

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DRC ACT

Date of Reserve: October 31, 2008

Date of Order: November 18, 2008

CMM 570/2007

Shiv Pal Singh ...

Petitioner
Through: Mr. O.P. Saxena, Advocate

Versus

Shriram Scientific and Industuri ...

Respondent
Through: Mr. Pankaj Gupta, Advocate

CM NO.14830/2008

1. Heard.
2. For the reasons stated in the application, the application is allowed and the order dated 15th October 2008 is hereby recalled. The petitioner is given liberty to address arguments on merits.
3. The application stands disposed of. CMM 570/2007 1. The petitioner is aggrieved by an order dated 17th February 2007 passed by the first appellate Court (ARCT) dismissing an appeal filed by the petitioner against the order of learned Additional Rent Controller dated 29th November 2006 allowing the eviction petition of the respondent.
2. Brief facts relevant for the purpose of deciding this petition are that the premises bearing No.D-4, Sri Colony, University Road, Delhi-110007 was allotted to the petitioner by virtue of his employment with the respondent on 29th July 1988. The petitioners services were terminated by the respondent after holding an inquiry, on 7th June 1994. He was asked to vacate the said premises but he declined to do so and an eviction petition under Section 14(1) (i) of Delhi Rent Control Act (for short, DRC Act) was filed. The petitioner took the plea that he had challenged his dismissal from service and in view of the provisions of Section 14(9) of DRC Act, since his termination from service was in dispute, the provisions of Section 14(1) (i) were not applicable in his case. However, these arguments did not find favour with the learned ARC. In the appeal preferred by the petitioner before learned ARCT, the learned ARCT also returned a finding against the petitioner, hence the present petition.

3. It is an undisputed fact that the petitioner was dismissed from service on 7th June 1994 after holding an inquiry. The petitioner's dismissal from service was challenged before the learned Labour Court and the Labour Court vide its order dated 8th April 2005, on the issue of inquiry, gave a finding in favour of the workman and held that the management had failed to prove that the inquiry was conducted in a fair and proper manner. The petitioner thereafter moved an application for passing an interim award in his favour. Vide order dated 17th April 2007 on the application of the workman for interim, the management was directed to pay Rs.2500/- per month as subsistence allowance.

4. Since the inquiry has been held to be not fair, the management contesting the reference before the Labour Court has now to establish the truthfulness of charges leveled against the workman before the Labour Court.

5. It is argued by the counsel for the petitioner that the case of the petitioner was squarely covered under Section 14(9) of DRC Act. Section 14(9) of DRC Act reads as follows: (9) No order for the recovery of possession of any premises shall be made on the ground specified in clause (i) of the proviso to sub-section (1), if the Controller is of opinion that there is any bona fide dispute as to whether the tenant has ceased to be in the service or employment of the landlord.

6. It is an undisputed fact that the petitioner is no more in the service of the respondent. The relationship between the petitioner and respondent, of employee and employer came to an end on 7th June 1994 when the services of the petitioner were dispensed with. The petitioner thereafter took recourse to the legal remedy available to him and challenged his dismissal from service. However, the fact remains that now he is not in services of the respondent. This Court had considered this aspect in *Shri Ram Saran vs. M/s Gian Chand Kedar Nath* 1978(1) RLR 100 and observed that where the services of a person are terminated and a dispute is raised before the Labor Court, that is not relevant for the purpose of finding out whether there is any bonafide disputes regarding the termination of services. In case the Labour Court or the Tribunal orders for reinstatement of the workman then the contract of service will again come into effect. Otherwise, the termination of services is effective, and therefore, there is no dispute regarding the end of the services and the provisions of Section 14(9) shall not be applicable.

