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

Date of decision: 8th December, 2015

+ W.P.(C) 8148/2007
SRI OM

..... Petitioner

Through: Mr Dev. P. Bhardwaj and Ms Anubha
Bhardwaj, Advs.

versus

THE MANGT. OF CHHOTU RAM EDUCATIONAL TRUST THR. ITS
SECRETARY

..... Respondent

Through: Mr Rajpal Singh & Mr Sandeep Singh
Kumar, Advs.

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this writ petition is to the award dated 17th August, 2007 passed by the Presiding Officer, Fast Track Court-XXI, KKD Courts vide which the claim filed by the petitioner was dismissed.

2. The petitioner (hereinafter referred to as 'the workman') Sh. Om was working with the management as a welder since 4th October, 1987. His services were terminated w.e.f. 1st April, 1994 vide communication dated 31st March, 1994. It was alleged that a demand notice demanding reinstatement was served on the Secretary of the Trust by registered AD post. Thereafter, the disputes were raised by filing statement of claims before the Conciliation Officer which resulted in failure. As such, the Govt. of NCT of Delhi vide its order No. F-24(3270)/95-Lab/34461-66 dated 1st November, 1995 referred the following dispute for adjudication by the Labour Court:-

“Whether the retrenchment of S/Shri Om and Baljit Singh is illegal and/or unjustified and if so, to what relief are they entitled and what directions are necessary in this respect?”

3. Initially the workman did not file the claim, as such, on 3rd January, 1997 a no dispute award was passed which was published on 10th March, 1997. Thereafter, an application dated 17th September, 1997 was moved by the workman which was dismissed on the ground that the Court has become *functus officio* after 30 days of the publication of the award. The workman challenged the said order of the Labour Court in this Court. The order was set aside and the matter was remanded back to the Labour Court with the direction to dispose of the petitioner’s application on merits. Thereafter, the application was allowed and no dispute award was set aside.

4. The workman filed the statement of claim alleging *inter alia* that he joined the employment of the respondent – Trust w.e.f. 04.10.1987. His last drawn wages were Rs.1085/-. His services were terminated with effect from 01.04.1994 which was wholly illegal and unjust as the job against which he was working was of regular and permanent nature. No seniority list was displayed on or before 01.04.1994. The service compensation and notice pay which has been sent much after the termination of services is neither proper nor adequate. The termination is in violation of Section 25F, G and H of the Industrial Disputes Act, 1947 read with Rule 76 and 77 of the Industrial Disputes (Central) Rules, 1957.

5. The claim was contested by the management on the ground that the workman has received the payment from the management in full and final settlement of all their accounts. It was not disputed that workman was retrenched with effect from 01.04.1994 but after complying with all legal formalities. All legal dues such as service compensation, notice pay, leave wages, gratuity, upto date earned wages were sent by money order which was received by the workman

in full and final settlement without any protest. Seniority list was displayed on 11.03.1994 before effecting retrenchment on 01.04.1994. Hence, workman was not entitled to any relief.

6. On the pleadings of the parties, following issues were settled:-

- (i) Whether the workman was paid full and final dues after retrenchment on 1.4.93?
- (ii) As per terms of reference.

7. On the basis of oral and documentary evidence adduced before the Labour Court, learned Labour Court passed the impugned award holding that vide letter dated 30th March, 1994, Ex.MW1/1, the management informed the workman that due to low strength of students in the institute, financial constraints and restructuring, management decided to retrench the workman under Section 25F of the Industrial Disputes Act w.e.f. 1st April, 1994. In lieu of one month's notice, he was paid one month's salary, retrenchment compensation. Along with the retrenchment order, details of dues and other dues were also given to the workman. The letter was duly received by the workman. The workman admitted having received a sum of Rs.10,771/- and that he had taken a loan of Rs.3000/- from the management. The seniority list of the employees was also displayed on the notice board on 10th March, 1994. The workman also admitted that there were only two welders and other welder Janak Raj was senior to him. The workman refused to accept the legal dues on the day of retrenchment, as such, the same were sent by money order. The dues were received by the workman without any protest. As such, it was observed that the evidence established that the workman was paid full and final dues after retrenchment on 1st April, 1994. It was also observed that the claim of the workman that retrenchment was unjustified as the management employed fresh hands after the retrenchment of the claim was unsustainable as Janak Raj was senior to Sh. Om and fresh hands were taken in the

employment of the management after the management came out of financial crisis. Therefore, it cannot be said that the retrenchment was illegal or unjustified. As such, the petitioner was not entitled for any relief.

