(2011) 05 DEL CK 0422

Delhi High Court

Case No: Writ Petition (C) 17434-35 of 2006

Shankar Dass and Another	APPELLANT
Vs	
Pratap International P. Ltd.	RESPONDENT

Date of Decision: May 27, 2011

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10, 25F

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: K.B. Hina, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Rajiv Sahai Endlaw, J.

CM No. 7765/2011 (for exemption).

1. Allowed, subject to just exceptions.

CM No. 7756-57/2011 (for restoration of the writ petition dismissed for non-prosecution on 25th March, 2010 and for condonation of 414 days delay in applying therefor).

2. The Respondent employer had not appeared inspite of the notice of the writ petition and the writ petition was being listed for hearing the counsel for the Petitioner only when it was dismissed for non-prosecution on 25th March, 2010. In the circumstances, need is not felt to issue notice of these applications to the Respondent employer.

3. However, it is found that even though the matter was listed before this Court on 2nd September, 2008 after the Respondent had failed to appear but the Petitioners did not argue the writ petition and sought as many as seven adjournments for

arguing on the writ petition and ultimately the writ petition was dismissed for non-prosecution as aforesaid. Though the said conduct of the Petitioners itself disentitles the Petitioners from any indulgence but to satisfy the judicial conscience, the paper book has been perused and the counsel for the Petitioners has been heard on the writ petition also.

4. Accordingly these applications are allowed.

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5. The two Petitioners preferred this writ petition impugning the award dated 21st February, 2006 of the Industrial Adjudicator denying any relief whatsoever to the Petitioners. The reference u/s 10 of the I.D. Act to the Industrial Adjudicator was made, of the dispute raised by as many as 61 workmen claiming to be employees of the Respondent and of M/s Guru Hair Enterprises (which has not been impleaded as a Respondent herein), as to the validity and legality of the termination of their employment. The Industrial Adjudicator has recorded in the award, that notwithstanding the issues framed as to the relationship of employer-employee, service of notice u/s 25F of the ID Act, the employment having come to an end automatically and other issues requiring each workman to lead evidence, only eleven workmen filed affidavits by way of evidence and only six appeared to tender the affidavits into evidence and to offer themselves for cross examination. The Industrial Adjudicator accordingly vide a well reasoned detailed award has granted relief to only such of the six workmen who were able to prove their case and has denied the relief to the others. The two Petitioners herein did not file any affidavits by way of evidence and did not even offer to lead any evidence.

6. In the circumstances, it has been enquired from the counsel for the Petitioners as to what can be said to be the error in the award requiring judicial review.

7. The contention of the counsel for the Petitioners is twofold. Firstly, it is stated that the Petitioners had in fact filed their affidavits. Secondly, it is contended that the Petitioners were attending each and every hearing and were advised that each of the workman was not required to file an affidavit and affidavits into evidence of some of them alone will suffice.

8. As far as the first of the aforesaid contentions is concerned, it is not even pleaded by the Petitioners in the writ petition that they have filed their affidavits nor have any such affidavits been filed before this Court. The counsel for the Petitioners however from an order during the proceedings before the Industrial Adjudicator, in her own file, states that permission was granted to file other affidavits also. It is not stated even now that the affidavits were so filed. Thus, such a contention cannot be considered.

9. As far as the second contention is concerned, even if it is to be believed that the Petitioners were appearing before the Industrial Tribunal, so long as they did not

prove their case, the same would be irrelevant. The counsel for the Petitioners has also argued that the dispute was raised by the 61 workmen through the union. Though union has been held to be entitled to raise the dispute but if the dispute requires evidence of individual workmen then in the absence of such evidence, no error can be found with the award in declining the relief of such of the workmen who failed to prove their case.

10. I have enquired from the counsel for the Petitioners whether any of the other workmen to whom also the relief has been declined or whether the Respondent employer against whom award qua six workmen has been made, have preferred any challenge to the award. The answer is in the negative.

11. No case for interference with the award is made out. The writ petition is dismissed. No order as to costs.