

## **Delhi Cloth And General Mills Ltd. vs Shambhu Nath Mukherjee on 28 September, 1984**

**Equivalent citations: AIR1985SC141, [1985(50)FLR89], (1985)ILLJ36SC, 1984(2)SCALE586, 1984SUPP(1)SCC534, 1985(17)UJ69(SC), AIR 1985 SUPREME COURT 141, 1984 LAB. I. C. 1743, 1985 UJ (SC) 69, 1984 SCC (SUPP) 534, (1985) 50 FACLR 89, (1985) 1 LABLJ 36, 1985 SCC (L&S) 249, (1985) 27 DLT 60, (1985) 1 LAB LN 1**

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**Bench: D.A. Desai, Ranganath Misra**

ORDER

D.A. Desai, J.

1. Deceased Shambhu Nath Mukherjee ('workman' for short) was serving with the appellant-The Delhi Cloth & General Mills Ltd. ('employer' for short). By its letter dated January 19, 1966 the employer informed the workman that his name has been struck off the rolls under the provisions of the relevant Standing Order with effect from August 24, 1965. There commenced the tragic tale of the unmerited suffering and paralysing woes of the workman who ultimately in his quest of illusory justice paid the supreme sacrifice of life and alas he is no more.

2. The workman raised an industrial dispute questioning the termination of his services in the manner done by the employer. Conciliation proceedings having failed, an industrial dispute was referred to the Labour Court for its resolution. Worn out stalling tactics to tire out an employed workman surfaced in the initial stages of the proceedings before the Labour Court. On a contention raised by the employer, an issue was framed : "Whether the dispute is an industrial dispute and whether the reference is bad". The Labour Court answered the preliminary issue in favour of the workman and against the employer, observing that in view of the provision contained in Section 2A of the Industrial Disputes Act, 1947 any dispute regarding discharge, dismissal or retrenchment or termination of service of even an individual workman, even if not espoused by a union, amounts to an industrial dispute and therefore, the reference was valid. The Labour Court further held that the termination of service sought to be brought about by striking off the name of the workman from the roll of the employer is illegal and invalid. Consequently, the workman was required to be reinstated. The employer filed a writ petition in the Delhi High Court inter alia questioning the constitutional validity of Section 2A. The challenge was to camouflage to iron the entrance door because the same was not pressed at the stage of hearing. After an unsuccessful appeal under the Letters Patent, the matter was brought to this Court by a certificate granted by the High Court. This Court by its

decision reported in Delhi Cloth & General Mills Ltd. v. Shambhu Nath Mukherjee and Ors. rejected all the contentions on behalf of the employer and confirmed the award of the Labour Court. In implementation of the award, the employer had to reinstate the workman in service. As the appellant did not implement the award, the present civil miscellaneous petition was filed by the workman for appropriate orders.

3. Upon a notice of the petition being served upon the appellant, a long counter-affidavit was filed raising numerous contentions, but the one which must engage the attention of this Court is that the respondent could not be physically reinstated in service as he would have retired on superannuation from the service of the employer on October 27, 1972. The respondent countered saying that there was no rule or standing order prescribing the age of superannuation for the workman of the appellant. On January 27, 1981 a direction was given by this Court that the employer shall deposit in this Court within a fortnight the amount covering the dues payable to the workman with interest @ 9% consequent upon the order of reinstatement made by this Court. In compliance with this order, a statement was filed by Mr. S.C. Malik, learned advocate for the appellant that the appellant has deposited Rs. 46,151. 60p with the Registry of the Supreme Court and he went on the record to state that the appellant has no objection to the court permitting the respondent-workman to withdraw this amount without giving any security. The Court so directed but it is sad to state that the workman had developed such a psychosis and a terrible credibility gap that he declined to withdraw the amount till his all contentions were disposed of by the court. He failed to avail of the services of the senior Counsel whose services were made available to the workman at the instance of the Supreme Court Legal Aid Committee. Our agony and distress is reflected in the order made by us on August 7, 1971.

