

\$~ 4 & 5

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

+ **LPA 421/2014**

BAMRA ENGINEERING WORKS

..... Appellant

Represented by: Ms.Raavi Birbal, Mr.Ravindra
and Mr.Shriram Chauhan,
Advocates.

versus

SUKHDEV SHARMA

..... Respondent

Represented by: Respondent in person.

+ **LPA 422/2014**

BAMRA ENGINEERING WORKS

..... Appellant

Represented by: Ms.Raavi Birbal, Mr.Ravindra
and Mr.Shriram Chauhan,
Advocates.

versus

HARKYAL SHARMA

..... Respondent

Represented by: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

%

18.09.2015

CM No.9802/2014 (Delay) in LPA 421/2014

CM No.9805/2014 (Delay) in LPA 422/2014

1. For the reasons stated in the applications the delay of 341 days in filing the appeals is condoned.
2. Application is disposed of.

LPA 421/2014 and LPA 422/2014

1. Sukhdev Sharma and Harkyal Sharma raised industrial disputes which were adjudicated by the learned Labour Court vide the award dated April 04, 2003 whereby they were directed to be reinstated with 50% back wages. Claiming that the award of the Labour Court in I.D.Nos.6/95 and 8/95 had not been implemented as Sukhdev Sharma and Harkyal Sharma were neither reinstated, nor back wages and further wages paid Sukhdev Sharma and Harkyal Sharma filed claim petitions under Section 33C (2) of the Industrial Disputes Act, 1947 (in short 'the ID Act').

2. During the course of proceedings the Authorised Representative of the Respondents Shri R.D.Yadav admitted having received the back wages by way of cash however, stated that he could not hand over the same to the workmen and thus handed over the same on October 25, 2008 under receipt and Sukhdev Sharma and Harkyal Sharma also admitted that they have received the total amount due under the award from Shri R.D.Yadav. Though the management had challenged the awards by filing writ petitions however, the order sheet of the Labour Court revealed that on April 07, 2010 the Authorised Representative of the management stated that management was still ready to take Sukhdev Sharma and Harkyal Sharma back on duty however, they refused to resume the duty. Further the order sheets of the Labour Court dated March 03, 2009 would reveal that Sukhdev Sharma and Harkyal Sharma were directed to report to the management to resume duty on March 05, 2009 at 10.00 A.M. whereafter the report of the Labour Inspector was received stating that though Sukhdev Sharma and Harkyal

8

Sharma resumed job however, after 2½ months they abandoned the same and sent medical certificates. Thus the Labour Court held that from the evidence on record it can be safely inferred that the workmen were not interested to resume the duty and were prolonging the matter in order to pressurise the management to cull out more and more back wages. Since the back wages as directed under the award had already been received and the workmen though resumed the duty had abandoned it the learned Labour Court dismissed the petitions under Section 33C (2) ID Act filed by Sukhdev Sharma and Harkyal Sharma. However, the learned Labour Court directed to pay a sum of ₹715/- along with interest within 30 days which were due to Sukhdev Sharma and Harkyal Sharma.

3. Challenging the order of the Labour Court dated April 15, 2010 Sukhdev Sharma and Harkyal Sharma filed writ petitions. The management led evidence to prove that the respondents were asked to join duties but they did not respond. The contention of the management was that both the brothers were owning 20-25 bighas of agricultural land on which they were carrying out cultivation and thus were in self-employment.

4. The learned Single Judge on the basis of communication sent to the ALO on January 27, 2005 Ex.WW-1/1 wherein the management stated that they had challenged the award by way of writ petition came to the conclusion that no reinstatement was granted. Learned Single Judge noted that self-employment in agriculture cannot in any event be equated to the employment in an industrial undertaking. The respondents have stated in cross-examination that they earn approximately ₹5000/- over six months from agriculture which translate to less than ₹1000/- per month. The learned Single Judge vide the impugned order held that the award was for granting

50% back wages with reinstatement and continuity of service to the respondents and the award could not be defeated by refusing reinstatement to the workmen on the ground that they were gainfully employed. Taking the respondents to be skilled workers and on the basis of minimum rates of skilled workers the learned Single Judge noted the wages during the various periods as under:

