

Dipankar Paul Vs. M/S. Consulting Engineering Services (India) Pvt.

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Court : Delhi

Decided On : Jul-14-2015

Judge : V.P.Vaish

Appellant : Dipankar Paul

Respondent : M/S. Consulting Engineering Services (India) Pvt.

Advocate for Def. : Mr. Jivesh Chandrayan

Advocate for Pet/Ap. : Mr. R.P. Sharma

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

20. h May, 2015 Date of Decision:

14. h July, 2015 % + W.P.(C) 6930/2012 DIPANKAR PAUL Through:
Petitioner Mr. R.P. Sharma, Advocate. versus M/S. CONSULTING
ENGINEERING SERVICES (INDIA) PVT. LTD.Respondent Through: Mr.
Jivesh Chandrayan, Advocate. CORAM: HON'BLE MR. JUSTICE VED PRAKASH
VAISH

JUDGMENT

1 By way of the present petition the petitioner has impugned the order dated
06.05.2011 passed by the learned Presiding Officer, Labour Court-V,

Karkardooma Courts, Delhi in Misc. Application No.11/2010 (Unique case ID No.02402C0381962010), whereby the claim filed by the petitioner was dismissed on the ground of limitation. The petitioner has also challenged the order dated 29.09.2012 passed by learned Labour Court whereby an application filed by the petitioner for setting aside the order dated 06.05.2011 was dismissed as not maintainable.

2. The brief facts as culled out from the petition are that the petitioner was working as a Computer Operator with the respondent since the year 2000 as a Daily Wager. In the year 2007, the petitioner was issued regularization/ confirmation letter dated 30.05.2007 and was promoted to the post of Computer Operator Gr.-II (Grade A-9) w.e.f. 01.04.2007. The petitioner was again promoted in the year 2008 to the post of Assistant Secretary Gr.-II (Grade A-8).

3. On 29.06.2009, the respondent issued an office order stating that since the project is getting over, the staff is requested to take leave unless any new project is on the way. The employees were assured that their salaries would be remitted to their bank account vide same letter. But vide letter dated 01.07.2009, respondent terminated services of the petitioner from the date of completion of notice period i.e. 31.07.2009 without making payment of earned wages and other dues of the petitioner.

4. Aggrieved by the action of the respondent, the petitioner served a demand notice dated 23.07.2009 and thereafter filed a statement of claim on 17.07.2010 before the Labour Court. Vide impugned order dated 06.05.2011, learned Labour Court dismissed the claim of the petitioner as barred by limitation. The petitioner then moved an application for setting aside of order dated 06.05.2011 which was dismissed by the learned Labour Court vide order dated 29.09.2012.

5. Learned counsel for the petitioner contended that the services of the petitioner were terminated vide letter dated 01.07.2009 (Annexure A-1) from the date of completion of notice period i.e. 31.07.2009 and the claim filed by the petitioner on 17.07.2010 is within the prescribed period of limitation. The termination was to take effect on 31.07.2009.

6. Learned counsel for the petitioner further submitted that the earned wages were not paid along with the letter dated 01.07.2009 and the earned wages were credited to the account of the petitioner on 27.08.2009.

7. Per contra, learned counsel for the respondent urged that the services of the petitioner were terminated vide letter dated 31.07.2009 and the petitioner was directed to contact accounts department for full and final settlement of his dues after furnishing no objection certificate/ handing over note. The petitioner did not approach the accounts department. According to the counsel for the respondent the services were terminated on 01.07.2009 and the statement of claim was filed by the petitioner on 17.07.2010 which is barred by limitation.

8. I have heard the learned counsel for the parties and have also carefully perused the material on record.

9. The short issue involved in this petition for consideration is, as to which date termination of services be effected from, the date of issuance of notice of termination i.e. 01.07.2009 or the date of completion of notice period of one month?.

10. Before entering into the merits of the contention of the parties, it is necessary to reproduce Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as ID Act), which reads as under: - 25F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- 11. (a) the workman has been given one months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

The underline object of Section 25F of the ID Act is two-fold. Firstly, a retrenched employee has one month time to have at his disposal to search for alternate employment and secondly, the workman must be paid retrenchment compensation not only as a reward earned for his previous services but also as a sustenance to the worker for the period which may be spent in search for another employment.

12. At this juncture, it is relevant to consider Section 10(4A) of the ID Act, which is as follows:

10(4A) Notwithstanding anything contained in section 9C and in this section, in the case of a dispute falling within the scope of section 2A, the individual workman concerned may, within twelve months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination or the date of commencement of the Industrial Disputes (Delhi Amendment) Act, 2003, whichever, is later, apply in the prescribed manner, to the Labour Court or the Tribunal, as the case may be, for adjudication of the dispute and the Labour Court or Tribunal, as the case may be, shall dispose of such application in the same manner as a dispute referred under sub-section (1).

13. A bare perusal of Section 10(4A) of the ID Act shows that it is manifestly clear that the workman may apply to Labour Court or Tribunal within 12 months from: (i) Date of communication of order of discharge; or (ii) Date of termination (if otherwise) specified; or (iii) Date of commencement of Industrial Disputes (Delhi Amendment) Act, 2003 whichever is later.

14. In the instant case, the petitioner was issued termination letter dated 01.07.2009 (Annexure A-1). However, a careful perusal of the said letter clearly shows that the services of the petitioner were to stand relieved from the date of completion of notice period, i.e. 31 st July, 2009. Therefore, in the instant circumstances limitation period will be calculated from 31.07.2009, which is specified in the termination letter dated 01.07.2009 and not from the date of communication of the termination letter.

15. Thus, in view of the provisions of Industrial Disputes Act, 1947 the claim filed by the petitioner on 17.07.2010 is within the period of limitation.

16. In view of the aforesaid discussion, the petition is allowed and the impugned orders dated 06.05.2011 and 29.09.2012 passed by learned Presiding Officer, Labour Court-V, Karkardooma Courts, Delhi are set aside. The concerned Labour Court is directed to decide the claim petition in accordance with law.

17. Both the parties are directed to appear before the concerned Labour Court on 03.08.2015 at 10.00 a.m.

18. The trial court record be sent back forthwith. (VED PRAKASH VAISH) JUDGE
JULY14h, 2015 hs

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