4. The difficulty in disposing of all the contentions of the workman by this Court became almost intractable because the respondent would not avail of the services of a senior Counsel and he had unfortunately become stone deaf and no dialogue with him was possible. Ultimately, a way out of the impasse was found. The Court framed the following two issues and remitted the reference to the Labour Court. They read as under :

1. Whether the appellant proves to the satisfaction of the Labour Court that there is a valid rule of retirement on superannuation at the age of 58 years for the employees of the category to which the respondent belonged ?
2. If issue No. 1 is answered in the affirmative, what amount including wages and all other benefits such as bonus etc. as if he is in service, the appellant is liable to pay to the respondent from the date of termination of service on August 24, 1965, till the date of his superannuation.

The Labour Court was directed to permit both the parties to lead evidence and certify its findings to this Court.

5. The Labour Court after a meticulous examination of the evidence led before it, recorded its finding in the negative on the first issue against the employer holding that there was no valid rule of

retirement on superannuation at the age of 58 years in respect of the category of employees to which the respondent belonged. Consequently, no finding was necessary on the second issue.

6. In the meantime the respondent had taken out a petition for taking action in contempt against the appellant. The matter was listed with the report of the Labour Court. The employer filed his objections controverting the findings recorded by the Labour Court. Unfortunately, the matter could not be listed for some time. The respondent workman was ill and unable to attend the court and he insisted on personally arguing his matter. Ultimately, a telegram was received by the Registry that the respondent workman had died on May 30, 1984. This information was conveyed by a telegram followed by a letter by Mrs. Durga Mukherjee, widow of the workman. This is the tragic end of a frustrating prolix court proceeding involving the workman in search of social justice and who had been able once to convince the apex court that the termination of his service was wholly illegal. We must record our grave apprehension that if industrial disputes are not resolved expeditiously and proceed along the beaten track like the un-ending civil suits before long the labour jurisprudence devised to ensure peace and harmony in industry would lose entirely its credibility and a frightening situation may emerge where people would move away from the talking table to direct action.

7. In any event physical reinstatement has been made impossible by the passing away of the workman.

8. The question is what relief we should give to the workman ? Before we proceed to examine the relative merits of the contention, let it be made distinctly clear that the amount of Rs. 46,151. 60p deposited by the appellant under the orders of this Court was sent by a demand draft to the widow of the late workman. She also appeared to be hesitant to receive the amount. Mr. Vimal Dave, learned Counsel appeared for her after she was substituted as an heir and legal representative and he assured us that the demand draft would be encashed. We now proceed to dispose of the remaining contentions raised on behalf of the employer.

9. Mr. Thadani, learned Counsel appearing for the appellant under the directions of this Court proceeded to compute the monetary benefits admissible to the deceased workman on the footing that he would have retired at the age of 65 years. On the other hand, Mr. Vimal Dave, learned Counsel for the widow of the late workman pointed out that once the finding of the Labour Court is accepted that there was no valid rule of service prescribing retirement by superannuation at the age of 58 years, the employer was bound to physically reinstate the respondent-workman in service and he would have been entitled to serve till the date of his death.

10. Having regard to the circumstances of the case, it is not necessary to decide the contention whether there was any valid rule of retirement applicable to the deceased workman. The Labour Court recorded a finding that there was no such rule. Mr. Thadani wanted to persuade us to reject this finding of the Labour Court on the ground that it is not the question of one workman but it might affect service conditions in relation to many other workmen and may make the task of the employer very difficult. We see some force in this submission. However, we want to confine the finding of the Labour Court to the facts of this case alone and not as a precedent that as far as the deceased workman was concerned there was no rule under which he could have retired on

superannuation at the age of 58 years. Accordingly, he must be paid his wages till the date of his death. We accept this submission. The calculations made by Mr. Vimal Dave on this basis is that the appellant would be liable to pay Rs. 1,00,663. 84p to the workman on the assumption that he would have served till the date of his death. For the purpose of this petition the payment may be treated as ex-gratia. Keeping open the contention of the appellant to be urged in an appropriate case, we direct that the appellant shall pay Rs. 1,10,000/- over and above the amount of Rs. 46,151.60p already paid to the workman. The appellant shall pay an amount of Rs. 1,10,000/- including costs to the widow of the deceased workman within a period of four weeks from today. The amount shall be paid by a demand draft drawn in favour of Registrar, of this Court and on the receipt of the amount, the Registry shall draw a demand draft in favour of Mrs. Durga Mukherjee, the widow of the deceased workman and despatch the amount in the manner as was done while sending the amount of Rs. 46,151.60p. The total compensation herein awarded is in total satisfaction of all the claims that the deceased workman had against the employer.