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

+ **LPA 604/2014**

BADSHAH SINGH

..... Appellant

Through

Mr. Rajiv Agarwal, Ms. Meghna De
& Ms. Sugandh Kochhar, Advocates

versus

DELHI JAL BOARD

..... Respondent

Through

Ms. Sakshi Popli and Ms. Samreen,
Advocates

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER
27.08.2019

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Dr. S. Muralidhar, J.:

1. This appeal is directed against an order dated 19th March, 2014 passed by the learned Single Judge dismissing the Appellant's Writ Petition (C) No. 4068/1999, whereby he had challenged an Award dated 30th April, 1999 of the Industrial Tribunal in ID No. 351/1990.

2. The brief factual background is that the Appellant was appointed by the Respondent/Delhi Jal Board as *Beldar* on muster roll basis with effect from 1st January, 1982. The case of the Appellant is that he was asked by his superior i.e. the Assistant Engineer-II to work at his house as a domestic servant after duty hours. When the Appellant declined to do so, he was

marked absent from duty from 11th May to 31st May, 1989, although he claims to have performed normal duties on all the above days. He claims that the wages for the month of May, 1989 were also denied to him. Another Junior Engineer (JE) had also been compelling the Appellant to work at his house as domestic help. According to the Appellant, his services were terminated on 15th June, 1989. On 30th June, 1989 he sent a legal demand notice to the Respondent. On 29th June, 1989 the Respondent served a memo on the Appellant which, according to him, he received only on 16th December, 1989. He is stated to have replied to the said memo on 29th December, 1989.

3. The Appropriate Government made a reference to the Industrial Tribunal (Tribunal) of the disputes arising from the termination of the Appellant's services with the Respondent on 30th January, 1990. The terms of reference read as under:

“Whether Sh. Badshah Singh has abandoned his services or his services have been terminated illegally and/or unjustifiably by the management and if so, to what relief he is entitled and what directions are necessary in this respect.”

4. On 20th February, 1990 the Appellant filed his Statement of Claim before the Tribunal. The Respondent filed its written statement on 25th September, 1990. On 26th March, 1991 the Tribunal framed the above term of reference. Even while the reference was pending before the Tribunal, on 28th June, 1990 an order was passed by the Respondent removing the Petitioner from service.

5. The Appellant examined himself as a witness and the Respondent examined one witness. The document sought to be relied upon by the Appellant in support of his plea that his services were terminated effectively from 15th June, 1989 was a slip written by the AE, which reads as under:

"Shri Badshah Singh should not be allowed for duty at Masjid Moth Pt. 1 till further orders. He should report in the office.

Illegible
15.6.89 AE".

6. According to the Tribunal the Appellant failed to explain how he came into possession of the above slip, particularly when he admitted in his cross-examination that it did not bear any dispatch number. The Tribunal came to the conclusion that the above slip did not amount to termination of services of the Appellant. The Tribunal took note of the plea of the Respondent that despite notices sent to him by Registered Post on 21st July, 1989 and 27th October, 1989, he did not reply to those notices and ultimately he was removed from service on 29th June, 1990. The Tribunal accepted the above plea and concluded that "it is a case of wilful abandonment of services by the workman, and hence, his termination by the management after exhausting all the legal, formalities, cannot be held illegal or unjustified, in the facts and circumstances of the case."

7. The Tribunal accordingly answered the reference in favour of the management and against the Appellant and held that the Appellant was not entitled to any of the reliefs prayed for.

8. Aggrieved by the above Award dated 30th April, 1999 of the Tribunal, the

Appellant filed W.P. (C) No. 4068/1999. By the impugned judgment dated 19th March, 2014 the learned Single Judge held as under:

(i) The note dated 15th June, 1989 did not show that the services of the Appellant were terminated. It only asked him to report to the office.

(ii) That the Appellant had received the memo much earlier than 24th December, 1989 could not be denied. Therefore, the reasoning in the impugned termination order dated 28th June, 1990 that the Appellant failed to give any reply to the memo within time was justified.

(iii) The fact that such a memo was issued suggested that the employer-employee relationship existed between the Appellant and the Respondent and the reference was in respect of a non-existent industrial dispute and therefore its pendency did not preclude the Respondent from taking action against the Appellant in terms of the memo dated 29th June, 1989.

(iv) The observations of the Supreme Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma AIR 2002 SC 643*** were of no assistance to the Appellant, since there was no dispute at all between the parties. There was, therefore, no requirement for the Respondent to seek the approval of the Tribunal under Section 33 (2) (b) of the Industrial Disputes Act, 1947 (ID Act) before terminating the services of the Appellant. In any event, no such contention had been raised by the Appellant before the Tribunal.

(v) Further, the judgment in *Anil Kumar v. Presiding Officer, Labour Court (82) 1999 DLT 958* would also not apply since the Appellant's services stood terminated by the order dated 28th June, 1990, which had not been challenged by the Appellant. The said order had therefore attained finality. The learned Single Judge, however, held the Appellant to be entitled to wages for the period from 15th June, 1989 to 28th June, 1990.

9. On 11th January, 2018 the following order was passed by this Court in the present appeal:

“1. The appellant is aggrieved by the judgment dated 19.03.2014 passed by the learned Single Judge in a writ petition filed by him, challenging an Award dated 30.04.1999, passed by the Industrial Tribunal, holding that he is not entitled to any relief.

2. By the impugned judgment, the learned Single Judge has dismissed the writ petition filed by the appellant on the ground that in the absence of any challenge laid by him to the order dated 28.06.1990 passed by the Management, his termination has attained finality. While parting with the case, the appellant was held entitled to the wages for the period from 15.06.1989 to 28.06.1990, the date when his services were terminated.

