

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

+ Judgment delivered on: November 18, 2015

% **1. W.P.(C) No. 3229/2004**

HOTEL TAJ PALACE

.....Appellant

Through: Mr. Vinay Bhasin, Senior Advocate with
Ms. Poonam Das, Advocate

versus

SHRI JAGAT SINGH & ORS

.....Respondents

Through: Mr. Sanjoy Gosh, Advocate for R-1 with
Mr. Yash S. Vijay.

2. W.P.(C) No. 3739/2004

HOTEL TAJ PALACE

.....Petitioner

Through: Mr. Vinay Bhasin, Senior Advocate with
Ms. Poonam Das, Advocate

versus

L.L. SHAH AND ANR

.....Respondents

Through: Mr. Sanjoy Gosh, Advocate with Mr.
Yash S. Vijay for R-1.
Ms. Sakshi Popli for GNCTD.

AND

3. W.P.(C) No. 624/2004

HOTEL TAJ PALACE

.....Petitioner

Through: Mr. Vinay Bhasin, Senior Advocate with
Ms. Poonam Das, Advocate

versus

SHRI RAJ PAL DUHAN (Deceased)
THROUGH LEGAL REPRESENTATIVES
AND ORS.

.....Respondents

Through: Mr. Sanjoy Gosh, Advocate with Mr.
Yash S. Vijay for R-1.
Ms. Sakshi Popli, Advocate for GNCTD.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The present Writ-Petitions i.e. (i) W.P.(C) No. 3229/2004, (ii) W.P. (C) No. 3739/2004, and (iii) W.P. (C) 624/2004 under Articles 226 and 227 of the Constitution of India are arising out of Awards dated 06.08.2003, 20.09.2003 and 06.08.2003 respectively, passed by the Presiding Officer, Labour Court No. VII, Delhi (*hereinafter referred to as the 'learned Labour Court/Industrial Adjudicator'*) in I.D. Nos. 673/96, 672/96 and 563/96 respectively.
2. The brief facts stated are that the respondent-workmen i.e., (i) Shri Jagat Singh, security guard, (ii) Shri LL. Shah, security guard and (iii) Late Raj Pal Duhan, doorman were appointed w.e.f. 01.09.1984, 04.06.1984 and 24.07.1982 respectively, with the petitioner-management. It is alleged that the petitioner-management was indulging in unfair

labour practices and the respondent-workmen formed the 'Taj Palace Intercontinental Hotel Karamchari Union' and filed a charter of demands with the petitioner-management, which was not accepted. Consequently, the industrial dispute between the worker's Union and petitioner-management as I.D. No. 6/1992 was raised by the Union Workers. The petitioner-management got annoyed with the workmen due to their demands and started victimising the workers and office bearers of the Union, and charge-sheets dated 07.11.1991, 11.03.1992 and 15.11.1991 were issued against the respondent-workmen, i.e. (i) Shri Jagat Singh, (ii) Shri L.L. Shah and (iii) Late Raj Pal Duhan respectively. The respondent-workmen replied to the aforesaid charge-sheets. An enquiry was subsequently conducted and Shri Jagat Singh and Shri L.L. Shah were terminated on 23.12.1994 and 02.08.1994 respectively and Late Raj Pal Duhan too was terminated.

Thereafter, the petitioner-management filed approval applications for seeking approval of the learned Industrial Adjudicator in respect of the aforesaid orders of termination. Further, the respondent-workmen, i.e., Shri Jagat Singh, Shri L.L. Shah, and Late Raj Pal Duhan raised the industrial dispute pertaining to their alleged illegal termination. Consequently, Secretary (Labour), Government of NCT of Delhi, made the following references to the learned Industrial Adjudicator under Section 10 of the Industrial Disputes Act, 1947:-

i) Reference No. F-24 (3555)/96-Lab./41616-20 dated 20.08.1996

“Whether dismissal of Sh. Jagat Singh from service is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

ii) Reference No. F-24 (3554)/96-Lab./41611-15 dated 29.08.1996

“Whether dismissal of Sh. L.L. Shah from service is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

iii) Reference No. F-24 (3708)/96-Lab./37412-16 dated 13.08.1996

“Whether dismissal of Sh. Raj Pal Duhan from service is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

The respondent-workmen filed their replies to the approval applications made under Section 33(2)(b) of the Industrial Disputes Act, 1947 moved on behalf of petitioner-management before the learned Industrial Adjudicator. However, during the pendency of the I.D. No. 6/1992, the petitioner-management moved an application before the learned Industrial Adjudicator for withdrawal of its application under Section 33(2)(b) of the Industrial Disputes Act, 1947.

Consequently, the learned Industrial Adjudicator passed the impugned Awards dated 06.08.2003, 20.09.2003 and 06.08.2003 in (i) I.D. Nos. 673/96, (ii) 672/96 and (iii) 563/96 respectively in favour of the respondent-workmen on the ground that the approval application was dismissed as withdrawn by the Industrial Tribunal by placing reliance on ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and Ors., AIR 2002 SC 643.***

Aggrieved by the aforesaid Awards, the petitioner-management, i.e., M/s Hotel Taj Palace, preferred the present Writ Petitions, i.e., (i) W.P. (C) No. 3229/2004, (ii) W.P(C) No. 3739/2004 and (iii) W.P. (C) 624/2004 respectively.

3. The learned counsel appearing on behalf of the petitioner-management has drawn the attention of this Court that despite the parties leading evidence on all issues at length before the learned Industrial Adjudicator, he did not give opportunity to advance arguments on all issues. Rather, the learned Industrial Adjudicator wrongly took a shorter route by relying on the judgment, i.e., *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and Ors (Supra)*, in existence of the reference under Section 10 of the Industrial Disputes Act, 1947 and passed the impugned Awards.

