



\$~5(2021)

NEUTRAL CITATION NO: 2022/DHC/000004

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

% *Decision delivered on: 16.12.2021*

+ **LPA 237/2021**

BENNET COLMAN AND CO LTDAppellant

Through: Mr Joginder Sukhija, Adv.

versus

THE SECRETARY LABOUR GOVT OF NCT OF DELHI & ANR.

.....Respondent

Through: Mr Atul Nagarajan, Adv. for R-2.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL):

[Physical Hearing/Hybrid Hearing (as per request)]

1. This appeal is directed against the interim order dated 08.07.2021, passed by the learned single judge in W.P.(C) 5166/2017.
2. The appellant, being aggrieved by the aforesaid order dated 08.07.2021, has preferred the instant appeal..
3. When the appeal came up for hearing for the first time on 10.08.2021, the following was recorded by us :

“2. Mr. Joginder Sukhija, who appears on behalf of the appellant, says that, the appellant is aggrieved by the interim order dated 08.07.2021, passed by the learned Single judge in W.P.(C.) 5166/2017, inasmuch as the order directs payment of retrenchment compensation of Rs.3,80,100/- to respondent no. 2 (i.e. the writ petitioner).

2.1 To be noted, this is the sum, stated in paragraph 16 of the award dated 03.11.2016 passed by the concerned labour court, as noted in the impugned interim order.

2.2. It is not in dispute that, the aforesaid award has been assailed by respondent no. 2 by way of W.P.(C.) No.5166/2017.

2.3. It is also not in dispute that, the concerned labour court, via the impugned award, has held that respondent no. 2 [i.e.,



the writ petitioner] is ~~NEUTRALIZATION NO. 2022/DHC/00004~~ meaning, Section 2(s) of the Industrial Disputes Act, 1947 (in short '1947 Act').

2.4 Furthermore, the concerned labour court, while holding that the respondent no. 2/writ petitioner is not a 'workman', proceeded to decide other issues as well on the premise that if its view was overturned [i.e. that respondent no. 2 was not a workman], then, the relief to respondent no. 2 would not get delayed only because other issues had not been dealt with, including the aspect concerning payment of retrenchment compensation.

3. Concededly, the provision concerning retrenchment compensation, which is embedded in Section 25F of the 1947 Act, is premised on the fact that, claimant is a workman.

4. Mr. Atul Nagarajan, who appears on behalf of respondent no.2 [i.e. the writ petitioner], says that, the appellant did not challenge the award dated 03.11.2016, and therefore, the learned Single judge was right in passing the impugned interim order for payment of retrenchment compensation to respondent no. 2.

4.1. We are unable to agree with the aforesaid submission of Mr. Nagarajan. However, Mr. Nagarajan has stated that, respondent no. 2 is in need of money as she is undergoing treatment for cancer.

4.2 Mr. Nagarajan further submits that, respondent no. 2 had also been afflicted with coronavirus, although, she has recovered from the same.

5. Given the aforesaid circumstances, we had asked Mr. Nagarajan as to, whether respondent no. 2 would be in a position to offer any financial security.

5.1 In that behalf, Mr. Nagarajan has returned with instructions. He says that, respondent no. 2 will be able to offer solvent security(ies) in the form of investments, made in government securities, amounting to Rs.3,03,229/-.

5.2 Insofar as the balance amount of Rs.76,871/- is concerned, Mr. Nagarajan says that respondent no. 2 will furnish a viable surety.

5.3. In view of the above, Mr. Sukhija says that he will obtain instructions.

5.4. Furthermore, Mr. Sukhija is directed to obtain



instructions as to, whether any amount payable to respondent no. 2, has been withheld by the appellant.

6. List the matter on 16.08.2021.”

4. On the next date of hearing i.e., 16.08.2021, we were informed by Mr Joginder Sukhija, who appears on behalf of the appellant, that gratuity had been paid to respondent no.2. This position was affirmed by counsel for respondent no.2.

4.1. Furthermore, on the same date i.e., 16.08.2021, it was also pointed out by Mr Sukhija that “the award dated 03.11.2016, does not refer to a particular amount, which the appellant could be called upon to pay, towards retrenchment compensation.” This aspect was not disputed by counsel for respondent no.2.

4.2. Accordingly, *via* order dated 16.08.2021, the observations made in paragraph 2.1 of our order dated 10.08.2021, were corrected. The relevant part of our order dated 16.08.2021, whereby the correction was ordered is set forth hereinafter:-

“3.1. However, having examined the award closely, Mr. Sukhija is right to the extent that, a typographical error has crept in paragraph 2.1 of our order dated 10.08.2021. Paragraph 2.1, after necessary correction, shall read as follows.

“2.1. To be noted, the sum alluded to hereinabove, i.e., Rs.3,80,100/- was the sum, which was arrived at by respondent no. 2, in terms of paragraph 16 of the award dated 03.11.2016, passed by the concerned labour court, as noted in the impugned order dated 08.07.2021.”