8. Feeling aggrieved, present writ petition has been filed. Although the claim was filed by two workmen, namely, Sh. Om and Baljeet, however, the present writ petition has been preferred by only one of the workmen, namely, Sh. Om.

9. Assailing the findings of the learned Labour Court, counsel for the petitioner submits:-

(i) There was no compliance of provisions of Section 25 of the Industrial Disputes Act, 1947 as before retrenchment the workman was not given one month's notice in writing indicating the reasons for retrenchment.

(ii) Mere acceptance of retrenchment compensation sent by money order does not operate as estoppel against the petitioner as the petitioner had no option but to accept the amount sent by money order.

(iii) Seniority list was never displayed. The petitioner was a skilled workman whereas Janak Raj was not having any requisite qualification. Moreover, Janak Raj was employed after his retrenchment as the management's own witness deposed that he was employed in the year 1994. Therefore, on the principal of 'last come first go', it was Janak Raj who was to be retrenched and not the petitioner.

(iv) Admittedly, fresh hands were appointed by the respondent. As per Section 25(h) of the Act, the petitioner was required to be given an opportunity for re-employment which was never given and the fresh

appointment was against the resolution of the respondent/Trust.

10. In response, learned counsel for the respondent submits:-

(i) The claim filed by the petitioner was highly belated as the reference was made as far back in the year 1995 but the petitioner did not file the claim despite grant of several opportunities, as a result of which, a no dispute award was passed against the claimant. It was only subsequently that pursuant to the directions given by this Court, the claim was filed by the petitioner in February, 2003.

(ii) There was total compliance of Section 25F of the Act. As per Clause(a), the workman was required to be given one month's notice in writing or he was to be paid in lieu of such notice, wages for the period of notice. As such, it was not mandatory for the management to serve one month's notice in writing before retrenchment. In lieu of one month's notice besides giving him salary for one month, the petitioner was paid earn leave, service compensation after deducting a sum of Rs.3,000/- which were taken as loan by the petitioner.

(iii) The seniority list was duly displayed before retrenchment and proved as Ex.MW1/3 according to which Janak Raj was senior to the petitioner and this fact was admitted by the petitioner during his cross-examination.

(iv) There was no violation of provisions of Section 25(h) of the Act or the policy of the Trust as when fresh hands were employed, no welder was appointed on which post the workman was working. Under the circumstances, the award does not suffer from any infirmity which calls for interference.

11. It is undisputed case of the parties that the petitioner joined the employment of respondent/Trust and his services were terminated w.e.f. 1st April, 1994 due to the fact that number of students reduced very much resulting in financial crisis. Section 25F prescribes the condition precedent to retrenchment of workman and reads as under:-

*25F. **Conditions precedent to retrenchment of workmen.**- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--*

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

*[***]*

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay² for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government³ or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

12. A bare perusal of clause (a) reflects that before retrenching an employee, it is incumbent upon the employer either to give one month's notice in writing indicating the reasons for retrenchment or payment of wages for one month in lieu of such notice. Under the circumstances, the submission of learned counsel for the petitioner that there is violation of clause (a) of Section 25 as no notice in writing was served upon the workman before retrenchment is unsustainable as in lieu of notice period, wage for the period of one month was sent to the workman.

13. Furthermore, as per Clause (b), the workman was required to be paid compensation which is equivalent to 15 days average pay for every completed year of continuous service in excess of 6 months. The petitioner was appointed on 4th October, 1987 and he was retrenched on 1st April, 1994. As such, total period

of service was 6 years 5 months and 26 days. Therefore, the compensation was required to be paid for a period of 90 days which was also paid.

