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

Date of Decision:- 25.09.2019

+ W.P.(C) 9755/2017

**HONG KONG & SHANGHAI BANKING
CORPORATION LIMITED**

..... Petitioner

Through: Ms.Jagriti Ahuja with Mr.Ateev
Mathur & Mr.Aditya Bakshi, Advs.

Versus

CHETAN KANDPAL & ANR

..... Respondents

Through: Mr.Rajeev Saxena with Mr.Rachit
Sahney & Mr.Manish Khurana, Advs.
for R-1.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition under Article 226 and 227 of the Constitution of India, the petitioner/management assails the award dated 14.06.2017 passed by the Central Government Industrial Tribunal-II, Karkardooma Courts, Delhi in ID No.233/2011, whereunder the Tribunal after holding that the services of the respondent/workman had been illegally terminated, directed the petitioner to reinstate him with all consequential benefits.

2. Learned counsel for the petitioner, on instructions, submits that

the petitioner is willing to amicably settle the matter with the respondent by paying him a lump sum compensation of Rs.5,00,000/- along with an experience certificate, which offer is not acceptable to the respondent and consequently the petition has been heard on merits.

3. The respondent had joined the services of the petitioner as a Relationship Manager in its Lucknow branch on 06.08.2007. On finding that the respondent's performance was not satisfactory, he was on 20.08.2008 asked to undergo training by way of a Performance Improvement Plan. Upon the closure of the petitioner's branch at Lucknow, the respondent was on 08.08.2008, transferred to Delhi. The petitioner terminated the services of the respondent on 22.05.2009 by paying him a sum of Rs 98,550/- in accordance with the terms and conditions of his appointment, which amount was duly accepted by him without any demur or protest. After a period of six months, the respondent issued a legal notice to the petitioner requesting for the withdrawal of his termination order. The said notice was replied to by the petitioner on 26.11.2009 wherein, the respondent's request was rejected.

4. In these circumstances, the respondent then raised an industrial dispute which was referred by the appropriate government to the learned Tribunal. In his statement of claim filed before the Tribunal, the respondent claimed that not only was he made to undergo the Performance Improvement Plan without any justification, but that he was also subsequently terminated, not because his services were unsatisfactory, but only as the petitioner was unwilling to retain him

after its Lucknow office was closed.

5. The petitioner filed its written statement opposing the respondent's claim wherein it was urged that the industrial dispute itself was not maintainable as the respondent, having been appointed as a Relationship Manager, did not fall within the definition of workman under Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter I.D. Act). It was further claimed by the petitioner that the respondent after having accepted all his terminal dues without any demur, was estopped from challenging his termination at this belated stage and that the termination of the respondent was strictly in accordance with the terms and conditions of his employment and that in any event, the respondent had been paid compensation exceeding what would be payable to him in accordance with Section 25(F) of the I.D. Act.

6. Based on pleadings of the parties, the following issues were framed by the Tribunal on 07.09.2011:-

“1. Whether the claimant is not a workman within the meaning of section 2(s) of the Act?

2. Whether his termination of services vide order dated 22.5.2009 amount to retrenchment, as defined in section 2(oo) of the Act? If yes its effect

3. As in terms of reference.

4. Relief”

7. The parties thereafter led their respective evidence and the impugned award came to be passed on 14.06.2017 whereunder the Tribunal, after deciding all the issues in favour of the respondent,

directed the petitioner to reinstate him with full back wages. The findings of the tribunal read as under:-

“Findings on issue no.1:- Burden to prove issue no.1 lies on management of HSBC but there is no evidence of management of HSBC which can show that claimant is not workman within meaning of section 2(s) of I.D. Act, 1947

In want of evidence of management on aforesaid issue No.1 is liable to be decided against management of HSBC and in favour of workman. Which is accordingly decided.

Findings on issue No.2

Burden to prove issue No.2 lies on management of HSBC. So management of HSBC was bound to prove whether termination of services of claimant Sh. Chetan Kandpal vide order dated 22.5.2009 amounts to retrenchment as defined section 2(oo) of the Act? If yes its fact.

But evidence of management HSBC not at all required reliable and credible to conclude that workman was retrenched instead of his termination by management of HSBC.

In these background issue no.2 is liable to be decided against management HSBC and in favour of workman.

Which is accordingly decided.

