

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

% *Date of decision : August 25, 2015*

+ **LPA 566/2015**

SHRI SUBHASH CHAND Appellant

Represented by: Mr.S.L.Kathpal, Adv.

versus

M/S PARKASH ENTERPRISES & ORS Respondent

Represented by: Mr.Rajinder Nischal,
Mr.Inderjit Singh, Advs.for
R-1&2.
Mr.Sanjay Ghose, ASC for
R-3&4.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Subash Chand was employed as a Helper with M/s. Prakash Enterprises during 1992 and was designated as Machineman with effect from March 1995 when while performing his duties he met with an accident on November 21, 1995 leading to injuries on his left hand. FIR No.285/1995 was lodged, however after trial Hari Prakash Singh proprietor of M/s. Prakash Enterprises was acquitted for offences punishable under Section 287/338 of IPC.

2. It is the case of Subash Chand that his services were illegally terminated on September 08, 1999 whereas the case of respondent is that the establishment closed in 1996. On an industrial dispute being raised a

reference was made where an ex-parte award dated March 14, 2005 was passed in favour of Subash Chand directing reinstatement with continuity of service and 5% of back wages last drawn by him for the intervening period i.e. from the date of termination till publication of the award. The reason for 5% back wages was the delay caused by the workman in the proceedings before the Labour Court and violation of Rule 10B(1) of the Industrial Disputes Central Rules, 1957.

3. In the claim petition Subash Chand claimed that he had been terminated by the management illegally and unjustifiably and thus he was entitled to reinstatement in service with full back wages and continuity and also sought cost of the litigation as per Section 11(7) of the I.D.Act. Subhash Chand filed an application for execution of the award. Based on the affidavit dated July 07, 2008 filed by Subash Chand Labour Commissioner passed an order dated September 26, 2008 directing recovery of a sum of ₹7,643/- from the employer at the new address given in the affidavit. Since despite the award directing reinstatement Subash Chand could not be reinstated as M/s. Prakash Enterprises at C-273, Maya Puri Industrial Area, Phase-I, New Delhi had closed down, Subash Chand filed a writ petition being W.P.(C) No.8497/08 inter-alia praying quashing of the proceedings under recovery letter dated September 06, 2008, seeking reinstatement with all consequential benefits and modification of the award dated March 14, 2005, release of wages for the period August 01, 1999 till September 08, 1999, release of withheld leave salary for Machineman's post for one year i.e. for 1998-99 at current minimum wages with interest thereon and also bonus for the year 1998-99.

4. As per the respondent the entire decretal amount was submitted, it was contended that having sought execution of the award Subash Chand cannot challenge the same. Further Subash Chand abandoned services after he met with an accident and the respondents having closed their factory Subash Chand could not be reinstated. It was also pointed out that Subash Chand had filed an application before Labour Court stating that directions for payment of 5% back wages was a clerical mistake which application was dismissed vide order dated February 21, 2008.

5. Learned Single Judge vide the impugned order noted that Subash Chand himself has admitted before the Labour Commissioner in execution proceedings that the factory of the respondent has closed down and regarding his claim of the amounts due, a recovery certificate has been issued under Section 33C(1) of the I.D.Act. Further learned counsel for Subash Chand failed to point out any illegality in the impugned order dated September 26, 2008 i.e. recovery certificate. It was further noted that since Subash Chand claimed wages at current minimum rate for the post of Machineman he was free to avail remedy under the relevant provisions of law and this being mixed question of law and fact could be adjudicated only by a Court of competent jurisdiction under relevant provisions of law.

6. As noted above the main challenge in the writ petition was to the recovery letter dated September 26, 2008 which was pursuant to the directions of the Labour Court vide the award dated March 14, 2005 and no illegality therein has been pointed out. As regards the directions for reinstatement is concerned, even as per the affidavit dated July 07, 2008 the proprietor has sold/changed his company i.e. M/s.Prakash Enterprises to

M/s.RGH Apparel Exports 53A/1, Rama Road, New Delhi. Thus the order of reinstatement could not be implemented. A perusal of the award would reveal that there is no adjudication with regard to release of the wages for the period August 01, 1999 till September 08, 1999, as this claim was never made in the claim petition and thus no relief could be granted on this count. No claim with regard to the leave salary for the year 1998-99 or the bonus was also raised. Thus, the learned Single Judge rightly noted that these being mixed question of fact and law can be adjudicated upon by a Court of competent jurisdiction under the relevant provisions of law while dismissing the writ petition.

7. Subash Chand was granted the relief of reinstatement by the Award dated March 14, 2005 however he could not be reinstated during the execution for the reason that the management had closed its work. In the writ petition one of the reliefs claimed by Subhash Chand was immediate reinstatement w.e.f. September 08, 1999 and as noted above since reinstatement was not possible, learned Single Judge was within its right to have suitably modified the award by granting relief of compensation to Subhash Chand which he failed to do.

8. In the facts and circumstances of the case, the award dated March 14, 2005 is modified and in lieu of reinstatement, respondent No.1 is directed to pay a lump sum compensation of ₹1 lakh to Subhash Chand to meet the ends of justice.

9. The appeal is accordingly disposed of.

CM 16865/2015 (stay)

Dismissed as infructuous.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 25, 2015
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