14. It is further alleged that as required by Clause (c), copies of the retrenchment notice along with Form 'P' was sent to the Secretary Labour, Assistant Labour Commissioner, Delhi Administration which fact was not specifically denied by the petitioner in the rejoinder. That being so, before retrenchment, the conditions precedent to retrenchment were duly complied with.

15. Moreover, seniority list Ex.MW1/3 was displayed on 11th March, 1994 before effecting retrenchment according to which the workman Janak Raj was senior to the petitioner. On the basis of principle of 'last come first go' coupled with the fact that the number of students reduced very much resulting in financial constraints, the workman was retrenched. Much emphasis was laid by the learned counsel for the petitioner for submitting that Janak Raj was appointed after retrenchment of the petitioner. Moreover, the petitioner was a qualified welder which was not so in the case of Janak Raj. Same is devoid of merits as the petitioner has to stand on his own legs. Petitioner himself admitted in his cross-examination that there were only two welders in the establishment. Besides him, Janak Raj was the other welder and Janak Raj was senior to him. Admission is the best piece of evidence against the maker thereof as held in *UOI and Ors. vs. Chander Singh*, MANU/DE/1771/2002; *Channabasappa Basappa Happali vs. State of Mysore*, (1971) 1 SCC 1 and *Delhi Transport Corporation vs. Shyamlal*, (2004) 8 SCC 88. In view of this admission on the part of the petitioner, he cannot derive any benefit from the testimony of MW1-Charan Singh who, at one stage, deposed that Janak Raj was taken as welder in the year 1994 but immediately thereafter expressed his ignorance about the same. In view of the seniority list Ex.MW1/3 wherein date of appointment of Janak Raj has been shown as 6th September, 1987 which reflected that Janak Raj was senior to the

petitioner coupled with the admission on the part of the petitioner himself that Janak Raj was senior to him, the petitioner does not get any benefit from the shaky testimony of MW1-Charan Singh.

16. As regards, non-compliance of Section 25(h) of the Act which prescribes that when any workman is retrenched and the employer proposes to take into employment any person then an opportunity to the retrenched workman has to be given coupled with the policy of the Trust relied upon by the petitioner, here again there is no violation because it has come on record that although certain fresh hands were employed subsequently by the respondent but no welder was appointed on the post on which the petitioner was working. Under the circumstances, there was no violation either of provisions of Section 25(f) or (h) of the Act.

17. While passing over, the conduct of the petitioner deserves to be noticed. Although he claimed that after retrenchment, he remained unemployed and raised the industrial dispute but the record reveals that after the reference of the industrial dispute by the Secretary (Labour), Govt. of NCT of Delhi in the year 1995, the petitioner did not file the claim despite grant of several opportunities. As such, a no dispute award was passed on 3rd January, 1997. After a lapse of almost 11 months, the petitioner moved an application for restoration of the dispute and setting aside the award. This application was dismissed on 18th November, 1998. Thereafter, the petitioner filed a writ petition before this Court and the matter was remanded back after setting aside the impugned order with the directions to dispose of the application afresh. Vide order dated 7th January, 2003, application for setting aside *ex parte* award was allowed. Thereafter, the matter was proceeded with. All this reflects that it was the petitioner himself who was responsible for delay in disposal of the proceedings.

18. Keeping in view the fact that the findings of the Labour Court are based on appreciation of evidence produced before it, I am of the view that the findings cannot be said to be based on no evidence at all, so as to warrant a re-appreciation of evidence by this Court. The limitations on the jurisdiction of this Court are well settled. A writ in the nature of certiorari may be issued only if the findings of the Industrial Adjudicator suffers from an error or jurisdiction or from a breach of principle of natural justice or is vitiated by a manifest or apparent error of law. No such issue has been established in the instant case on behalf of the petitioner.

19. For the foregoing reasons, I find no merit in the submissions made on behalf of the petitioner. The award does not suffer from any infirmity so as to warrant interference by this Court. As a result, the writ petition fails and is accordingly dismissed, however, with no order as to costs.

(SUNITA GUPTA)
JUDGE

DECEMBER 08, 2015/rs