Issue no.3 & 4 have been framed by my Ld. Predecessor on the basis of question of determination mentioned in schedule of reference.

So following question of determination no.1 is as follows:-

“Whether the action of the management of Hongkong & Sanghal Banking Corporation (HSBC) Ltd., New Delhi in

terminating the services of Shri Chetan Kandpal, ex-Relationship Manager, Consumer Finance w.e.f. 22.05.2009, legal and justified?”

This question of determination no.1 has been made issue no.3 by my Ld. Predecessor.

It is relevant to mention here that burden to prove this issue lies on management of HSBC but management of HSBC has not discharged its burden to prove this issue through its required reliable and credible evidence.

While workman provide unfair labour practice adopted by management of HSBC in terminating his service w.e.f. 22.05.2009.

In this background issue no. 3 is liable to be decided against management and in favour of workman which is accordingly decided.

Finding on issue no. 4:

It is relating to relief to the workman.

To provide relief to workman.

It is relevant to mention here that management of HSBC utterly failed to discharge its burden to prove issue no. 1 to 3.

Hence I have already decided issue no. 1 to 3 against management of HSBC and in favour of workman.

So issue no 4, which is relating to relief to workman. It is also liable to be decided in favour of workman and against management of HSBC.-Which is accordingly decided.

Therefore workman Sh. Chetan Kandpal is entitled to relief to reinstate with full back wages.”

8. Aggrieved by the Award of the learned Tribunal, the petitioner has instituted the present petition.

9. Ms. Jagriti Ahuja, learned counsel for the petitioner, submits that the impugned Award suffers from complete non-application of mind as the Tribunal has simply given its findings without even referring to the rival contentions of the parties. She further submits that a perusal of the impugned award in itself shows that the learned Tribunal has merely reproduced its earlier orders and has thereafter proceeded to copy paste the written arguments of the respondents as also of the petitioner in verbatim. She places reliance on an earlier decision of this Court in *M/s. British Airways vs. Union of India & Anr.*, (W.P.(C) No.5720/2015) to contend that such an Award, which is wholly unreasoned, is not sustainable and is liable to be set aside on this ground itself.

10. On the other hand Mr. Rajeev Saxena, learned counsel for the respondent, while not seriously disputing the fact that the learned Tribunal has merely effected a verbatim reproduction of the written arguments of the parties as also the earlier orders passed by it, submits that the Tribunal is not expected to give any detailed finding while dealing with an industrial dispute. He further submits that once the Tribunal reproduced the written arguments of the parties, it is evident that their rival contentions had been duly considered while arriving at the findings, even though they may not have been specifically dealt with. He, therefore, prays that the writ petition be dismissed.

11. I have heard the learned counsel of the parties at length and

with their assistance perused the record.

12. Upon a close examination of the impugned Award, not only do I find merit in the petitioner's contentions but I am also constrained to observe that evidently the Tribunal has, after reproducing all its previous orders, proceeded to copy paste the written submissions of the parties without even making any effort to change their font size. Subsequent thereto, the Award goes on to reproduce, once again in verbatim, Rule 10-B of the Industrial Dispute (Central) Rules 1947 (hereinafter I.D. Rules), laying down the procedure required to be followed while deciding an industrial dispute and the Tribunal appears to have, thereafter, simply given its findings without even referring to the evidence led by the parties or without giving any reason whatsoever for the same.

13. The necessity for a Tribunal to set out the reasons of its findings while determining an industrial dispute has been repeatedly emphasised by the Apex Court as well as by this Court. In this regard, reference may be made to paragraphs 13 to 15 of an earlier decision of this Court in *M/s British Airways* (supra) which reads as under:-

“13. There is no gainsaying that an award passed by a Labour Court is the end product of an adjudicatory process by a statutory authority appointed under the Industrial Disputes Act, 1947. While performing this adjudicatory function, it is incumbent upon a Labour Court to apply its mind to the material on record and provide reasons, howsoever brief, in support of its findings. The importance of passing a well-reasoned order while performing adjudicatory functions, cannot be undermined and has been repeatedly emphasized by the Hon'ble Supreme Court as also this Court in a plethora of decisions. Reliance may be placed upon a recent decision of

*this Court in **Ms. Richa Shailja v. Union of India and Anr.** [WP(C) No.4757/2018], wherein a Division Bench while dealing with a challenge to an order passed by the Central Administrative Tribunal, held as follows:-*

