(2011) 03 DEL CK 0455

Delhi High Court

Case No: LPA No. 631 of 2008

Shri Mohar Singh		APPELLANT
	Vs	
Richa and Company		RESPONDENT

Date of Decision: March 23, 2011

Acts Referred:

- Factories Act, 1948 - Section 51
- Industrial Disputes Act, 1947 - Section 33, 33(1), 33(2), 33A

Hon'ble Judges: Dipak Misra, C.J; Sanjiv Khanna, J

Bench: Division Bench

Advocate: Ashok Agarwal, Aurobindo Ghose and Anuj Agarwal, for the Appellant; Raavi Birbal, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. In this batch of intra-Court appeals, the assail is to the order dated 12.9.2008 passed by the learned Single Judge in M/s. Richa & Company v. Shri Suresh Chand [W.P.(C) No. 10744/2006] and other connected matters whereby the learned Single Judge has dislodged the award dated 22.12.2005 passed in the applications filed by the workmen u/s 33A of the Industrial Disputes Act, 1948 (for brevity "the Act") whereby the Industrial Tribunal-II, Delhi (for short "the tribunal") has directed the management to fix the duty hours of the workmen from 9.30 am to 6.00 pm which was prevalent prior to 1.7.2002.

2. Sans unnecessary details, the facts which are essential to be stated are that during the pendency of a dispute raised by the workers union regarding annual increment, transport allowance, summer and winter uniform and enhancement in tea allowance, the Respondent-management changed the working hours from 9.30 am to 6.15 pm instead of 9.30 am to 6.00 pm which included a tea break from 4.00 pm to 4.15 pm. As the working hours were changed, a complaint was filed by the union of the workmen, which was not

entertained by the tribunal vide order dated 7.2.2004 holding that the application of the union u/s 33A of the Act was not maintainable. Thereafter, the Appellants - workmen filed separate complaints seeking similar relief contending that during the pendency of the reference, the terms and conditions of service could not have been altered. The said applications were resisted by the management on the foundation that the change of working hours was not connected with the reference in question and the provisions of Section 33A of the Act were not attracted. The tribunal by the award dated 22.12.2005 expressed the view that there was a change in the conditions of service of the employees and accordingly directed the management to maintain the working hours which were prevalent before the disputes arose.

3. Being aggrieved by the aforesaid award, a number of writ petitions were filed by the management. Before the writ court, it was contended that there was no nexus between the subject matters of the reference that was pending between the workmen of the union and the management, and there was basically no alteration of service condition. It was also contended that the Factories Act permitted the management to take work from a workman, 8 hours a day and 48 hours a week and, hence, there is no statutory violation of the working hours. The learned Single Judge after referring to various decisions came to hold as follows:

20. Therefore, it is apparent that the disputes pending before the Tribunal pertaining to annual increment, transport allowance, summer and winter uniforms and enhancement of tea allowance etc. was not connected to dispute about increase of the working hours. From the aforesaid it is clear that there is no violation of Section 33(1)(a) of the Industrial Disputes Act as the subject matter involved regarding the timings of the workmen is different from the subject matter of reference.

21. It is also apparent that there is no violation of Section 33(1)(b) of the Industrial Disputes Act as the same relates to discharge or punishment and none of the Respondents in the petitions have been either discharged or punished. The increase of working hours from 9.30 AM to 6 PM to 9.30 AM to 6.15 AM is also in compliance with Section 51 of the Factories Act, 1948 which contemplates and mandates that working hours in a factory shall not be more than 48 hours in a week. Consequently, there is no violation of Section 33(2)(a) of the Industrial Disputes Act which clearly states that "the employer may in accordance with the standing orders applicable to a workman concerned in such dispute (or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman) after, in regard to any matter not connected with the dispute, the conditions or service applicable to that workman immediately before the commencement of such proceeding.

22. The Petitioner, therefore, has changed the timing of working of the Respondents from 9.30 AM to 6.15 PM in accordance with the Factories Act according to which a workman can be made to work up to 48 hours in a week. The Respondents in their counter affidavits have not denied or disputed that they are bound to work 8 hours a day and 48

hours a week. It is not disputed that the Respondents are paid emoluments according to the work done by them. The only objection of the Respondents in various writ petitions is that the Petitioner could not change the working hours without obtaining permission from the concerned authority / Tribunal as earlier the Respondents were made to work for 7 hours and 45 minutes as a day whereas the salary was paid to them for 8 hours and on revision of working time from 9.30 AM to 6 PM to 9.30 AM to 6.15 PM they are working for 8 hours for which the salaries are paid to them.

