

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

Reserved on: 16th November, 2017

Pronounced on: 23rd November, 2017

+ W.P.(C) 14619/2004

M/S.MATERIAL MOVEMENT P.LTD Petitioner

Through: Mr. Harvinder Singh, Mr.
Mohit Gupta and Mr. Rohit
Aggarwal, Advocates

versus

WORKMEN RAM AVTAR & ORS. Respondents

Through: Mr. Ashraf Yusuf Khan and
Mr. Lalit Kumar, Advocates

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

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1 This writ petition has been filed by the Management of M/s. Material Movement Pvt. Ltd, challenging Award dated 8th July, 2003 passed by Labour Court - IV, Karkardooma Courts, Delhi (herein after referred to as “the Labour Court”) whereby the Labour Court has directed reinstatement of the three respondent – workmen with full back wages and continuity of service, holding that their termination violated Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”).

2 Mr. Harvinder Singh, learned counsel appearing for the petitioner, submits that each and every finding of the Labour Court is vitiated by total non-application of mind. Mr. A.Y. Khan, learned counsel appearing for the respondents, has been unable to rebut this submission of Mr. Harvinder Singh, which on the face of it, appears to be well taken and results in vitiating the impugned Award in its entirety.

3 In view of the apparent non-application of mind, reflected in the impugned Award, it is not necessary to delve deep into the factual matrix of the present case. Suffice it to state that the Award emanated from an order of reference, dated 8th November, 1988 by the Secretary (Labour), Government of NCT of Delhi, arising from an industrial dispute raised by the three respondent –workmen Ram Avtar, Pitamber and Prem Narain, against their termination from service.

4 The communication from the Government of NCT of Delhi contained the following term of reference:

“ Whether the services of S/Sh. Ram Avtar, Pitamber and Prem Narain have been terminated illegally and/or unjustifiably by the management and if so, to what relief are they entitled and what directions are necessary in this respect.”

5 Consequent to the above mentioned reference, Statement of Claim was filed by the respondent –workmen, who claimed to have been diligently working with the petitioner till 30th April, 1988 and were unjustifiably terminated on 1st May, 1988, when they demanded their legal dues which had not been paid by the petitioner. In the

written statement filed in response thereto, it was averred, by the petitioner, that the termination of the respondent – workmen had been effected after conducting a domestic enquiry against them, as they had committed misconduct.

6 That this was the correct factual position, is manifest from a reading of the order, dated 30th April 1988, whereby the respondent-workmen were terminated, which is reproduced, for ready reference, as under:

“I have perused the charge-sheet, the proceedings of enquiry and the report and findings of the enquiry officer in the case of:

Sh. Prem Narayan

Sh. Ram Avtar

Sh. Pitamber

of the factory and I am satisfied that the charges against the three workmen stand established.

Accordingly, I hereby terminate their service with immediate effect. Because their continuance in employment is not in the interest of the Management. The order of termination be conveyed to them and they be asked to come and collect their legal dues which may be paid to them when they call on us. Alternatively, these be remitted to them by MO if they so desire, at their cost, risk and responsibility.”

7 Consequent on the above termination, the respondent – workmen raised an industrial dispute, challenging their termination, which, consequent on failure of conciliation, was referred for adjudication to the Labour Court vide the order dated 8th November, 1988, as already noted hereinabove.

8 Initially, in the proceedings before the Labour Court, only a single issue “as per terms of reference” was framed. Subsequently, on 26th May 1994 and 22nd October 2002, two additional issues were framed in the following terms:

- “(i) whether the enquiry conducted by the Management is fair and proper?
- (ii) whether the respondent had closed down its factory w.e.f. 13th October 1998. If so, its effect?”

9 As is the norm in such cases, the validity of the domestic enquiry conducted by the petitioner against the respondent – workmen was decided, as a preliminary issue, by the Labour Court vide order dated 21st August, 1995. The decision went against the petitioner and in favour of the respondent-workmen.

10 Consequent upon the said preliminary Award of the Labour Court, the respondent – workmen were reinstated in service with the Management of the petitioner w.e.f. 18th July, 1996.