23.10.2003 to 31.01.2004 @ Rs.3207.90 p.m.	:	Rs.10,552.00
01.02.2004 to 31.07.2004 @ Rs.3286.90 p.m.	:	Rs.19,721.40
01.08.2004 to 31.01.2005 @ Rs.3318.90 p.m.	:	Rs.19,913.40
01.02.2005 to 31.01.2005 @ Rs.3465.90 p.m.	:	Rs.20,813.40
01.08.2005 to 31.01.2006 @ Rs.3589.90 p.m.	:	Rs.21,539.40
01.02.2006 to 31.07.2006 @ Rs.3695.00 p.m.	:	Rs.22,170.00

5. The learned Single Judge thus directed the appellant management to pay to the respondent a sum of ₹1,22,418.14 upto 31.07.2006 and for the period thereafter till March 05, 2009 at the minimum wages prescribed from time to time for skilled workmen to be paid within six weeks to the respondents in the two writ petitions.

6. As noted above admittedly the back wages in terms of the award dated April 04, 2003 have already been paid to the workmen respondents. Thus the only issue that remained to be implemented as an executing Court was with regard to the reinstatement and in case no reinstatement was offered whether Sukhdev Sharma and Harkyal Sharma were entitled to wages till they were reinstated or they abandoned the job.

7. Supreme Court in the decision reported in 1995 (1) SCC 235 Municipal Corporation of Delhi vs. Razak following the earlier constitutional Bench judgment in AIR 1964 SC 743 Central Bank of India V. P.S. Rajgopalan held:

This decision itself indicates that the power of the Labour Court under Section 33C(2) extends to interpretation of the award or settlement on which the workman's right rests, like the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award or settlement but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior adjudication or recognition of the same by the employer. This decision negatives instead of supporting the submission of learned Counsel for the respondents.

Another decision on the point is Bombay Gas Company Ltd. v. Gopal Bhiva and Ors. 1964 (3) SCR 700, wherein also Gajendragadkar, J., (as he then was) speaking for the Bench, referring to the above Constitution Bench decision, stated that the proceedings contemplated by Section 33C(2) are analogous to execution proceedings and the Labour Court, like the Executing Court in the execution

proceedings governed by the CPC, would be competent to interpret the award on which the claim is based. It is obvious that the power of the Executing Court is only to implement the adjudication already made by a decree and not to adjudicate a disputed claim which requires adjudication for its enforcement in the form of decree. The Executing Court, after the decree has been passed, is however competent to interpret the decree for the purpose of its implementation. This position was settled by the above Constitution Bench decision and has been the consistent view of this Court ever since then.

10-A

8. A perusal of the evidence on record would reveal that the workmen admitted that after passing of the award they went to the management only once when they met a lady manager of the management whose name they did not know and they never visited the management again. Though the workmen denied the letter dated October 28, 2003 Ex.MW-1/1, however the management proved the same being sent by postal receipt and U.P.C. vide Ex.WW-1/2 and Ex.MW-1/3. The address on the postal receipt and U.P.C. were admitted to be correct by the workmen. Hence the inference drawn by the learned Labour Court that despite offer the workmen did not report to duty for reinstatement cannot be faulted. Learned Single Judge read Ex.WW-1/1 in isolation ignoring the other evidence as noted by the learned Labour Court. The finding of fact arrived at by the learned Labour Court was not based on no evidence and is also not perverse warranting interference by the Writ Court. Having received offer of reinstatement and not joining the job, the learned Single Judge erred in granting wages in lieu of reinstatement. Consequently, the impugned orders passed in the writ petitions are set aside.

9. Appeals are disposed off.

CM No.9800/2014 (Stay) in LPA 421/2014

CM No.9803/2014 (Stay) in LPA 422/2014

Applications are dismissed as infructuous.


PRADEEP NANDRAJOG, J.


MUKTA GUPTA, J.

SEPTEMBER 18, 2015/'vn'