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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 15.01.2020

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W.P.(C) 6382/2010

VOLTAS LIMITED

..... Petitioner

Through: Mr. D.S. Chauhan, Ms. Ruchi Singh
and Mr. Prashant Kumar, Advs.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Ashok Gupta, Adv. for R3.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition filed by the management assails the notice dated 28.06.2010 issued by the Deputy Labour Commissioner/respondent no.2 directing the petitioner to pay a sum of Rs.6,23,631/- to the respondent no.3 towards his back wages as also the consequential Recovery Certificate dated 13.08.2010.
2. The facts in brief are that the respondent no.3, who was working as a semi-skilled clerk in the petitioner's establishment since 14.01.1987, was served with a chargesheet dated 08.03.2000 for his alleged involvement in a trade union demonstration. Following a domestic enquiry into this allegation, the respondent no.3 was dismissed from service vide order dated 01.04.2003. Since an industrial dispute being ID No.71 of 2000 was already pending between the parties before the same Tribunal, on 01.04.2003 the petitioner filed an application under Section 33(2) (b) of the Industrial

Disputes Act, 1947 ('ID Act' for short) before the learned Tribunal seeking approval of its decision to dismiss the petitioner from service.

3. Though the workman/respondent no.3 opposed the approval application, the petitioner by relying on its settlement dated 13.06.2007 with the workmen's union, i.e., All India Voltas Employees Federation, of which the respondent no.3 was a member, sought withdrawal of its approval application in terms of the aforesaid settlement. On 15.11.2007, the Labour Court permitted the petitioner to withdraw its approval application in terms of the settlement dated 13.06.2007 and the same was disposed of as withdrawn.

4. Thereafter, on 20.11.2008, the respondent no.3 approached this Court by way of a writ petition being WP(C) 8368/2008 alleging therein that as his services had been terminated without acquiring the requisite approval under Section 33(2)(b) of the ID Act, he was entitled to be treated in service, but the respondent nos.1 and 2 were not passing any orders on his application under Section 33C(1) of the ID Act. He, therefore, sought issuance of directions to the respondent nos.1 and 2 to initiate proceedings against the petitioner under Section 33C(1) of the ID Act for recovery of his back wages. Even though the petitioner was arrayed as a respondent in the said writ petition, it admittedly failed to contest the same. Consequently this Court, by relying on the uncontroverted plea of the respondent no.3, allowed the aforesaid writ petition vide its order dated 10.02.2010 by *inter alia* holding that the dismissal of respondent no. 3 by the Management, having not been approved, was void, inoperative and ineffective. The relevant findings of this Court in the aforesaid order read as under:-

“8. The issue at the heart of the present case is no more res integra in view of the settled legal position enunciated by the Apex Court in Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd (Supra). Indisputedly, the action of the respondent management dismissing the petitioner was not approved by the competent authority and in fact the application moved by the respondent management under Section 33 (2) (b) was withdrawn by it. Once no approval to the said decision of the management was accorded, then clearly the said order of dismissal became void, inoperative and ineffective and such an order could not bring the jural relationship of employer and employee to an end. If no approval is given by the competent authority then nothing more is required to be done by the employee and the necessary consequence will be as if no order of dismissal had been passed by the management against such an employee. It would be pertinent to reproduce the relevant para of the said judgment here:-

“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 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.”

8. In the light of the aforesaid legal position, the order of 9.7.2008 passed by the Assttr. Labour Commissioner is ex-facie illegal and cannot be sustained in the eyes of law. The said order is accordingly set aside. The matter is remanded back to the concerned authority for appropriate direction on the application moved by the petitioner under Section 33 (C) (1) of the I.D. Act in accordance with law.

9. The petitioner is directed to appear before the office of Labour Commissioner on 2.3.2010.”

5. In compliance of these directions, the respondent no.2 instituted proceedings against the petitioner on the basis of the respondent no.3's application under Section 33C(1) of the ID Act. In its reply, the petitioner opposed this application on the ground that since the approval application had been disposed of as settled, the respondent no.3 was neither entitled to any backwages nor could he challenge his

dismissal as being void, inoperative and ineffective. It was further urged by the petitioner that in its order dated 10.02.2010, this Court had not given any directions to the respondent no.2 to accept the unsubstantiated version of the respondent no.3. However, in its impugned notice and recovery certificate, the respondent no.2 has accepted the respondent no.3's claim and held him entitled to receive back wages on account of his illegal termination and has directed the petitioner to pay him a sum of Rs.6,23,631/- towards his back wages.

