



2024:DHC:4654



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

% **Date of order: 31st May, 2024**

+ **W.P.(C) 3987/2015 & CM APPL. 1554/2018**

BIKRAM BHATTACHARJEE Petitioner

Through: **Mr. Tom Joseph and Ms. Arya
Krishnan, Advocates**

versus

M/S SINGER INDIA LTD. Respondent

Through: **Mr. Rakesh Kr. Khanna, Senior
Advocate with Mr. M.S. Nagar, Mr.
Mohit Nagar and Mr. Aditya P.
Khanna, Advocates**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition has been filed under Articles 226 and 227 of the Constitution of India on behalf of the petitioner seeking the following reliefs:

“a) Issue Appropriate Writ Order or Direction whereby quashing the impugned Award dated 04/03/2015 as passed by Shri. Sanjeev Kumar, Presiding Officer, Labour Court in Review Petition bearing No.: Misc.Appl.28/2014 under the provisions of the Industrial Disputes Act, 1947

b) Issue Appropriate Writ Order or Direction whereby quashing the impugned Award dated 26/08/2014 as passed by Shri. Sanjeev Kumar, Presiding Officer, Labour Court in LCA No. 59/2010 under the provisions of the Industrial Disputes Act,



1947. Pass such other and further Order/Orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

c) Pass such other and further Order/Orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The petitioner workman was appointed as Accounts Assistant on 11th October, 1989, with the respondent namely M/s Singer India Limited (hereinafter “SIL”).
3. The workman was terminated from service on 14th September, 1993, when he was allegedly prevented to report to duty *via* Transfer Letter dated 13th September, 1993.
4. The Conciliation Proceedings took place before the Conciliation Officer on 26th October, 1993. Appropriate Government made a reference for adjudication u/s 10(1)(c) and 12(5) of the Industrial Disputes Act, 1947, *vide* Order No. F.24(3972)/94-Lab on being satisfied of the existence of a dispute during the Conciliary Proceedings.
5. Learned Presiding Officer, Labour Court passed an award in favour of workman on 25th May, 2001, directing management to re-instate the workman with full back wages and continuity of service with consequential relief.
6. SIL Management appealed against the order in CWP No. 7137/2001 before the Hon'ble Delhi Court on 28th November, 2001. The Court granted *ex-parte* stay on the operation of the award.



2024:DHC:4654



7. An interim order was passed on 7th July, 2003, in CWP No. 7317/2001 whereby SIL was directed to reinstate the Workman from 1st August, 2003.
8. In May 2005, workman filed C.M. No. 6774/2005 in CWP No. 7137/2001 praying for a direction to SIL to pay workman commensurate with his nature of work.
9. The workman was retrenched by the management *via* letter dated 22nd September, 2005, on the ground that there is no “Assistant” in the Company.
10. The workman moved an Application C.M. No. 12358/2005 in CWP No. 7137/2001 for revoking the second retrenchment of the workman on the ground that he is entitled to post of Manager as consequential relief as Mr. Jai Kumar Seth, who is junior to the Petitioner, in terms of experience and qualification is a Manager in the Company.
11. An *ex-parte* stay was granted by the Hon’ble Delhi High against the retrenchment on 29th September, 2005.
12. SIL withdrew its appeal in CWP No. 7137/2001 on 30th April, 2009, with an undertaking that it would implement the complete Labour Court Award dated 25th May, 2001.
13. SIL Management sent a letter to the workman along with a cheque for Bank Wages, stating that they have implemented the Labour Court Award dated 26th May, 2001. However, since consequential relief was not provided, workman filed Contempt Petition CCC No. 494/2009 before the Hon’ble Delhi High Court on 26th May, 2009.
14. The Single Judge Bench of the Hon’ble Delhi High Court while disposing CCC No. 494/2009 observed that if workman is entitled to any



2024:DHC:4654



further consequential relief, the remedy for same is under Sec. 33C of the I.D. Act.

15. The workman filed an appeal against the Order of the Single Judge and it was dismissed on grounds of maintainability. A Special Leave Petition was filed against it before the Hon'ble Supreme Court of India and that too was dismissed.

16. SIL Management transferred the Workman to Guwahati on 15th June, 2009, at the position of "Assistant" with a *mala fide* intention as alleged by the petitioner.

17. The enquiry proceedings were initiated against the workman for disobeying the orders of the Management for not reporting at Guwahati on 5th September, 2009.

18. An application was filed u/s 33C(2) of the I.D. Act by the workman before the Labour Court for computation of consequential relief on 19th January, 2010. The Enquiry Officer found workman guilty of all charged levelled in the Charge Sheet on 25th July, 2013.