4. Being of this view, the learned Single Judge set aside the award passed by the tribunal. At this juncture, we may note with profit what has been held by the tribunal. The tribunal referred to an appointment letter Ex.CW1/1 issued by the management on 1.10.1993 conveying the duty timing by 9.30 am to 6 pm and opined that there was a material change in the conditions of service of the employees. Thereafter, the tribunal has opined thus:

14. Clause (a) of Sub-section (2) of Section 33 of the ID Act permits the employer to alter the conditions of service applicable to a workman immediately before the commencement of such proceeding, during the pendency of any proceeding before the Labour Court or Tribunal etc in respect of an industrial dispute in regard to any matter not connected with such dispute in accordance with the standing orders applicable to a workman concerned in such dispute and in the absence of the standing orders, in accordance with the terms of the contract whether express or implied without any permission or approval of such authority. The management therefore was required to show that they have altered the conditions of service applicable to the workman immediately before the commencement of ID No. 22/98 in accordance with the standing orders and if there are no such standing orders the same was done in accordance with the terms of the contract whether express or implied between them and the workman. The management has miserably failed to show the same. No standing orders have been relied upon / shown under which the conditions of service regarding the changed timings have been altered by the management nor they could show any contract whether express or implied whereby they have changed the service conditions of the workman applicable to him immediately before the commencement of ID No. 22/98 pending in this Court. In fact workman has been able to show from his appointment letter that his duty hours were from 9.30 AM to 6.00 PM. Thus by changing the duty hours from 9.30 AM to 6.00 PM to 9.30 AM to 6.15 PM, the management has altered the conditions of service which were applicable to the workman immediately before the commencement of the ID No. 22/98 and as such they have violated the provision of Section 33 of ID Act.

5. We have heard Mr. Ashok Agarwal, learned Counsel for the Appellants and Ms. Raavi Birbal, learned Counsel for the Respondent.

6. Learned Counsel for the Appellants submitted that the order passed by the tribunal should not have been interfered with by the learned Single Judge by opining that there has been no change of service conditions, as by the order of appointment, a concession

was given and there was no stipulation that the management could enhance the working hours. It is urged by him that when the dispute is pending with regard to service conditions, the service conditions could not have been changed and, therefore, there could not be any alteration of the working hours. Learned Counsel would further submit that the Appellants were entitled to get overtime pay.

7. To bolster his submissions, learned Counsel for the Appellant has relied on the decisions rendered in Indian Oxygen Ltd. Vs. Their Workmen, Workmen v. Calcutta Electric Supply and Ors., (1974) 3 SCC 193 Life Insurance Corporation of India Vs. D.J. Bahadur and Others, and Hindustan Lever Ltd. Vs. Ram Mohan Ray and Others, .

8. Ms. Raavi Birbal, learned Counsel for the Respondent, per-contra, submitted that the order of the learned Single Judge is absolutely justified in holding, inter alia, that the dispute pending before the tribunal was not concerned about the increase of working hours and, hence, there was no violation of Section 33(1)(a) of the Act as the matter involved related to working hours of the workmen, which was different from the subject matter of reference. It is also urged by her that earlier there was no tea break but to allow the tea break, time was enhanced. It is urged by her that Section 33(2)(a) is attracted as there is a model standing order in force. Learned Counsel has commended us to the decisions in Orissa Oil India Mazdoor Union and Ors. v. UOI, 1990 LAB I.C. 1146, The Lord Krishna Textile Mills Vs. Its Workmen, and Management of May and Baker (India) Ltd. Vs. Their Workmen, .

9. To appreciate the submissions raised at the Bar, we have carefully perused the award passed by the tribunal and the order passed by the learned Single Judge in the writ petitions. In fact, for the sake of clarity and convenience, we have reproduced the relevant paragraphs in extenso. As the controversy gets projected, it is clearly vivid that the management has taken recourse to Section 33(2)(a) of the Act. Therefore, we reproduce Section 33(2) in entirety:

33(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute or, where there are no such standing order, in accordance with the terms of the contract, whether express or implied, between him and the workman -

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or (b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

10. On a perusal of the said provision, it is quite clear that there can be an alteration of service conditions if it is in accord or consonance with the standing order, in regard to any matter not connected with the dispute, immediately before the commencement of such proceeding or in the absence of a standing order, in accordance with the terms of the contract, whether express or implied, between the management and the workmen. To elaborate, if there is a settlement between the management and the workmen, it has the status of a binding contract and relying on the same the conditions of service can be altered, which are not connected with the dispute. In the present case, the tribunal has opined that no standing order was produced. The learned Single Judge, as is manifest from the order, has come to hold that the subject matter does not involve timings of the workmen. It is evident from the language employed in the Act u/s 33(2)(a) that the change can only take place if there is a standing order in force or a contract express or implied. Ms. Raavi Birbal would submit there is a model standing order. Learned Counsel also submits that there is stipulation in the letters of appointment that there could be change. It is also her further submission that even if the standing order of the company is not there, the model standing order would come to aid of the management. As these aspects have not been dealt with either by the tribunal or by the learned Single Judge, we think it appropriate to set aside the award as well as the order by the writ court which has reversed the award and remit the matter to the tribunal to deal with this lis, from these spectrums so that the controversy can be put to rest. It be clarified that the parties are at liberty to adduce fresh evidence and advance all their contentions as available to them under law.

11. In the result, the appeals are allowed to the extent indicated hereinabove. There shall be no order as to costs.