
(2013) 07 DEL CK 0618

Delhi High Court

Case No: LPA 182 of 2013

Shri Romi Sharma and
Others

APPELLANT

Vs

The Management of
Hotel the Oberoi

RESPONDENT

Date of Decision: July 9, 2013

Acts Referred:

- Industrial Disputes Act, 1947 - Section 33A

Hon'ble Judges: Badar Durrez Ahmed, Acting C.J.; Vibhu Bakhru, J

Bench: Division Bench

Advocate: H.K. Chaturvedi with Ms. Anjali Chaturvedi and Mohd. Aqil Saifi, for the Appellant;
Parag P. Tripathi with Mr. Jayant K. Mehta and Mr. Sukant Vikram, for the Respondent

Final Decision: Dismissed

Judgement

Badar Durrez Ahmed, Actg. C.J.

1. This appeal is directed against the order dated 13.02.2013 passed by the learned Single Judge of this Court whereby the appellants' writ petition being W.P. (C) No. 9748-9750/2006 was dismissed. The appellant has challenged the orders dated 02.12.2000 and 03.07.2001 passed by the Industrial Tribunal. At the outset, Mr. Parag Tripathi, learned counsel appearing on behalf of the respondent submitted that the present appeal ought not to be entertained because the appellants had suppressed the fact that an earlier writ petition being W.P. (C) No. 3115/1998, filed by the appellants had been dismissed by a learned Single Judge of this Court on 05.07.2004 along with the connected writ petitions filed on behalf of the management being W.P. (C) No. 4361/1997 & 2736/1998. In the order passed on 05.07.2004, the learned Single Judge had observed as under:-

82. Issue could be looked at from another angle. The workmen had filed an application u/s 33A of the ID Act 1947. The Tribunal adjudicated upon the merits of the dismissal of the workmen and held in favour of the management. Vide order dated 2.1.2000, merits of the inquiry as well as dismissal order was upheld. Vide order date 3.7.2001, application of the workmen u/s 33A was dismissed. The two orders dated 2.12.2000 and 3.7.2001 have attained finality. The workmen have not challenged the same. Consequences must flow. Res judicata applies to case of Industrial Law. See [Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another](#), : [The Punjab Co-operative Bank Ltd. Vs. R.S. Bhatia \(Dead\) through Lrs.](#), and 1993 II L.L.J. 60 (P & H), The Punjab State Co-operative Bank Ltd. vs. Presiding Officer.

83. The workmen, under the circumstances cannot seek any relief in view of the judgment of the Supreme Court on which they relied, being the decision reported as [Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others](#), . Had the workmen not filed an application u/s 33A of the I.D. Act 1947 or had the same not been dismissed, issue would have to be determined in the light of the decision of the Supreme Court in Jaipur Zilla Sahakari Bhandar (supra) but having exercised their right by invoking Section 33A and having failed therein, the order against them not having been challenged, workmen would not be entitled to any relief as prayed for by and under W.P. (C) No. 3115/1998.

84. A declaration is accordingly issued that the dismissal of the workmen is legal, valid and has attained finality.

85. W.P. (C) NO. 3115/1998 filed by the workmen is dismissed W.P. (C) No. 4361/1997 and W.P. (C) No. 2736/1998 are allowed as per the direction in para 59 and 81 above. No costs.

(Emphasis supplied)

2. It will be seen from the above that a clear finding was returned by the learned Single Judge that the orders dated 02.12.2000 and 03.07.2001 (which are the subject matter of challenge in the present proceedings), had already attained finality on the date when the learned Single Judge delivered the judgment in, inter-alia, W.P. (C) No. 3115/1998 on 05.07.2004. It will also be seen from the above extract that the learned Single Judge declared that the dismissal of the workmen was legally valid and had attained finality. This would be apparent from paragraph 84 mentioned in the above extract.

3. It is also necessary to note that the appellants being aggrieved by the said decision dated 05.07.2004 had preferred a Letters Patent Appeal before a Division Bench of this Court. That Letters Patent Appeal (LPA No. 885/2004) was also dismissed by the Division Bench of this Court by a detailed judgment delivered on 19.11.2005. Thereafter, a review petition being RP No. 66/2006 was filed on behalf of the petitioners which was also rejected by the Division Bench on 10.02.2006.

4. It is evident that the issue with regard to dismissal of the workmen had attained finality by virtue of those decisions. However, the appellants filed another writ petition being W.P. (C) No. 9748-9750/2006 shortly after the rejection of the review petition. In fact the review petition was rejected on 10.02.2006 and the said writ petition was filed on 29.03.2006, a little over a month later. In that writ petition, the petitioners (appellants herein) did not make any mention of the earlier writ petition being W.P. (C) No. 3115/1998 which had been filed by them and which had been dismissed by the learned Single Judge by virtue of the order dated 05.07.2004. No mention was made of the LPA No. 885/2004, nor of the review petition No. 66/2006. There was only a stray reference to the writ petitions which had been filed on behalf of the management.

5. We are, therefore, of the view that apart from the fact that the matter had attained finality and cannot be reopened, the present appeal deserves to be dismissed also on the ground that the appellants had suppressed the factum of the filing of the earlier petition being W.P. (C) No. 3115/1998 and the orders passed by thereon as also in the subsequent LPA No. 885/2004 and RP No. 66/2006. For these reasons, we are not entertaining this appeal and are dismissing the same.