

(2011) 04 DEL CK 0276

Delhi High Court

Case No: Writ Petition (C) 6604 of 2001

Workman Sh. Mohan Ram
(Deceased) through legal heirs

APPELLANT

Vs

Universal Ferro and Allied
Chemicals Ltd. and Others

RESPONDENT

Date of Decision: April 18, 2011

Acts Referred:

- Industrial Disputes Act, 1947 - Section 25F

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Baburao Pakhidey and Vikas Pakhidey, for the Appellant; Siddharth Dias, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.

The Petitioner workman impugns the award dated 8th June, 2001 of the Labour Court.

2. Though on the last date, the counsel for the Respondent employer had sought to withdraw from the matter on the ground that he was not receiving instructions and the matter was adjourned to enable the counsel for the Respondent employer to issue proper notice to the Respondent employer and file an application seeking discharge but today the counsel for the Respondent employer states that he has since received instructions.

3. Upon being called upon to argue the matter, the counsel for the Respondent employer sought adjournment to file documents stated to be forming part of the Labour Court record. The Labour Court record has not been requisitioned in this Court till now. It is not deemed expedient to adjourn the matter after it has remained pending in this Court for the last ten years and particularly when the Respondent employer has had an opportunity to in the said time either seek

requisitioning of the Labour Court record or to file documents forming part thereof.

4. The counsels have been heard.

5. The Petitioner workman was admittedly employed as a Driver with the Respondent employer with effect from 1st August, 1978 and till 31st July, 1987 when according to the Petitioner workman, his services were illegally terminated and when according to the Respondent employer he was retrenched in accordance with law. Reference of the dispute as to the legality/justification of the termination of services of the Petitioner workman was made to the Labour Court on 3rd March, 1988. The Respondent employer was proceeded against ex parte before the Labour Court and an ex parte award dated 9th March, 1993 in favour of the Petitioner workman and against the Respondent employer, of reinstatement with full back wages and continuity of services was published.

6. The Respondent employer applied to the Labour Court for setting aside of the ex parte award and the same was allowed on 22nd October, 1994.

7. It was thereafter that the award dated 8th June, 2001 impugned in this petition was published. The Labour Court has disbelieved the version of the Respondent employer of having complied with Section 25F of the Industrial Disputes Act, 1947 and accordingly rejected the plea of the Respondent employer of retrenchment.

8. However, since the Petitioner workman had died on 30th May, 2001 (as confirmed by both the counsels) i.e. shortly prior to the pronouncement of the award, the Labour Court granted the relief to the legal heirs of the Petitioner workman of payment of Rs. 30,000/- only as compensation besides the amount of Rs. 51,525/- recovered by the Petitioner workman in enforcement of the ex parte award (supra). Both counsels confirm that the said amount of Rs. 51,525/- represented the emoluments due to the Petitioner workman under the ex parte award from the date of termination till the date of that award.

9. The contention of the counsel for the Petitioner workman is that the award of Rs. 30,000/- only is perverse once the reference otherwise was decided in favour of the Petitioner workman. It is contended that even if the minimum wages as payable to a Driver for the period from 1993 i.e. the date of the ex parte award and till the date of demise of the workman on 30th May, 2001 had been computed, a sum of approximately Rs. 2,84,000/- was due to the Petitioner workman.

10. The counsel for the Petitioner workman in this regard relies on [Gammon India Limited Vs. Niranjan Dass,](#)

11. The counsel for the Petitioner workman has further contended that the Respondent employer though did not challenge the award dated 8th June, 2001 but did not pay the amount of Rs. 30,000/- awarded there under also to the legal heirs of the Petitioner workman and the said amount was finally paid under directions of this Court only on 24th October, 2008 i.e. after more than seven years of the date of

the award.

12. The counsel for the Respondent employer has contended that the retrenchment was in order; that the Respondent employer had two vehicles and was employing two Drivers and both Drivers were retrenched and no dispute was raised by the other Driver. The counsel for the Respondent employer as aforesaid had sought time to produce the documents, of closure of the undertaking of the Respondent employer at Delhi stated to have been filed before the Labour Court. He was however permitted to hand over in the Court his file stated to be containing the said documents. However, perusal of the said file did not disclose any document which would show closure of the undertaking of the Respondent employer at Delhi at the contemporaneous time. The counsel also admitted so and states that the undertaking was closed subsequently but is unable to give the date thereof. He also states that since then the Bombay office of the Respondent employer is also shut down and all operations of the Respondent employer have come to a close.

13. A perusal of the counter affidavit of the Respondent employer however shows that the closure is stated to be with effect from 19th August, 2006 i.e. much after the date of the award and demise of the Petitioner workman. It thus cannot have any bearing on the matter in controversy.

14. The finding of the Labour Court of the Respondent employer having not complied with the provisions of Section 25F of the Act and having not paid or tendered the retrenchment compensation to the Petitioner workman prior to or simultaneously with the retrenchment is a finding of fact and which would ordinarily be not disturbed in exercise of power of judicial review. The counsel for the Respondent employer is unable to show any perversity in the said finding. He only contends that the Petitioner workman had refused the retrenchment compensation. There is however nothing to show such refusal having been proved before the Labour Court or having not been considered by the Labour Court. Though the counsel for the Petitioner workman from his own file has invited attention to a copy of the letter dated 7th August, 1987 stated to have been sent to the Petitioner workman but the same is only a reply to the letter dated 4th August, 1987 of the Petitioner workman and though records that earlier a letter dated 31st July, 1987 was sent to the Petitioner workman at three addresses but records that the letter sent to the two addresses including the cheque was returned with the endorsement "refused", nothing is stated therein as to whether the cheque was delivered at the third address or not. The argument urged now is not borne out from the copy of the letter dated 7th August, 1987 shown to this Court.

15. Once the Labour Court has found the termination of the services of the Petitioner workman to be illegal, it is not understandable as to how the amount of Rs. 30,000/- only was computed. Ordinarily upon the termination being held illegal, the Petitioner workman would have been entitled to the relief of reinstatement with back wages and which according to the Petitioner workman and which is not

disputed by the Respondent employer at the rate of minimum wages would have been in the sum of Rs. 2,84,000/-. Even if compensation in lieu of reinstatement were to be ordered, the same was also required to have a bearing to the relief of reinstatement and cannot be arbitrary.

16. The counsel for the Respondent employer has argued that the Petitioner all this while had not worked for the Respondent employer and thus is not entitled to the full wages to which he would have been entitled.

17. Considering all the aforesaid aspects, it is deemed expedient to modify the award by directing the Respondent employer to pay a further sum of Rs. 1,00,000/- to the legal heirs of the Petitioner workman. On enquiry, it is informed that the widow of the Petitioner workman is alive. The said amount of Rs. 1,00,000/- be paid by demand draft in the name of the widow within four weeks of today failing which the same besides the other remedies of the Petitioner workman shall also incur interest at the rate of 10% per annum.

Further compensation having been awarded, no order as to costs.