

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

Judgment reserved on : 4th October , 2018

Date of decision : 1st July, 2019

+ **W.P.(C) No. 8648/2010**

CHANDRA PRAKASH TIWARI & ANR. Petitioners
Through: Mr. A.K.Mishra, Advocate
versus

M/S PADMINI TECHNOLOGIES LTD. Respondent
Through: Mr. Yogendra Misra,
Advocate.
AND

+ **W.P.(C) No. 733/2011**

M/S PADMINI TECHNOLOGIES LTD. Petitioner
Through: Mr. Yogendra Misra, Advocate
versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. A.K. Misra, Advocate.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The WP(C) No.8648/2010 has been filed by Shri Chandra Prakash Tiwari son of Late R.N Tiwari and Shri Narender Krishan son of Shri Mitra Nand, petitioners No.1 and 2 respectively against M/s

Padmini Technologies Ltd., the erstwhile employer of the petitioners arrayed as the respondent.

2. The WP(C) No.733/2011 has been filed by M/s Padmini Technologies Ltd., the employer of Shri Chandra Prakash Tiwari and Narender Krishan who are arrayed as respondents No.2 & 3 to WP(C) No. 733/2011 with the Union of India having been arrayed as respondent No.1.

3. Both the afore mentioned writ petitions assail the same impugned award dated 10.9.2010 of the learned Presiding Officer, Labour Court, Kardardooma Courts, Delhi in LCA No.52/2006 whereby Shri Chandra Prakash Tiwari and Narender Krishan employees of Padmini Technologies were awarded a lump sum compensation of Rs.50,000/- and Rs.1,00,000/- lakh respectively towards all their monetary claims and in lieu of reinstatement against M/s Padmini Technologies Ltd.

4. Whereas the grievance of the erstwhile employees Shri Chandra Prakash Tiwari and Shri Narender Krishan is to the effect that they ought to have been reinstated with Padmini Technologies Ltd. with full backwages along with interest at the rate of 12% per annum accrued from the date of termination till the date of actual payment of the amount of backwages,- the contention of M/s Padmini Technologies Ltd. on the other hand is to the effect that the impugned award be set aside in toto being beyond the jurisdiction of the learned Labour Court submitting to the effect that in terms of Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as '*the Act*') what can be enforced is the pre-existing benefits or pre-existing rights and that no such adjudication or determination of any compensation could have

been awarded by the learned Labour Court on determination of any rights of the employees.

5. It was contended by M/s Padmini Technologies Ltd. the employer, to the effect that the impugned award had granted lump sum compensation to Shri Chandra Prakash Tiwari and Shri Narender Krishan, the erstwhile employees of the erstwhile employer towards all their monetary claims and reinstatement qua which it was contended that the same could not be granted by the Labour Court in terms of the jurisdiction of the Industrial Tribunal in terms of Section 7 of *the Act*.

6. Arguments have been addressed on behalf of either side by their learned counsel and the written submissions of either side are on the record. In as much as both the petitions assail the same award, both the petitions have been taken up for consideration together by the Court and shall be adjudicated by this common judgment.

7. On behalf of the workmen reliance has been placed on the verdicts of the Hon'ble Supreme Court in:

- a) *Oswal Agro Furnace Ltd. v. Oswal Agro Workers Union*: 2005 II A.D. (SC) 605
- b) *Talwar Cooperative Credit & Service Society Ltd. v. Sushil Kumar*; (2008) 9 SCC 486
- c) *Deepali Gundu Surwase v. Kranti Union Adhyapak Mahavidyalaya (D.ED) & Others*; (2013) 10 SCC 324

8. Reliance has been placed on the following judgments on behalf of the M/s Padmini Technologies Ltd. in support of their contentions.

