review can be found in the said reply by the Industrial Tribunal to the reference. The respondent workman while continuing to be an employee of

the petitioner could not have contested the election. It was open to the respondent workman, if not desirous of contesting the election for having not been sponsored by the political party as per his expectation, ought to have withdrawn his nomination and the last date for which withdrawal was admittedly till the date when he withdrew his resignation. However the respondent workman while continuing in the electoral fray, also applied for withdrawal of the resignation. The fact that the respondent workman continued in the electoral fray is proved from 684 votes secured by him. It is thus clear that the respondent workman was wanting to sail in two boats, i.e. of while contesting the elections and which he could not have contested while being the employee of the petitioner, to also keep the option open of withdrawing the resignation in the event of being unsuccessful in the election. Not only so, the respondent workman also misrepresented that he was no longer interested in contesting the election.

19. In the aforesaid context, the facts of the present case are materially different from that of *Nirmal Verma* (supra) relied upon by the respondent workman. In that case the cessation of employment was complete and the

request for withdrawal of resignation was made after being unsuccessful in the election. It was in those facts that this Court held the reason of rejection of the request for withdrawal of resignation to be erroneous.

20. I have also wondered as to the legality of the reply by the Industrial Tribunal to the reference insofar as directing the petitioner to decide on the application of the respondent workman for withdrawal of resignation. Once a reference had been made to the Industrial Tribunal on that aspect and the Industrial Tribunal had held the request for withdrawal of resignation to be illegal and unjustified, the question of the petitioner thereafter deciding the same did not arise. I thus fail to see any logic whatsoever in the part of the award challenging which this writ petition has been filed. It thus has to be necessarily held that the award in so far as restoring the respondent workman to the post prior to submission of letter of resignation and with all consequential benefits is not only beyond the terms of reference but is even otherwise illogical and perverse and thus liable to be set aside.

21. The petition therefore succeeds. The award of the Industrial Tribunal in so far as directing restoration of the respondent workman to the post

held prior to the submission of resignation with all consequential benefits is set aside/quashed. Though costs of ₹7,500/- of legal proceedings were, under interim orders, paid by the petitioner to the respondent workman but it is not deemed expedient to direct refund thereof. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

25th MARCH, 2011
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