11 The respondent – workmen, thereafter, moved an application, before the Labour Court, averring that, in view of the reinstatement, nothing survived for determination in the proceedings with respect to the reference dated 8th November, 1988 (*supra*). The learned Labour Court, however, decided the said application, vide order dated 10th September, 1996, which reads thus:

“A.R. of both the parties

This date was fixed for C.E. of the workman on his affidavit. A.R. of the management submitted that this court has already decided in issue and passed an award on 21.8.95. the award was published and the workman was taken back on duty. He contended that

dispute does not exist now and matter has been finally decided.

I have perused the order dated 21.8.95 passed by this court, it is only order on the findings of issue no. 2. regarding the enquiry conducted by the management. The point of reference is still to be answered by this court. It is true that some of the relief has become infructuous as there is no question of reinstatement because the workman has already been re-employed and there remains dispute of back wages only. I think it proper to give an opportunity to the parties to settle the dispute amicably and in case of failure the management shall cross examine the witness on the next date. Fixed 10.10.1996 for C.E. of the workman.”

12 An application, dated 13th October, 1998 was, thereupon, moved, by the petitioner, before the Labour Court, for permission to lead evidence in support of its decision to dismiss the respondent-workmen from service. A second application, intimating the fact that the factory of the petitioner stood closed, was also filed.

13 The application filed by the petitioner for permission to lead additional evidence was allowed, by the Labour Court, vide order dated 13th October, 1998 which reads as under:

“An application has been moved by the management, which is allowed. To come for M/E on 6.4.99. An application for closure has been moved. Copy given. To come for reply and arguments on 6.4.99.”

14 Consequent thereto, evidence was in fact, led by both parties, by way of filing affidavit-in-evidence whose deponents were cross examined. However, as the Labour Court has not even noticed the said

fact, it is not necessary to make reference thereto, for the purposes of the present judgment.

15 On the face of it, there was no justification for the Labour Court to have framed any issue regarding closure of the petitioner's factory, inasmuch as the said closure had taken place much after the termination of the three respondent-workmen from service, which was the subject matter of the reference made to the Labour Court on 8th November, 1988. The closure of the petitioner's factory was clearly irrelevant, to decide the said issue.

16 After hearing the parties, the Labour Court proceeded to pass the impugned Award dated 8th July, 2003. Paras 6 to 9 of the impugned Award merit reproduction in extenso, thus:

“My findings on the issue are as follows:

ISSUE NO. 2

Issue No. 2 regarding enquiry was decided against the management and in favour of workman and *management was not allowed to lead evidence* to prove his case since this plea was not taken in the written statement.

ISSUE NO. 3

Onus of proving this issue was on the management. It is stated that the factory had been closed about 4 ½ years back and its assets/liabilities have been disposed off on 13.10.98. It is contended by AR for workmen that management had not produced proof of surrender of ESI License, proof of surrender of provident fund cont., proof of sale of factory and machinery and statement of accounts to show that management had closed the factory. The only evidence led by the management is in the form of photo copies of documents which are not admissible in evidence. Hence this issue is decided in favour of workmen and against the management.

ISSUE NO. 1

Onus of proving this issue was on the workmen and the enquiry proceedings have also been vitiated and decided against the management and in favour of the workman. But *there is nothing on record to show that the management had complied with the conditions of Section 25F while terminating the services of workmen. As the services of workmen have been terminated without complying with conditions of Section 25F, workmen are entitled to be reinstated with full back wages and continuity of service.* This issue is accordingly decided in favour of workmen and against the management.

In view of findings on the issue, the award is passed in the above mentioned terms. Reference is answered accordingly. Copy of the award be sent to the appropriate government for effecting publication. File be consigned to Record Room. ”

(Emphasis Supplied)

17 The petitioner has approached this Court challenging the aforementioned Award dated 8th July 2003, passed by the Labour Court.

18 I have heard Mr. Harvinder Singh, learned counsel appearing for the petitioner and Mr. A.Y. Khan, learned counsel appearing for the respondent-workmen at length and perused the record.