6. Impugning the aforesaid notice and recovery certificate, the present petition has been filed by the management.

7. Learned counsel for the petitioner submits that the basic premise of the impugned notice is that since the petitioner's approval application was withdrawn, the respondent no.3 has to be treated as being in service. In doing so, he submits that the respondent no.2 failed to appreciate the fact that the petitioner had filed an approval application with respect to the termination of the workman/respondent No.3, but the same was withdrawn only in view of the specific settlement arrived at between the petitioner and the Employees' Union, of which the respondent no.3 was an Office Bearer. He submits that it could therefore not be held that the dismissal of respondent No.3 was unapproved or liable to be treated as non-est in the light of the decision of the Supreme Court in ***Jaipur Zilla Bhoomi Vikas Bank Ltd. V/s Ram Gopal Sharma & Ors.*** 2002 I LLJ 834. He submits that in fact the respondent No.3 had concealed these material facts in WP(C) 8368/2008 wherein this Court, guided by the settled legal position, had merely directed the Labour Commissioner, i.e.,

respondent no.2 herein, to decide the pending application under Order 33C(1) of the I.D.Act preferred by the workman/respondent no.3 herein, in accordance with law. He submits that these directions, however, could not imply that the Labour Commissioner was bound to blindly accept the averments made by respondent No.3.

8. On the other hand, learned counsel for the workman/respondent No.3, while supporting the impugned order, contends that once this Court, while allowing the previous writ petition preferred by the respondent no.3 on 10.02.2010, had specifically held that his dismissal by the petitioner was unapproved, then the order of his dismissal was void, inoperative and ineffective. As a result, the respondent no.2 had no other option except to comply with the findings of this Court and was, therefore, fully justified in issuing the impugned notice and recovery certificate. He further submits that the petitioner's plea regarding concealment of facts from this Court by the respondent no.3 is contrary to the record as he had specifically mentioned the alleged settlement dated 13.06.2007 between the petitioner and the Union in his writ petition. He, therefore, prays that the writ petition be dismissed.

9. I have considered the rival contentions of the parties and, with their assistance, perused the record. As noted hereinabove, the petitioner, besides urging that this Court passed the order dated 10.02.2010 after having facts concealed from it by the respondent no.3, has contended that this Court had not given any findings on the merits of claim raised by the respondent no.3. In fact the order dated 10.02.2010 merely directed the respondent no.2 to consider the

application under Section 33 C(1) of the ID Act preferred by the respondent no.3, in accordance with law. On the other hand, the stand of the respondent No.3 is that he was never a party to the said settlement and, therefore, it is only the directions issued by this Court in WP(C) No.8368/2008 which bind the parties herein.

10. Even though there may be merit in the petitioner's plea that the approval application filed by it was not simply withdrawn, but was withdrawn as settled, I find that this Court while allowing WP (C) 9368/2008 had specifically held in its order dated 10.02.2010 that the dismissal of respondent no.3 by the petitioner management had not been approved by the competent authority. Once this order was not assailed by the petitioner, the findings therein are binding on all the parties to the said writ petition. The petitioner was admittedly a respondent in the said writ petition and, therefore, its plea that the respondent no.3's dismissal cannot be said to be ineffective or void has to be necessarily rejected.

11. I am also unable to accept the petitioner's plea that this Court had, vide its order dated 10.02.2010, simply directed the respondent no.2 to decide the respondent's application in accordance with law. In the light of the specific findings of this Court that the respondent no.3's dismissal being without approval was ineffective and void, it cannot be said that the respondent no.2 could have still considered the petitioner's plea that the said dismissal was, in any manner, valid. Rather, once this Court came to the specific conclusion that the dismissal of respondent no.3 by the petitioner was ineffective and void, the respondent no.2 was bound by those findings. I, therefore,

find no infirmity in the impugned notice and recovery certificate which are based on a correct appreciation of this Court's order dated 10.02.2010 passed in WP(C) No. 8368/2008.

12. The writ petition is accordingly dismissed with no order as to costs.

REKHA PALLI, J.

JANUARY 15, 2020

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