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Court : Delhi

Decided On : Oct-09-2015

Judge : The Honourable Ms. Justice Sunita Gupta

Appeal No. : W.P.(C) No. 474 of 2014 & CM No. 932 of 2014

Appellant : M/s. G.D. Engineering Works

Respondent : Arvind Kumar

Judgement :

1. Challenge in this writ petition is to the Award dated 16th November, 2013 passed by the Presiding Officer, Labour Court-XVI, Karkardooma Courts, Delhi in ID No.286/2009 whereby the termination of the respondent (hereinafter referred to as workman ?) was held to be illegal and he was awarded a lump sum compensation of Rs.2 lacs.

2. The workman claimed to be working with the petitioner (hereinafter referred to as the management ?) as a Turner and alleged his illegal termination on 1st June, 2006. An industrial dispute was raised, with the result the Dy. Labour Commissioner vide reference dated 28th August, 2009 referred the following dispute for adjudication:-

Whether services of Shri Arvind Kumar, S/o Sh. Virender Kumar have been illegally and/or unjustifiably terminated by the management; and if yes, to what relief is he entitled and what directions are necessary in this respect. ?

3. The workman filed statement of claim stating therein that he was working with the management for the last seven years as a Turner at the last drawn monthly salary of Rs.5,000/-. The management never provided any legal facilities to the workman. They used to obtain his signature on blank paper/vouchers etc. On his repetitive demands for the legal facilities, the management got annoyed and illegally terminated him on 1st June, 2006 without giving any notice or notice pay in violation of Section 25F of the Industrial Disputes Act. The management also withheld the earned wages for the month of April and May, 2006. A complaint was made by the workman before Dy. Labour Commissioner as well as Conciliation Officer but in vain. A legal demand notice dated 17th October, 2006 was sent to the management but the same was not received by the management. The workman is unemployed since the date of his illegal termination, as such, he prayed for reinstatement with back wages along with all consequential benefits.

4. The management contested the claim of the workman by filing written statement wherein preliminary objections were taken, inter alia, on the ground that the workman has left the job on his own after settling all his accounts on 31st March, 2004. The present claim has been filed in the month of September, 2009, i.e., after a lapse of around 5 years. Moreover, the workman is a habitual litigant and has filed industrial dispute against M/s. Gupta Engineering Co. and Sat Engg. Works (India). On merits, relationship of employer and employee was not disputed. However, it was alleged that the last drawn salary of the workman was Rs.4500/- per month. It was denied that the management has illegally terminated the workman. In fact the workman himself stopped appearing on his duties and abandoned the services after settling his accounts with the Management on 31st March, 2004. The workman was not unemployed as he was working as a salesman, as such, dismissal of the claim was prayed.

5. The workman examined himself whereas from the side of the management, Sh.Gaya Din, its proprietor and Sh. Jagdish Chander, another employee were examined.

6. Learned Trial Court observed that the relationship between the parties prior to 31st March, 2004 is undisputed. The controversy mainly revolves upon existence

of Ex.RW1/C vide which a sum of Rs.2850/- was paid to the workman because according to the management, the workman has voluntarily left the job and settled the entire amount due. It was observed that as per this document, salary of 19 days only was paid for the month of February, 2004 whereas the workman continued to work thereafter. Therefore, this document does not prove that the workman has left the job of the management on 19th February, 2004. Moreover, the testimony of the workman that he was terminated on 1st June, 2006 could not be shaken in cross-examination. As such, it was observed that the workman had not left the job voluntarily. There was violation of Section 25F of Industrial Disputes Act. Therefore, the termination was illegal and compensation of Rs.2 lacs was awarded to the workman.

7. Assailing the findings of the learned Labour Court, the learned counsel for the petitioner submits that the workman is a habitual litigant as he is in the habit of filing the cases against the management wherever he worked. It was submitted that earlier he worked with M/s. Allied Auto Company and after leaving the job, filed a similar petition which was withdrawn by him. Thereafter, he raised another industrial dispute against M/s. Gupta Engineering Company and Sat Engineering Works which was decided against him. Thereafter having worked with the present management till 19th February, 2004 he filed a belated claim on the allegation that he was terminated on 1st June, 2006. No documentary proof has been placed by him on the record to show that he worked with the Management w.e.f. 31st March, 2004 to 1st June, 2006. The counsel further submits that the Trial Court fell in error in observing that the testimony of the workman has not been challenged regarding his termination on 1st June, 2006 as it was specifically suggested to the workman that after 19th February, 2004, he did not work with the management. Moreover, the workman himself left the services of the management and executed a receipt Ex.RW1/C before the Labour Inspector. Under the circumstances, it is submitted that the findings of the learned Labour Court are perverse and the same deserve to be set aside.