- a) *U.P. State Road Transport Corporation Vs. Birendra Bhandari*; (2006) 10 SCC 211
- b) *Jeet Lal Sharma Vs. Presiding Officer, Labour Court - IV and Ors.* 2000 (3) SCT 674 (Delhi)

- c) Municipal Corporation of Delhi Vs. Ganesh Razak and Ors.* (1995) SCC (1) 235
- d) State Bank of India Vs. Ram Chandra Dubey and Ors.* (2001) 1 SCC 73
- e) Central Inland Water Transport Corporation Limited Vs. The Workmen and Ors.* (1974) 4 SCC 696
- f) Uptron India Limited Vs. Shammi Bhan and Ors.* (1998) 6 SCC 538
- g) Escorts Limited v. Presiding Officer and another* (1997) 11 SCC 521
- h) Municipal Council, Samrala Vs. Raj Kumar* (2006) 3 SCC 81
- i) Punjab State Electricity Board Vs. Darbara Singh* (2006) 1 SCC 121
- j) Kishore Chandra Samal vs. The Divisional Manager, Orissa State Cashew Development Corporation Ltd., Dhenkanal* (2006) 1 SCC 253
- k) S.M. Nilajkar and Ors. Vs. Telecom, District Manager, Karnataka* (2003) 4 SCC 27
- l) Talwara Cooperative Credit and Service Society limited v sushil kumar* (2008) 9 SCC 486
- m) Deelpali Gundu Surwase v Kranti Junior Adhyapak Mahavidhyalaya (D.E.D) and Ors.* (2013) 10 SCC 324

ANALYSIS

9. At the outset, it is essential to observe that the proceedings of the dispute between the employees Shri Chandra Prakash Tiwari and Shri Narender Krishan and the employer M/s Padmini Technologies Ltd. reached the Labour Court pursuant to the disposal of the application filed by the employees Shri Chandra Prakash Tiwari and Shri Narender Krishan dated 28.7.2003 addressed to the Assistant Labour

Commissioner of the Labour Department with reference to their complaint dated 23.5.2003 seeking release of the arrears of the reimbursable amount and their annual benefits and for employment with M/s Padmini Technologies Ltd. in relation to which the Labour Inspector Shri J.C. Thukral conducted an enquiry and visited the office of M/s Padmini Technologies Ltd. and submitted a report that the employer did not produce any service records of the employees and the Labour Inspector thus proposed that the employees sought conciliation proceedings, but as contended on behalf of the employees, M/s Padmini Technologies Ltd., the employer was not ready and willing to enter into any settlement before the Assistant Labour Commissioner and thus Shri S.C. Jain, the Assistant Labour Commissioner vide the letter No.Asst.LC./North-Easst/East/03/3187 addressed to Shri Chandra Prakash Tiwari and vide the letter No.Asst.LC./North-Easst/East/03/3186 addressed to Shri Narender Krishan both dated 22.10.2003 informed each of them, that on the basis of the complaints made by them in relation to their legal wages and legal dues, they could seek redressal before the Labour Court under *the Act* and thus Shri Chandra Prakash Tiwari and Shri Narender Krishan filed their complaint against M/s Padmini Technologies Ltd. before the Labour Court seeking the release of their salary along with full back dues/arrears and all other dues such as P.F. Bonus, Gratuity, leave encashment, reasonable compensation for the alleged illegal and arbitrary termination of their services and also sought compensation for harassment for threats given by the personnel of the Management and sought a restraint against the Management from such illegal threats

being meted out to them apart from the said employees having sought their reinstatement.