19 Mr. Havinder Singh points out that the Labour Court had proceeded to decide issues which did not arise for consideration and, in fact, did not decide the issue which *did* arise for consideration. The finding on Issue No.2, he submits, is *ex facie* erroneous as the petitioner had, in fact, been permitted to lead additional evidence, vide order dated 13th October, 1998 (*supra*). Issue No. 3 which was

regarding closure of the petitioner's factory, Mr. Singh rightly points out, never arose for consideration and the Labour Court was totally unjustified even in framing the said issue. Issue No. 1 - the only issue which actually arose for consideration had been correctly reflected in the referential order dated 8th November, 1988 (*supra*) of the Government of NCT as relating to whether the termination of the respondents' service was illegal or unjustifiable and, if so, the relief to which the said respondents would be entitled to as a consequence thereof. Instead of deciding this issue, Mr. Harvinder Singh points out that the Labour Court has held that the removal of the respondents having infringed Section 25F of the Act which, in terms, did not apply as the termination of the respondents was by way of disciplinary action.

20 Mr. A.Y. Khan, learned counsel appearing for the respondents has confessed his inability to support the impugned Award.

21 On the face of it, the impugned Award smacks of rank non application of mind, vitiating it in its entirety.

22 The finding of the Labour Court regarding Issue No.2, is erroneous on facts, as the Management had, in fact, been allowed to lead additional evidence vide order dated 13th October 1998, (*supra*) which had, consequent thereto, actually been led. As a result of this factual error, the Labour Court has not even adverted to the said evidence, let alone considering the same. Once the Management had been permitted to lead additional evidence, it was incumbent, on the

Labour Court, to consider the same and decide whether the termination of the respondents' service was justified or not.

23 Issue No. 3 dealing with the closure of petitioner's factory never arose for consideration, as such closure was affected much after the termination of the respondent-workmen on 1st May, 1988. Be it noted that, in the reference wherefrom the present proceedings emanated, the closure of the petitioner's factory, or the disengagement of the respondent-workmen as a consequence thereof, were not under challenge.

24 In fact, the only issue which did arise for consideration was whether the respondents' termination was legal and valid, or not. The Labour Court ought to have examined this issue alone and come to a finding as to whether the decision of the Management to terminate the respondent-workmen, by way of disciplinary action was sustainable in law or not. Unfortunately, the Labour Court has not decided this issue at all. Rather, the Labour Court has held the removal of the respondent-workmen to be illegal as having infringed Section 25F of the Act. This demonstrates rank non application of mind even to the bare provisions of the statute. Section 25F which deals with retrenchment does not even arise for consideration in the present case, the termination of the respondent-workmen having been effected by way of disciplinary action. In this context, Section 2(oo) of the Industrial Disputes Act, 1947 which defines "retrenchment", may be reproduced thus:

“retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

- (a)voluntary retirement of the workman; or
- (b)retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c)termination of the service of a workman on the ground of continued ill-health.”

25 Consequently, the impugned Award of the learned Labour Court has to be set aside in its entirety, being vitiated by total non application of mind and being, *ex facie* perverse in nature.

26 Given the completely tangential manner in which the Labour Court has proceeded, entirely unmindful of the facts of the case and the law as contained even in the bare statutory provisions, any attempt, on my part, to adjudicate on merits would result in my donning the mantle of the Labour Court, which would, needless to say be impermissible in law. “First instance adjudication” on merits has, per statute, necessarily to be by the Labour Court, and not by this Court. Needless to state, in view of the fact that the respondent-workmen were taken back in service, the question of reinstating them does not survive any further. The only issue that would have to be decided by the Labour Court would be whether the termination of the respondent-workmen was illegal or invalid and, if so, the relief to which the

respondent-workmen would be entitled. This relief, quite obviously, could only be monetary in nature – if at all, the Labour Court finds that respondent-workmen are entitled thereto.

27 Resultantly, the impugned Award dated 8th July, 2003 passed by the Labour Court is hereby quashed and set aside. The reference, dated 8th November 1988, as made by the Secretary (Labour), Government of NCT to the Labour Court is revived and the Labour Court is directed to decide the reference *de novo*. It is made clear that the Labour Court would proceed on the basis of the material available before it and not allow any further evidence to be led by either of the parties.

28 In view of the fact that these proceedings have been pending since long, the Labour Court is requested to decide the present reference, as remanded to it hereinabove as expeditiously as possible, and, at any rate, not later than six months from the date of receipt by or presentation before it, of a certified copy of this order, whichever is earlier.

29 There will be no order as to costs.

30 The record of the Labour Court, which has been requisitioned, be sent back.

C. HARI SHANKAR, J.

NOVEMBER 23, 2017
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