The learned counsel appearing on behalf of the petitioner-management has further argued that the judgment relied upon by the learned Industrial Adjudicator is not applicable to the instant case as *Jaipur Zila's* case (*Supra*) does not deal with Section 10 of the Industrial Disputes Act, 1947.

The learned counsel has further argued that the scope of reference under Section 10 of said Act is much wider than Section 33(2)(b) of the said Act and once a reference is made under Section 10, Section 33(2)(b) becomes redundant. Therefore, the learned Industrial Adjudicator should

have adjudicated the industrial dispute on merits rather than relying solely on *Jaipur Zila's* case (*Supra*).

On the other hand, the learned counsel appearing on behalf of the respondent-workmen argued that as per the Constitution Bench judgment rendered in the *Jaipur Zila's* case (*Supra*), it was held that the termination of the workman without completing the approval process is inchoate because the effect of non-filing or withdrawal of the approval application under Section 33(2)(b) of the Industrial Disputes Act, 1947 renders the termination illegal. So, the workman is entitled to all the benefits including the back wages and reinstatement with the continuity in the service. The learned counsel for the respondent-workman relied upon the following cases to support his contentions:

a) Air India Ltd. vs. M.H. Mhadgut, 2007(3)BomCR846

b) Ram Kishan vs. Lt. Governor, NCT of Delhi 96 (2002) DLT 145.

4. The instant case bears distinct and peculiar circumstances. The respondent-workmen, i.e., (i) Shri Jagat Singh, security guard, (ii) Shri LL. Shah, security guard and (iii) Late Raj Pal Duhan, doorman, were dismissed from their respective services after holding an alleged valid enquiry.

5. The factum of pendency of a dispute between the workmen and the petitioner-management on the date of termination of the aforesaid workmen is not disputed by the petitioner-management. In these

circumstances, the management was under a legal obligation to file the approval application under Section 33(2)(b) of the Industrial Disputes Act, 1947 *qua* against the respondent-workmen for their action of dismissal of the respondent-workmen from their services and consequently, the petitioner-management did abide by the legal obligations entrusted under the law by filing the same, which was contested on merits by the respondent-workmen.

6. It seems that after filing the approval application under Section 33 (2)(b) *qua* against the respondent-workmen, i.e., (i) Shri Jagat Singh, security guard, (ii) Shri LL. Shah, security guard and (iii) Late Raj Pal Duhan, doorman, the respondent-workmen themselves too raised an industrial dispute and filed complaint against the petitioner-management challenging their dismissal from service, which were referred by the appropriate Government to the learned Industrial Adjudicator. The following are the references:-

- i) Reference No. F-24 (3555)/96-Lab./41616-20 dated 20.08.1996
- ii) Reference No. F-24 (3554)/96-Lab./41611-15 dated 29.08.1996
- iii) Reference No. F-24 (3708)/96-Lab./37412-16 dated 13.08.1996

7. It is apparent that the petitioner-management on the one hand, is seeking approval of their action of dismissal of respondent-workmen and claiming that a valid enquiry was held and on the other hand, the

respondent-workmen too are challenging the validity of their dismissal, which was referred to the learned Industrial Adjudicator and consequently, giving rise to the existence of two parallel proceedings before the Industrial Adjudicator. The parties led their evidence on the respective issues and in the meanwhile, the petitioner-management preferred to withdraw their approval application under Section 33(2)(b) against the respondent-workmen, leaving behind the dispute raised by the respondent-workmen under Section 10 of the Industrial Disputes Act, 1947.

8. However, the learned Industrial Adjudicator, in haste, without appreciating the evidence on record led by the parties on the issue pertaining to the reference made to him, passed the impugned Awards dated 06.08.2003, 20.09.2003 and 06.08.2003 solely relying on the judgment, i.e., ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and Ors. (Supra)*** without replying to the terms of reference sent to the learned Industrial Adjudicator under Section 10 of Industrial Disputes Act, 1947.

9. The judgment, i.e., ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and Ors. (Supra)*** loses its significance in presence of the reference under Section 10 of the Industrial Disputes Act, 1947. Reliance is placed on the judgment rendered by this Court in the case titled as ***All India Women's Conference vs. Raj Karan and***

Another, 2010-IV-LLJ-467 (Del). The judgments relied upon by the respondent-workmen, i.e., ***Air India Ltd. vs. M.H. Mhadgut, 2007 (3) BomCR 846*** and ***Ram Kishan vs. Lt. Governor, NCT of Delhi 96 (2002) DLT 145*** are not helpful to the respondent-workmen.

10. In the instant case, the learned Industrial Adjudicator has passed the aforesaid impugned Awards in haste overlooking the evidence adduced by the parties available on record thereby failing to decide the reference on merits. Therefore, the impugned Awards dated 06.08.2003, 20.09.2003 and 06.08.2003 are set aside and consequently, the present matters are remanded back to the learned Industrial Adjudicator with a direction to pass fresh Award after considering and appreciating the evidence available on record and giving due opportunities to the parties as per law.

11. As such, the parties are directed to appear before the learned Industrial Adjudicator on 15.12.2015. The learned Industrial Adjudicator is further directed to dispose of I.D. Nos. i.e., **(i)** 673/96, **(ii)** 672/96 and **(iii)** 563/96 within a period of three months from the date on which the parties are directed to appear before the learned Industrial Adjudicator.

Consequently, the present Writ-Petitions, i.e., **(i)** W.P.(C) No. 3229/2004, **(ii)** W.P. (C) No. 3739/2004, and **(iii)** W.P. (C) 624/2004 are disposed of in the above terms.

The Lower Court record be sent back with a copy of this Judgment.

No order as to costs.

I.S.MEHTA, J

NOVEMBER 18, 2015

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