8. Countering the submissions of the learned counsel for the petitioner, learned counsel for the respondent submits that as per the receipt Ex.RW1/C, the workman was paid his dues only for a period of 19 days for the month of February,

2004 and there was nothing in this receipt that it was for full and final settlement of his accounts. The earlier cases filed by the workman against the previous management has no bearing on the present case. The award passed by the Labour Court does not suffer from any infirmity which calls for interference. As such, the petition deserves to be dismissed.

9. A perusal of the pleadings of the parties goes to show that there is no dispute that the workman was working with the management as a Turner. There is dispute regarding last drawn salary of the workman as the workman claimed his salary to be Rs.5000/- per month whereas according to management, it was Rs.4500/- per month. No finding in regard to the actual wages has been given by the Labour Court. However, management had placed on record the receipt of salary and vouchers in order to show that the same was Rs.4500/- per month. It is the case of the management that the workman worked upto 19th February, 2004 and thereafter did not report for duty. He was paid his due salary before the Labour Inspector on 31st March, 2004 vide Ex.RW1/C. Although it is true that this receipt does not mention that it is in full and final settlement of all claims of the workman but it is to be kept in mind that as per the other salary slips and vouchers, the workman used to receive the salary for the whole month, therefore, there is no plausible reason as to why the wages for the month of February, 2004 will be paid to him only till 19th February, 2004 and that too before the Labour Inspector. This fortifies the claim of the management that the workman worked up to 19th February, 2004 and thereafter did not report for duty.

10. It is the claim of the workman that he worked w.e.f. 31st March, 2004 to 1st June, 2006. It was suggested to MW1-Sh. Gaya Din in cross-examination that the workman was taken back on duty after the payment of due salary before the Labour Inspector on 31st March, 2004 and that he was again terminated from services when he demanded two months due salary on 1st June, 2006. The suggestions to this effect were denied by Sh. Gaya Din. It is pertinent to note that it was never the claim of the workman that after 31st March, 2004, he was taken back on duty and then terminated on 1st June, 2006. In fact, as per the claim petition, his services were terminated on 1st June, 2006. As such, the suggestions given by him to MW1 Sh. Gaya Din itself suggests that the relationship of

employer and employee came to an end on 31st March, 2004. If according to the workman, he was again taken back on duty thereafter and worked till 1st June, 2006, the onus was upon the workman to prove this fact. However, no documentary evidence has been proved by him to substantiate this version. Moreover, the receipts of salary and vouchers reflect that the wages were paid to the workman against the receipt. That being so, if it was the practice of the management to pay the salary against receipt then the workman must be in possession of some documents to prove that he worked till 1st June, 2006 but no such evidence was led by him. Moreover, besides the testimony of MW1-Gaya Din, the management also examined another employee, namely, Jagdish Chander who also deposed that the workman worked up to 19th February, 2004 and had duly received his earned wages. After settling all his accounts with Sh. Gaya Din, he left the job and never reported for duty. In cross-examination, he reiterated that the workman left the job on 19th February, 2004 and thereafter never joined the management. There is no challenge to this part of the testimony of this witness. No suggestion was given to the witness as to why he will depose against the workman.

11. Learned Trial Court also fell in error in observing that the management could not shake the testimony of the workman that he worked till 1st June, 2006 as a perusal of cross-examination of the workman goes to show that it was specifically suggested to him that after 31st March, 2004, he never worked with the management and had taken all his earned wages till that date. The workman admitted that he had no documentary proof of having worked with the management w.e.f. 31st March, 2004 to 1st June, 2006. Moreover, although the workman alleged that he made a complaint to the Dy. Labour Commissioner and the Labour Inspector visited the Management, however, no copy of the complaint made by him to the Dy. Labour Commissioner was filed and there is nothing to show that in the year 2006 any Labour Inspector visited the management. The burden of proof of relationship of employer and employee between the workman and the management w.e.f. 31st March, 2004 till 1st June, 2006 was upon the workman.