19. *Vide* its order dated 26th August, 2014, the Labour Court fixed 5% increment as consequential relief in an application filed u/s 33C(2) by the workman.

20. The workman filed a Review Petition bearing no. Misc. Appl. 28/2014 before the Labour Court on 19th April, 2014, thereby contending that there is error apparent on face of the record.



2024:DHC:4654



21. *Vide* order dated 4th March, 2015, the Labour Court dismissed the review petition stating that there is no error apparent on the face of the record and no procedural error.
22. Aggrieved by the impugned order dated 4th March, 2015, the petitioner has filed the present writ petition seeking setting aside of the same.
23. Learned counsel appearing on behalf of the petitioner submitted the impugned award is bad in law and is liable to be set aside as the same has been passed without taking into consideration the entire facts and circumstances of the case.
24. It is submitted that despite holding promotion to be a consequential relief, the Labour Court did not grant a promotion to the workman as there was no appraisal since he was out of service due to his alleged illegal termination by the SIL Management.
25. It is submitted that the learned Labour Court arbitrarily fixed 5% to be the rate of increment as consequential relief without any appraisal of the workman based on an unsigned Fact Sheet submitted by the Management to the Labour Court.
26. It is submitted that there has been a violation of the principles of natural justice as the learned Labour Court did not provide a copy of the unsigned and unofficial fact sheet to the petitioner workman, thereby depriving him of the opportunity to rebut its contents.
27. It is further submitted that the learned Labour Court was wrong in dismissing the review petition *vide* its order dated 4th March, 2015, on the



2024:DHC:4654



grounds of maintainability as it observed that there was no error on the face of the record/procedural error.

28. It is submitted that the learned Labour Court did not give reasons as to how the principles of natural justice were not violated as the fact sheet relied upon by the management was allegedly not supplied to the petitioner workman, therefore, there is clear violation of the said principles.

29. It is further submitted that the leaned Labour Court committed an error apparent on the face of the record by relying on an unsigned fact sheet of the management and arbitrarily fixing 5% increment as consequential relief without taking into consideration the compensation of those who joined later/are junior to the petitioner workman.

30. It is submitted that the learned Labour Court wrongly held that no service rules were produced in evidence by the workman as it is an internal and confidential document of the company and the onus to produce the same falls on the management.

31. It is submitted that the petitioner workman was illegally terminated from his services on 14th September, 1993, and the learned Labour Court ought to have considered that his performance was above average and that he was honest, sincere, and diligent in performing his duties.

32. It is submitted that the gross salary of the workman was wrongly calculated as per Award dated 26th August, 2015 and there is a shortfall in the amount paid to the workman.

33. It is further submitted that the management cannot take advantage of its own wrong by contending that the petitioner is not eligible for promotion



2024:DHC:4654



as the appraisal could not take place because the workman had been illegally terminated by the Management.

34. Therefore, in view of the foregoing submissions, the learned counsel appearing on behalf of the petitioner prays that the instant petition may be allowed and the relief as prayed may be granted.

35. *Per contra*, learned senior counsel appearing on behalf of the respondent company vehemently opposed the present writ petition submitting to the effect that the same is liable to be dismissed being devoid of any merits.

36. It is submitted that the petitioner withheld the information that the onus was on him to prove that he is an employee of the respondent company by summoning the relevant records.

37. It is submitted that the learned Labour Court was correct in dismissing the review petition bearing No. Misc. Appl. 28/2014 filed by the petitioner as the Labour Court lacks the power to review the matter on merits.

38. It is submitted that salary of two employees in the same company cannot be directly compared to claim promotion as a matter of right as there are differences with respect to service conditions, capability, skill, efficiency and performance.

39. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondent company prayed that the present petition, being devoid of any merit, may be dismissed.

40. Heard the learned counsel appearing on behalf of the parties and perused the material on record including the pleadings.



2024:DHC:4654



41. The case of the petitioner in the review petition filed before the Labour Court was that the total compensation arrived at after enhancing back pay by 5% annually from date of termination to reinstatement shows that the gross salary as per the Award is much higher than the actual gross salary paid by the management to the workman in the year 2003. Secondly, the respondent management tried to settle personal scores with the workman by not giving any consequential relief. Thirdly, the learned Labour Court ought to have summoned salary documents of certain other employees while fixing annual increment of the employee as the same has been done in an arbitrary manner.

42. On the basis of the rival submissions advanced before the Court, the limited question that arises for the consideration of this Court is whether the learned Labour Court was correct in dismissing the review petition filed by him on 4th March, 2015, against an order dated 26th August, 2014, citing its lack of jurisdiction.

43. However, before advertng to the merits of the matter, this Court deems it appropriate to peruse the impugned order and analyse findings arrived at by the Labour Court.