10. In view of the proceedings that were conducted before the Deputy Labour Commissioner, Vishwakarma Nagar, Jhilmil Colony, Shahdara, Delhi, the Labour Inspector and the Assistant Labour Commissioner's letters dated 22.10.2003 to the employees of M/s Padmini Technologies Ltd. i.e the petitioners of the WP(C) No.8648/2010, it is apparent that it cannot be contended by M/s Padmini Technologies Ltd that the Labour Court did not have any jurisdiction to entertain the complaint made by Shri Chandra Prakash Tiwari and Shri Narender Krishan which in fact was related to an '*industrial dispute*' in terms of Section 2(k) of *the Act* in as much as an '*industrial dispute*' is defined in terms of *the Act* as:

“2(k) industrial dispute means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person,”

11. Significantly the matters within the jurisdiction of the Labour Court under Section 7 as prescribed by the Second Schedule to the said enactment are to the effect:

“THE SECOND SCHEDULE

(Section 7)

Matters within the Jurisdiction of Labour Courts

1. The propriety or legality of an order passed by an employer under the standing orders;

2. The application and interpretation of standing orders;

3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;

4. Withdrawal of any customary concession or privilege;

5. Illegality or otherwise of a strike or lock-out; and

6. All matters other than those specified in the Third Schedule.”

12. In terms of Section 7 of *the Act*, ‘*industrial disputes*’ relating to any matter whether specified in the Second Schedule or the Third Schedule can be assigned by the appropriate Government to the Industrial Tribunal for adjudication and the matters falling within the ambit of the Industrial Tribunal alone are prescribed in the Third Schedule to *the Act* as under:

“ THE THIRD SCHEDULE
Matters within The Jurisdiction of Industrial
Tribunals
(Section 7A)

- 1. Wages, including the period and mode of payment;*
- 2. Compensatory and other allowances;*
- 3. Hours of work and rest intervals;*
- 4. Leave with wages and holidays;*
- 5. Bonus, profit sharing, provident fund and gratuity;*
- 6. Shift working otherwise than in accordance with standing orders;*
- 7. Classification by grades;*
- 8. Rules of discipline;*
- 9. Rationalization;*

10. Retrenchment of workmen and closure of establishment; and

11. Any other matter that may be prescribed.”

13. The issues that were framed in the proceedings before the Labour Court on 23.10.2004 read to the effect:

“1. To what amount, if any, the claimant is entitled.”

14. The issues 2 and 3 additionally framed on 8.12.2006 read to the effect:

“2. Whether the services of workman have been illegally terminated, if so, to what relief is he entitled and what directions may be issued in this regard?

3. Whether the complaint/claim filed by the workman on 24.12.03 is time bared or not?”

15. The issue No.4, an additional issue was framed on 3.10.2008 and reads to the effect:

“4. Whether management has closed its business permanently since December, 2001, if so, its effect.”

16. The issues framed during the course of the proceedings before the Labour Court clearly indicate that the said issues fall within the ambit of the jurisdiction of the Labour Court in terms of the Second Schedule in as much as the contention of the employees that is the petitioners of WP(C) No.8648/2010 was to the effect that their services had been wrongly terminated and they sought reinstatement and adequate relief in relation thereto which clearly falls within the ambit of Clause 3 of the Second Schedule which reads to the effect:

“3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed”

17. The facts germane for the determination of the present petitions as brought forth through the impugned award are to the effect that Shri Chandra Prakash Tiwari and Shri Narender Krishan were confirmed by M/s Padmini Technologies Ltd on 2.9.2000 and on 19.6.1995 respectively as Executive and Office Assistant respectively. The impugned award brings forth and it has been established that the Management of M/s Padmini Technologies Ltd. closed its business permanently in December, 2001.

18. According to the employees i.e. the petitioners of WP(C) No.8648/2010, the Management suddenly stopped paying their reimbursement amounts and annual benefits and their salaries from March, 2002 without giving any intimation of any kind in as much as even no oral notice was given to them and that the Management had removed the attendance register and they were even unable to mark their attendance in the office and the employees apprehended that the Management would terminate their services without any basis and without paying their dues. It was also contended by the employees that the Management had not even deposited their provident fund contribution with the Provident Fund Authority after deducting the same from their salaries. Actually the employees had sought the release of their salary along with full back dues/arrears and all other dues such as P.F. Bonus, Gratuity, leave encashment, reasonable compensation for the alleged illegal and arbitrary termination of their services and also sought compensation for harassment in view of threats given to them by the personnel from the Management.