*“15. [T]he impugned order in our view is not a reasoned order. The petitioner being dissatisfied by the reasons given by the respondents while rejecting her representation has led to the filing of the OA and an application seeking stay of transfer. While dealing with the similar issue, the Hon’ble Supreme Court of India in the case of **Kranti Associates Private Limited and Another vs. Masood Ahmed Khan and Others** reported in (2010) 9 SCC 496 has held that reasons have become an indispensable component of the decision making process. The Supreme Court has highlighted that even a quasi-judicial authority must record reasons in support of its conclusions. The Supreme Court has underlined the principle that recording of reasons is meant to serve the wider principle of justice that must not only be done but it must appear to be done...”*

*14. It may also be appropriate to refer to the decision of the Punjab and Haryana High Court in **Fruit & Merchant Union v. Chief Information Commissioner and Ors.** [CWP No. 4787/2011], the relevant paragraph 12 of which reads as under:*

*“12. A perusal of the aforesaid order shows that the same is totally non-speaking. It is lacking not even in reasons for which was opined that the information sought by the applicant herein does not amount to personal information or trade secrets of a third party, even the facts of the case have not been referred to in detail. In the absence of brief facts and the reasons contained in the order, it is not possible for the next higher court to appreciate as to what weighed with the authority in reaching the conclusion and as to whether there was application of mind by the authority or the order is arbitrary. Hon’ble the Supreme Court in **Kranti Associates Private Limited and another v.***

Masood Ahmed Khan and others, (2010) 9 SCC 496, while referring to its earlier judgments... opined that every order passed by quasi-judicial authority or even an administrative authority affecting the rights of parties, must be a speaking order. It must not be like the “inscrutable face of a sphinx”. The superior court cannot effectively exercise its power of judicial review unless in the order impugned, facts and reasons have been stated in detail. Merely giving an opportunity of hearing is not enough. Wherever an order can be subject to appeal or judicial review, the necessity to record reasons is even greater. It ensures that the decision is not a result of caprice, whim or fancy but was arrived at after considering the relevant facts and the law. It enables an aggrieved party to demonstrate before the higher court that the reasons on which his claim has been rejected, are erroneous. It operates as a deterrent against possible arbitrary action by any authority invested with judicial power. The aim is to prevent unfairness or arbitrariness in reaching conclusions. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. The faith of the people in administrative authorities can be sustained only if they act fairly and dispose of the matters before them by well-considered orders...”

15. When the findings in the impugned award are examined in the light of the settled legal position noted hereinabove, there can be no doubt that the said award is wholly bereft of reasons and does not at all show application of mind to the materials on record. It is also evident that the learned Labour Court’s findings and consequential directions are based on the bald assertions of the respondent. As noted hereinabove the learned Labour Court has just not given any reason for his findings and almost 54 pages out of the 55 pages award are a simpliciter reproduction of either the pleadings, evidence by way of an affidavit as also the cross-examination of the parties or their written submissions.

Such an approach of the learned Labour Court discharging an important adjudicatory function wholly unacceptable. For the aforesaid reasons, the impugned award is, wholly unsustainable and is accordingly quashed.”

14. In the light of the aforesaid settled legal position, the impugned Award which is not only non-speaking and unreasoned but is merely a mechanical reproduction of the written submissions of the parties, the provisions of Rule 10-B of the I.D. Rules, as also the earlier orders passed by the Tribunal, cannot be sustained and is accordingly quashed.

15. At this stage learned counsel for the respondent submits that the respondent had led sufficient evidence before the Tribunal substantiating its claim and he should not be made to suffer merely because the Award passed by the Tribunal did not deal with the evidence or give any reasons for its findings. He, therefore, prays that the matter be remanded back to the Tribunal for fresh adjudication on the basis of the evidence already on record.

16. In these circumstances, I find that the respondent's prayer seeking remand of the matter is justified. While quashing the impugned award dated 14.06.2017, the matter is remanded back to the learned Tribunal for passing of a fresh award after properly dealing with the material already placed on record. It is made clear that this Court has not expressed any opinion on the merits of the claim petition and, therefore, it will be open for the learned Tribunal to adjudicate this dispute on its own merits.

17. The petition is allowed in the aforesaid terms.

SEPTEMBER 25, 2019/gm

REKHA PALLI, J