44. Upon referring to the settled position of law, the learned Labour Court *vide* its order dated 4th March, 2015, arrived at a finding that it does not have the jurisdiction to review the award unless there is some procedural error. The petitioner had failed to establish a procedural error apparent on the face of the record. The relevant paragraphs of the impugned order are as follows:



“10. Thus from the aforesaid judgement it is evident that there is no jurisdiction to this court to review the award unless there is some procedural error.

11. Now reverting back to the case, the applicant workman has failed to point out any procedural error in the judgement. He has mainly challenged the impugned order dt. 26.8.14 passed by this court on the ground that there is an error apparent on the face of the record. First error he pointed out is that his salary got reduced due to the relief of 5% increment every year granted by this court because management while reinstating him as given more salary. In my view this court is not concerned what salary management has fixed in the year 2003 as this court was only concerned what increment in salary workman was entitle as part of consequential relief for the intervening period of his termination and the date of award.

12. Further error he pointed out that this court should have summon the salary, income record of co-employee, Jai Kumar Seth, Madan Mohan Sharma and Jitender Singh Gill to determine the consequential relief. I have already given my finding that workman was not entitle to salary which have been granted to coworkman. Hence, there was no reason to summon the salary record of co-workmen. Similarly the other error pointed out by workman that is “admittedly workman is out of station of service during that period hence no appraisal can be done for that period in my view workman cannot claim promotion as given to co-employee Jai Kumar part of consequential relief” is also not an error on the face of the record but is a finding given on merit after considering the evidence produced by parties. I have held that workman is not entitle to promotion given to co-workman Jai Kumar Seth. Hence, in my view these error pointed out by the workman from the impugned order do not show any procedural error apparent on the face of the record or any procedural error. In my view what the applicant is seeking Hence in these circumstance, in my view the review application is not maintainable before this



court as the recall or review is sought by the workman is not a procedural review but a review on merits which is not permissible in the absence of any provision in the ID Act, 1947 which confer the power to review. Hence application has no merit and therefore same is hereby dismissed.”

45. Upon perusal of the above extracts of the impugned order, it can be observed that the petitioner workman had failed to establish any procedural error in the order dated 26th August, 2014. Additionally, it is apposite to note that the submissions concerning the alleged violation of principles of natural justice does not seem to have been advanced before the learned Labour Court in the review application and has been made before this Court only after the dismissal of the review application by the Labour Court.

46. Further perusal of the impugned order states that the petitioner has himself relied on the fact sheet supplied by the management to arrive at the cumulative figure due to him pursuant to the award. Hence, at this stage, the petitioner cannot now be allowed to claim that the same document was never supplied to him.

47. In this backdrop, this Court is of the view that the contention of the petitioner regarding error made by the learned Labour Court in non-appreciation of the fact that the non-supplying of the fact sheet by the management to the workman being violative of the principles of natural justice is not tenable because it was not a proceeding in the nature of an enquiry wherein the guilt of the workman had to be ascertained. It was a Section 33C(2) proceeding whereby the Court had to merely compute the benefit due to the workman pursuant to the award dated 25th May, 2001.



48. With regard to the power of review/recall afforded to a Labour Court, the Hon'ble Supreme Court in ***Kapra Mazdoor Ekta . v. Birla Cotton Spg. and Wvg. Mills Ltd., (2005) 13 SCC 777*** has held that a review on merits is not permissible under the I.D. Act in the absence of a provision in the Act conferring the power of review on the Tribunal either expressly or by necessary implication. The relevant paragraph is reproduced herewith for reference:

“19. Applying these principles it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite



party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal [1980 Supp SCC 420 : 1981 SCC (L&S) 309] it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again.”

49. The Labour Court, therefore, was correct in not venturing into the merits of the matter due to the absence of a conferring provision in the Act.

50. It has been held in ***Iswaral Mohanlal Thakkar v. Paschim Gujarat Vij Co. Ltd., (2014) 6 SCC 434*** that the High Court cannot exercise its writ jurisdiction to sit as an Appellate Court or re-appreciate evidence and record its findings on contentious points. The order of the Court below can be quashed only if there is an error apparent on record.

51. In light of the foregoing discussions on facts as well as law, this Court does not find any infirmity in the impugned award dated 4th March, 2015, passed by the Presiding Officer, Labour Court, Karkardooma Courts, Delhi as the same does not suffer from any illegality and there is no error apparent on the face of record to justify the interference of this Court under its writ jurisdiction.



2024:DHC:4654



52. Accordingly, the instant writ petition is dismissed along with the pending applications, if any.

53. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 31, 2024
GS/AV/RYP

Click here to check corrigendum, if any