3. We have enquired from the counsel for the respondent as to whether the wages of the appellant for the aforesaid period have been paid. She states that a cheque dated 29.12.2014 for a sum of Rs.9,434/- was prepared and offered to the appellant but he had refused to accept the same and by now, the said cheque has turned stale.

4. Counsel for the respondent is directed to issue a fresh cheque for the sum of Rs.9,434/- in favour of the appellant, which shall be handed over to Mr. Aggarwal, learned counsel for the appellant within two weeks. It is clarified that the aforesaid cheque shall be encashed by the appellant without prejudice to

his rights and contentions as raised in the present appeal.

5. Counsel for the respondent seeks an adjournment to enable her to prepare the brief.

6. At the request of the counsel for the respondent, list in the category of 'After Notice Misc. Matters' on 26.09.2018.”

10. Subsequently on 26th September, 2018 the following order was passed:-

“1. Proxy counsel appearing for the counsel for the respondent/DJB seeks an adjournment on the ground that the arguing counsel is held up before some other Court.

2. Counsel for the appellant confirms that his client has received a sum of Rs.9,434/- from the respondent/DJB and states that the same is without prejudice to his rights and contentions as raised in the present appeal.

3. At the request of the counsel for the respondent/DJB, list in the category of 'After Notice Misc. Matters' on 07.05.2019.”

11. This Court has heard the submissions of Mr. Rajiv Agarwal, learned counsel appearing for the Appellant and Ms. Sakshi Popli, learned counsel appearing for the Respondent.

12. The first issue that arises for consideration is whether the learned Single Judge was justified in coming to the conclusion that there was in fact no industrial dispute which required to be referred for adjudication to the Tribunal. It was the case of the Appellant that his services stood terminated with effect from 15th June 1989, whereas it was the case of the Respondent that the document relied upon by him in support of such contention in fact demonstrated the contrary. The mere fact that the Respondent was not

prepared to accept the version of the Appellant that his services stood terminated meant that there was a dispute between the parties which required to be resolved. In fact the case of the Respondent was that the Appellant had abandoned his services, which plea was denied by the Appellant.

13. Therefore, at the time when a reference was made to the Tribunal there was a dispute between the parties. In fact, the first portion of the term of the reference is whether the Appellant had abandoned his services. Consequently, the Court is unable to concur with the view of the learned Single Judge that there was in fact no industrial dispute which required to be referred for adjudication. Interestingly, even the Tribunal did not come to such a conclusion. The Tribunal concluded that there was wilful abandonment of services on the Appellant's part and that therefore the order terminating his services was lawful.

14. The next question that arises concerns the legality of the order dated 28th June, 1990 passed by the Respondent, removing the Appellant from service. It is not in dispute that this order was passed during the pendency of the dispute in the tribunal. Therefore, Section 33 (1) of the Industrial Disputes Act, 1947 ('ID Act') stood squarely applicable. Under Section 33 (2) (b) of the ID Act, where there is already a dispute pending before the Tribunal and the management seeks to remove the workman from service, it is mandatory for the management to approach the Tribunal to seek its permission.

15. An order of removal from service passed by the management, without

seeking such approval from the Tribunal would be void and such a legal result would ensue notwithstanding that the workman may not have formally applied to the Court for such a declaration. This has been made abundantly clear in para 15 of the judgment of a Constitution Bench of the Supreme Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma*** (*supra*) which reads thus:

“15. The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Section 33A, cannot be accepted. In our view, not making an application under Section 33(2) (b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b). An employer who does not make an application under Section 33(2) (b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to take a position that such order is not inoperative or void till it is set aside under Section 33A notwithstanding the contravention of Section 33(2) (b) proviso, driving the employee to have recourse to one or more proceeding by making a complaint under Section 33A or to raise another industrial dispute or to make a complaint under Section 31(1).

Such an approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimization, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can

be saved from hardship of unemployment.”

16. The learned Single Judge was in error in distinguishing the above judgment on the ground that there was no occasion for the management to seek the Tribunal’s permission since no valid dispute existed between the parties for which a reference had to be made under the ID Act. In the present case, in the light of the conclusion of this Court that there did exist a dispute between the parties for which a reference was made, leads to the obvious conclusion that the Respondent ought to have sought the permission of the Tribunal, before resorting to removal of the Appellant from service.

17. For the aforementioned reasons, the Court sets aside the Award of the Tribunal as well as the impugned judgement of the learned Single Judge and holds that the order dated 28th June, 1990 passed by the Respondent removing the Appellant from service, without seeking the permission of the Tribunal, is void *ab initio*.

18. The Court is informed that the Appellant is presently 57 years of age and has three more years of service left. The Appellant is directed to be reinstated forthwith.

19. The question then arises is whether the Appellant would be entitled to full back wages. In ***Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80***, the Supreme Court *inter-alia* observed as under:

“Speaking realistically, where termination of service is

questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation upto the Apex Court and now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workman were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away

therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.”

20. In *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya* (2013) 10 SC 324 the Supreme Court summarised the legal proposition as under:

“In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (supra).”

21. For the aforementioned reasons, while directing the reinstatement of the Petitioner forthwith in service, the Court further directs that the Respondent will pay him the full back wages with continuity of service. The appropriate orders in that regard shall be passed not later than four weeks from today.

22. The appeal is allowed in the above terms but in the circumstances, with no order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 27, 2019
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