19. The Management through proceedings before the Labour Court had submitted that their factory was lying closed ever since December, 2001, qua which the issue No.4 framed during the Labour Court proceedings as already been adverted to hereinabove is indicated to have been disposed of to the effect that the closure of the factory of the Management since December, 2001 had been established.

20. The Management, however, had contended that though it had closed its factory, the workers used to come to the premises of the factory for some administrative work till July-August, 2002 and had left the services of the Management after full and final settlement of their accounts, but that the employees Shri Chandra Prakash and Narender Krishan apparently had got some better employment and left the services of the Management after full and final settlement of their accounts. The Management submitted that a sum of Rs.6120 was to be paid to Shri Chander Prakash Tiwari and a sum of Rs.18,900/- was to be paid to Narender Krishan which the Management submitted the said employees were at liberty to take from the Management at any point of time and that the Management is still ready and willing to pay the same. The employees on the other hand refuted that there had been full and final settlement between them and the Management and reiterated that their services had been unlawfully terminated.

21. The learned Labour Court vide the impugned award has categorically observed that the Management had proved that it had closed in December, 2001, but it had not been proved as to when the Management had been closed inasmuch as there was no notice to the Government issued regarding the closure and it was observed to the

effect that the statement of MW-1 Shri Rakesh Sharma, examined on behalf of the Management indicated that the Management had closed with effect from 21.3.2001 and small number of workers used to attend and after settlement of their dues, they left as they got another job. The learned Labour Court observed to the effect that the workmen have not cross-examined MW-1 on the point of closure and thus the closure of the Management stood established.

22. As regards Issue No.4 as already observed hereinabove, the learned Labour Court had held that the Management had proved that it had closed its business permanently in December, 2001 and its findings in relation to the same read to the effect:

16. Regarding additional issue framed on 03.10.08: Whether management has closed the business permanently since December 2001, if so, its effect.

My inference on the basis of record is that the management has proved the issue on the following grounds: -

- i) The management in the WS as well as in the evidence through the sole management witness had stated that the management has closed its business since December 2001. The workman has not cross examined the MW on this point of closure. Hence, statement of the MW stands proved.*
- ii) Only in the arguments, it is stated by AR for workman that no proof of closure has been filed. However, the cross examination of MW1 shows that the management has ceased to exist,*

however, the exact time of the termination of the operation is not shown. MW1 in his cross examination has stated that the management has three properties. Plot No. 46/5 and Plot No. 58, Industrial Area, Sahibabad have been sold. Plot No. B-23 has been in the possession of the bank. This very plot number was the office of Eagle Hunter Pvt. Security Agency. This show that the factory/business of the management has been closed.

23. The learned Labour Court, however, qua issue No.2 observed to the effect:

“ Keeping in view of the claim, reply, evidence and documents on record. I feel that the services of the workmen have been terminated illegally by the management on the following grounds:

- i) The management though stating that the workmen allegedly attended the management in August, 2002, has not placed on record the formal order of termination of the workmen.*
- ii) Management had stated that there was a settlement between the parties. For cessation of relationship, the document of settlement has not been placed on record. Perusal of cross examination of the sole management witness shows that the settlement was oral. This MW further stated that settlement was not recorded in his presence. Hence, the sole MW cannot tell as to when the settlement took place and what were the details of the settlement as he was not a party to the settlement. The management had not examined any other witness to prove the terms*

of the settlement between the workmen and the management. Accordingly, the alleged settlement has not been proved by the management. Hence this court has no option except to hold that the settlement is not proved, hence the termination of the workmen was illegal.”