3.2. Accordingly, paragraph 2.1 of our order dated 10.08.2021 shall stand corrected to the extent, as indicated above. The remaining parts of the said order shall remain unaltered.”

4.3. Since Mr Sukhija, on 16.08.2021, informed us that even if respondent no.2 were to succeed in the writ petition, pending before the learned single



judge, the amount of retrenchment compensation payable to her be equivalent to Rs. 2,03,320/- and not Rs. Rs.3,80,100/-, time was granted, via very same order, to counsel for respondent no.2 to take instructions vis-a-vis the calculations furnished by Mr Sukhija.

5. Thereafter, the matter was taken up on 26.08.2021, when counsel for respondent no.2 indicated to the Court that the appeal could be disposed of with a direction to the appellant to pay Rs. 2,03,320/- to respondent no.2, [i.e., the sum quantified by the appellant] against a solvent security furnished by respondent no.2, which would subsist during the pendency of the writ petition, to secure the interest of the appellant.

5.1. As a matter of fact, on that date i.e., 26.08.2021, Mr Sukhija had indicated to us that broadly, the appellant was agreeable to such a modality being followed for disposing of the appeal.

5.2. Accordingly, we had asked counsel for the parties to file an application under Order XXIII Rule 3 of Code of Civil Procedure, 1908 read with Section 151, for bringing the terms of the settlement on record. With this direction, the matter was posted on 06.09.2021.

6. On 06.09.2021, Mr Sukhija sought accommodation. At his request, the matter was adjourned to 29.09.2021. While doing so, we had indicated that the parties would bear in mind the directions contained in our order dated 26.08.2021, and, accordingly, file the appropriate application for disposal of the appeal, as indicated in the said order.

7. Thereafter the matter was taken up on 29.09.2021. Once again, on that date, accommodation was sought on behalf of Mr Sukhija on the ground that, he was unwell. Counsel for respondent no.2 indicated to us on that date that he would follow up with Mr Sukhija to have the application for disposal of the appeal, placed before us, which was, as indicated earlier, an



application for bringing on record the terms of settlement. It is in this direction that, the matter was directed to be posted on 09.12.2021.

8. On 09.12.2021, at the request of Mr Sukhija, the matter was listed for today, with a direction that the authorised representative of the appellant shall remain present on the next date of hearing i.e., today.

9. Today, Mr Sukhija, as would be evident, after 4 months, on instructions of the authorised representative i.e., Kumar Laxmikant, Assistant General Manager, says that, the appellant is not agreeable to an interim arrangement, whereby the quantified sum i.e., Rs. 2,03,320/- would be paid to respondent no.2, which, as indicated above, was to be secured by respondent no.2 by furnishing a solvent security.

9.1. Mr Sukhija says that the appellant is interested only in final settlement, and, in this behalf, has offered Rs. 1,00,000/- to respondent no.2, towards full and final settlement.

9.2. Mr Atul Nagarajan, who appears on behalf of the respondent no.2, says that, this figure is not acceptable to respondent no.2.

10. Given this position, we are of the view that, the best way forward is to set aside the interim order dated 08.07.2021, as the issues articulated in our order dated 10.08.2021 do not find a reflection in the interim order. The learned single judge has not stated, while passing the said interim order, that, in her view, respondent no.2 is *prima facie* a 'workman', within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947.

10.1. In our opinion, while passing the interim order, not only the balance of convenience and irreparable damage principle had to be kept in mind but also the learned single judge ought to have directed her attention to the aspect, as to whether a *prima facie* case was made out.

11. Therefore, as indicated above, the interim order dated 08.07.2021 is



set aside.

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11.1. The learned single Judge is requested to take up the writ petition for hearing at the earliest, as we are told that respondent no.2 is undergoing treatment for cancer.

11.2. We are also told that the date already fixed in the writ petition, is 30.03.2022. Given the circumstances that respondent no.2 is faced with, list the matter before learned single judge for directions on 25.01.2022.

12. Before we conclude, we must record our unhappiness in the way the appellant has proceeded in the matter. If the appellant was not willing to enter into an interim arrangement, it should have indicated to the court at the earliest and not wasted four months in taking the decision in the matter.

12.1. It seems incredulous that, while Mr Sukhija was taking a stand before us on behalf of the appellant on the interim arrangement that could be put in place, given the fact that respondent no.2 was undergoing treatment for cancer, the appellant had no clue about this.

13. The appeal is disposed on in the aforesaid terms.

14. Needless to add, nothing stated hereinabove will impact the merits of the case pending before the learned single judge.

14.1. Furthermore, the learned single judge will not permit the parties to seek adjournment, unless it becomes absolutely necessary.

15. The case file shall stand consigned to record.

RAJIV SHAKDHER, J

TALWANT SINGH, J

DECEMBER 16, 2021/nk

Click here to check corrigendum, if any