12. In Workmen of Nilgiri Co-op. Mkt. Society Ltd. v. State of T.N., (2004) 3 SCC 514, it was held:-

47. It is a well settled principle of law that the person who sets up a plea in existence of relationship of employer and employee, the burden would be upon him.

48. In N.C. John vs. Secretary, Thodupuzha Taluk Shop and Commercial Establishment WorkersUnion and Others (1973 Lab IC 398), the Kerala High Court held:

The burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved produce books of accounts they would have proved employer-employee relationship. ?

49. In Swapan Das Gupta and Others vs. The First Labour Court of West Bengal and others (1976 Lab IC 202) it has been held:-

Where a person asserts that he was a workman of the Company and it is denied by the Company, it is for him to prove the fact, it is not for the Company to prove that he was not an employee of the Company but of some other person. ?

13. Again, in Ravi N. Tikoo vs. Deputy Commissioner (S.W.) and Ors., (2006) 128 DLT 267, it was held:-

31. It has been repeatedly held that so far as an industrial claim is concerned, its procedure is guided by the general principles of the law of evidence that he who asserts must prove. Based on the rule of Roman Law - `ei incumbit probatio, qui dicit, non qui negat' - the burden of proving a fact rests on party who substantially asserts the affirmative of the issue and not upon the party who denies it, for a negative does not admit of direct and simple proof. It is well settled that the onus and burden of proof of establishing the employment is consequently on the workman. The workman can discharge the same by leading cogent and reliable evidence in respect thereof which could be oral or documentary. In the event of non-availability of the same, he can very well cause the same to be summoned

from the authorities concerned or the management itself and place the same before the industrial adjudicator. ?

14. In Sharad Mittersain Jain and Ors. vs. State of Maharashtra, 2004 LLR 367 Bom., it was observed as follows:-

.....To prove a contract of employment, there has to be a direct evidence to show some nexus between the claimant and the respondent. This can be of any kind such as appointment letter, monthly payment slip, deduction of PF, payment of any dues which would show that he was in the employment any correspondence wherein the respondent has admitted that claimant was in his employment. In substance, the court are in favour of documentary evidence to record a definite finding on such type of issue. They are the best piece of evidence for coming to a conclusion one way or other. ?

15. In view of this legal position, the burden was upon the workman to prove the relationship of employer and employee between the parties after 31st March, 2004 which he has failed to prove. That being so, the findings of the Labour Court that the workman was illegally terminated on 1st June, 2006 cannot be sustained.

16. The submission of management that the workman is a habitual litigant and is in the habit of filing such like claim petition against the management wherever he worked cannot be brushed aside. The management has placed on record copy of the award dated 28th August, 2006 passed by the Labour Court and a perusal of the same goes to show that this was an industrial dispute raised by the present respondent/workman against M/s. Gupta Engineering Company and Sat Engineering (Works) on the allegations that his services were illegally terminated by the management. In that case also the management had taken the plea that the workman was guilty of concealing material particulars regarding filing of similar petition for the same period against M/s. Allied Auto Company which was withdrawn by the workman. In that case the workman had denied that he worked with M/s. Sat Engineering Works and Gupta Engineering Company. Taking into account all the facts and circumstances, the award was passed in favour of the management and against the workman. All this goes to show that the workman is in the habit of raising industrial dispute against the management wherever he

worked.

17. In the instant case also, after leaving the job on 19th February, 2004, he claimed to have worked with the Management till 1st June, 2006 without any cogent evidence. Under the circumstances, the findings of the learned Labour Court being perverse deserve to be set aside.

18. It is settled law that in exercise of the jurisdiction u/s 226/227 of the Constitution of India, this Court does not sit as a Court of appeal over the award of inferior court. However, once it is shown that certain important facts on record have not been considered which were material for determination of the real issues between the parties, then this Court can interfere in the findings of the lower court.

19. Under the circumstances, the writ petition is allowed and the award dated 16th November, 2013 passed by the Presiding Officer, Labour Court-XVI, Karkardooma Courts, Delhi in ID No.286/2009 is set aside.

20. The petition and the pending application, if any, stand disposed of accordingly.

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