24. Though the Management seeks to controvert the said observations of the learned Labour Court, apparently there is no infirmity in the same. The learned Labour Court has also rightly held that apparently there was no challenge to the determination of issue No.3 that had been framed for the claim of the workmen having been filed on 24.12.2003 being time barred in as much as the said aspect was disposed of on 25.5.2007 by the Labour Court holding that the LCA originally filed was within limitation in as much as for the filing of an LCA there was no limitation and an application subsequently filed for reinstatement along with other dues was also within the limitation period.

25. Though it was sought to be contended by the Management that Shri Chandra Prakash Tiwari did not fall within the ambit of the definition of a **workman** and that *the Act* did not apply to him, the Labour Court has rightly observed to the effect that there was no document of appointment and dues of Shri Chandra Prakash Tiwari which was filed on record by the Management and that the Management had failed to prove that Shri Chandra Prakash Tiwari was not a **workman** and merely because he was appointed as Executive (B&A), his nomenclature could not bring forth his duties. Undoubtedly without

any evidence and proof having been led by the Management in relation to the duties to be performed by Shri Chandra Prakash Tiwari, the contention raised by the Management that Shri Chandra Prakash Tiwari was not a workman in terms of Section 2(s) of *the Act* merely because of the nomenclature of his post,- *per se* cannot be accepted.

26. In the circumstances, apparently the findings of the learned Labour Court to the effect that the Management has closed in 2001 without any notice under Section 25(O)(1) of *the Act* having been given to the Government of the closure of the Management and thus, consequently there had been an unlawful termination of the services of the workmen employees/workmen i.e. Shri Chandra Prakash Tiwari and Shri Narender Krishan cannot be faulted.

27. Furthermore, the Hon'ble Supreme Court in *Syed Yakoob vs. K.S. Radhakrishnan & Ors. AIR 1964 SC 477* has observed that findings of facts reached by the subordinate Court or the Tribunal as a result of the appreciation of evidence cannot be reopened in the writ proceedings except when the recording on the said finding has been made on an erroneous refusal to admit admissible and material evidence which has influenced the impugned finding whether the finding of fact is based on no evidence or whether the error of law, if any, committed by the subordinate Court or the Tribunal is sought to be corrected by a writ of certiorari which is apparent on the face of the record.

28. It is apparent thus that in the instant case there is no infirmity in the impugned award of the learned Labour Court in as much as there is no infirmity in the analysis of the evidence led by the parties by the learned Labour Court. In the circumstances, qua the contention raised

on behalf of the workmen that they ought to have been reinstated, it is essential to observe that the grant of the relief of reinstatement is not automatic and specially in the facts and circumstances of the instant case where the Management of M/s Padmini Technologies Ltd. has itself closed down, there is no scope of any reinstatement. The other contention raised on behalf of the workmen is to the effect that the compensation awarded is meagre. Taking into account the entire facts put forth, however, there appears no infirmity even in the determination of the compensation already directed to be paid vide the impugned award.

29. The Court while issuing notice in WP(C) No.733/2011 on 4.2.2011 had directed M/s Padmini Technologies Ltd. to deposit the awarded amount with the Registrar General of this Court.

30. However, in as much as the said amount vide impugned award has apparently been deposited by the M/s Padmini Technologies Ltd. only pursuant to the order dated 4.2.2011 in WP(C) No.733/2011 in the circumstances, a further sum apart from the amount awarded of Rs.50,000/- to Shri Chandra Prakash Tiwari and a sum of Rs.30,000/- to Shri Narender Krishan are directed to be paid by the M/s Padmini Technologies Ltd. within a period of two months from the date of this judgment.

31. The amount deposited by M/s Padmini Technologies Ltd. in terms of the impugned order dated 4.2.2011 in WP(C) No.733/2011 directed to be released to Shri Chandra Prakash Tiwari and Shri Narender Krishan in terms of the impugned award by the Registrar General of this Court on production of proof of their identities.

The WP(C) No.8648/2010 is disposed of accordingly and WP(C) No.733/2011 is dismissed.

ANU MALHOTRA, J.

JULY 1st, 2019

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