7. In *Madhu Bala v. Ram Scientific* I.R.F 98(2002) DLT 399, this Court observed as under:

6. After considering the submissions made by learned counsel for the parties and going through the records, this Court is of the considered view that Section 14(9) of the Act does not enjoin upon the Controller to form an opinion in regard to the validity of the termination of the service but merely calls upon him to see as to whether a bonafide dispute regarding the termination of the employment exists or not. The underlying object of this provision is to ensure that no workman/employee is thrown out of the residential

premises allotted to him by his employer during the subsistence of his employment but as soon as cessation of service or employment is shown on record the Controller assumes jurisdiction to issue orders under Section 14(1)(i) of the Act This Court is further of the view that the question in regard to the validity/legality of the termination of the services is beyond the scope of inquiry under Section 14(9) of the Act. Forums for adjudication of such dispute are different. The Controller under the Act is not vested with any jurisdiction to adjudicate the question of validity/legality of the termination of the services of an employee. In the judgment of this Court in Ram Saran vs. Kedar Nath (supra), a Single judge of this Court clearly observed that it was not relevant for the purposes of proceedings under Delhi Rent Control Act whether there was a dispute pending before the Labour Court or not. It was held that the requirement of law is that there should be a bona fide dispute regarding the termination of services. It was further observed that what was being disputed by the employee before the Labor Court was not relevant for the purpose of finding out whether there was any bonafide dispute regarding the termination of the services and in case the Labour Court or Tribunal or any authority orders the reinstatement of the employee then contract of services will again come into effect. The Apex Court in the case of Fakirabhai Fulabhai Solanki v. The Presiding Officer and Anr (supra), was dealing with a case of suspension only and as such held that the workman continued to be an employee during the period of suspension. Section 33 of Industrial Disputes Act is also of no avail to the petitioner for the reason that respondent is acting within the parameters prescribed by the provisions of Delhi Rent Control Act for evicting his employees whose services have been terminated. 7. In case of the scope of Section 14(9) of the Act is enlarged so as to enable the Controller also to examine as to whether any bonafide dispute regarding the validity/legality of the termination of the service exists or not then two Courts exercising jurisdiction in different fields would be examining the issue of validity of termination of the services and an employee would continue to enjoy occupation of the premises allotted to him in the course of his employment inspite of the termination of his services and without doing any work for the employer. This would defeat the very purpose of Section 14(1)(i) of the Act which enables an employer to recover possession of the premises from an employee after terminating his services so that the same accommodation may be offered to some other employee who is working for him and giving him services. Residential accommodation to an employee is provided primarily for the sake of efficient discharge of his duties and once an employee stops discharging the duties, on account of the termination of his services, the employer must be in a position to put some other employee in those premises from whom he requires efficient discharge of duties. The Controller in terms of Section 14(9) of the Act has only to see as to whether services of the employee have been terminated or not. The validity of termination is beyond the scope of his jurisdiction. (emphasis added)

8. Learned counsel for the petitioner argued that both judgments of this Court were not applicable in the case in hand and does not lay down the correct legal position. If a labour dispute is raised by a person after termination of his services and his termination becomes the subject matter of adjudication by a competent Court, then bar of Section 14(9) shall be applicable. I consider that the interpretation sought to be given by the petitioner does not stand the scrutiny of reasons. Almost every termination of services is

challenged by the employee whether the termination is fair or unfair and this challenge ultimately is decided by after a lapse of number of years. An employee whose services have been terminated cannot take benefit of Section 14(9) merely because he has challenged his termination and continue to remain in the premises for years together blocking the premises and taking advantage. The contract of services between the employee and employer is over once the services of an employee are terminated by the employer after holding an inquiry or after following the contractual/statutory obligations. Once an employee is terminated, he is no longer providing services to the employer and is not under his employment, Section 14(i) would come into effect and he is liable to vacate the premises. His challenge to the legality of the termination or legality of an inquiry is altogether different matter. During his challenge to legality of termination, he does not continue to be an employee. The relationship of employer and employee stands terminated when he is dismissed from service. An adjudication about the validity of the termination does not mean that the relationship of an employer and employee stands restored. If the Court ultimately comes to a conclusion that the services were wrongfully terminated, the Court who may grant appropriate relief to him. It may order reinstatement, in such a case, the employee would be entitled to the accommodation as per the rules of the company or the Court may only order paying him suitable compensation for wrongful termination and wages or a part of wages or lumpsum amount for the period when he was out of service and in that event, the employer would only be liable to pay such compensation amount as ordered by the Court.

9. In view of foregoing discussion and the settled legal position, I consider that the raising of disputes regarding legality of termination by an employee would not attract Section 14(9) of DRC Act. The petition is devoid of any merit and is hereby dismissed. In the facts and circumstances, parties are left to bear their own costs.

November 18, 2008

Sd./-
SHIV NARAYAN DHINGRA J.