

Competent Security Services Vs. Govt of Nct of Delhi and Ors

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Court : Delhi

Decided On : Dec-15-2014

Judge : Suresh Kait

Appellant : Competent Security Services

Respondent : Govt of Nct of Delhi and Ors

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment delivered on: December 15, 2014 + W.P. (C) No.1660/2011 COMPETENT SECURITY SERVICES Petitioner Represented by: Mr. A.K. Singla, Sr. Adv. with Mr. Naresh Daksh and Mr. Sheetesh Khanna, Advs. versus GOVT OF NCT OF DELHI & ORS Represented by: NEMO. Respondents CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

1. The present petition is directed against the impugned award dated 06.09.2010 whereby the respondent No.2 / workman was granted reinstatement with 50% back wages and continuity of service.

2. Mr. A.K. Singla, Id. Sr. Counsel appearing on behalf of the petitioner submitted that respondent No.2 was appointed as Masson. As per his letter of appointment, which is at Page 8 of the petition, he was directed to work at Maurya Sheraton Hotel w.e.f 03.05.2001. As per the terms of appointment, absence for a continuous period of 10 days (including absence for which leave though applied for but not

granted) and when overstayed for a period of 10 days, would lose his lien in the service and same shall automatically come to an end without any notice or intimation.

3. Vide movement order dated 27.07.2005, respondent No.2 was shifted at Royal, Plot No.9, Sector-27A, Faridabad, Haryana. Since, he did not join over there, vide movement order dated 18.08.2005, he was shifted at Rushtamji, C-477, C.R. Park, New Delhi.

4. As per the Attendance Register of July, 2005, respondent No.2 attended the office of the petitioner Management on 26th and 27th July, 2005, however, he remained absent from 28th to 31st July, 2005 in the afternoon session. In the month of August, 2005, he remained absent from 22.08.2005. Thereafter, he never reported for duty.

5. Mr. Singla, Id. Sr. Counsel further submitted that thereafter, respondent No.2 / workman raised industrial dispute and vide order dated 29.03.2007, the matter was referred to the Labour Court on the following reference:

Whether Sh. Kafil Ahmad, S/o, Sh. Maqsood Ahmed has not reported for duty at directed place at C-477, C.R. Park or his services have been terminated illegally and / or unjustifiably by the management and if so, to what sum of money as monetary relief along with other consequential benefits in terms of existing Laws / Govt. notifications and to what other relief is he entitled and what directions are necessary in this respect?.

6. Based on the pleadings of the parties, following issues were framed vide order dated 01.08.2008:

1. Whether the workman abandoned the job?.

2. Whether the services of the workman were terminated illegally and unjustifiably?.

7. As per the claim of the respondent No.2 / workman, on 28.04.2005, he was asked to do some work beyond his job profile and on his objection, the shift In-

charge Sh. Bacchan Singh had abused him and threatened him to get out of the job. Whereafter, on the same day, the workman was called by Supervisor Mr. Vinay and asked him to leave the job. Thereafter, the workman was not allowed to do his job, whereupon, he wrote two letters Ex.WW1/2 and WW1/3 to the Management.

8. The case of the petitioner before the Labour Court was that they never terminated the services of workman, rather he was absenting himself from his duties w.e.f. 28.04.2005 without any information and sanction of leave and he came to report for duty on 27.07.2005. He was given a movement order to report for duty at Faridabad, but he did not report there. He reported for duty on 18.08.2005. Thereupon, a movement order was given to him to report for duty at C.R. Park on 19.08.2005, where he reported. However, when he was asked to report for duty on 20.08.2005, he did not report. As per letter 30.04.2005, he wrote to the Management regarding harassment and not taking him in job.

9. Mr. Singla further submitted that the reference was limited to the extent whether respondent No.2 / workman did not report for duty at directed place at C-477, C.R. Park, New Delhi, or his services have been terminated illegally, unjustifiably by the petitioner.

10. There is no evidence brought by the respondent No.2 / workman that he reported for duty on 22.08.2005 to 30.08.2005. He remained absent from duty, though vide communication dated 20.08.2005 addressed to the respondent No.2 / workman it was specifically stated that vide order dated 18.08.2005, he was directed to attend his duty at C-477, C.R.Park, but he did not join there. He had marked his presence in the attendance register on 19.08.2005 and 20.08.2005. It was further informed that after marking his attendance on 19.08.2005, he had gone to his house. An explanation was sought from him in this regard. To which, vide letter dated 22.08.2005, he replied that it was not known to him why the petitioner Company was sending him here and there and for two days he was sent to Faridabad, then to C-477, C.R. Park. As a result of which, he had suffered grave mental agony and financial loss.

11. Despite this fact, the Id. Tribunal held that the stand of the Management that respondent No.2 / workman did not report for duty at Faridabad is not believable for the reason that workman had placed on record the movement order Ex.WW1/5.

12. As per the Attendance Register for the month of August, 2005, the workman has been shown to be present from 1st to 20th August, 2005, thereby proving that the workman was regularly visiting the Management and marked his presence at the Office of the Management when he was not assigned any work at Faridabad on 27.07.2005.

13. However, the fact remains that respondent No.2 / workman was asked to work at Hotel Maurya Sheraton, New Delhi. He stopped reporting for duty since 28.04.2005 and thereafter he made a complaint that he was not entitled to be shifted from Hotel Maurya Sheraton, whereas as per the terms of the appointment, he was liable to be shifted anywhere in India, whenever the clients of the petitioner Organisation so requires.

14. As per the terms and conditions of the employment, the petitioner directed the respondent No.2 / workman to report for duty and movement order dated 27.07.2005 was issued to him to this effect. However, he did not report for duty and insisted reporting for duty at Company Office. Again on 18.08.2005, when he was given another movement order to report for duty at C.R. Park, New Delhi, respondent No.2 / workman exchanged correspondence on 20.08.2005 and 22.08.2005, whereby suggested the petitioner to retain him at Hotel Maurya Sheraton.

15. The Id. Tribunal led the onus on the petitioner to prove the decision taken by the Id. Labour Court as mentioned in the reference and issue No.1, however is perverse, illegal, and non-sustainable for the reasons that the Id. Labour Court has not considered the letter of appointment given to workman, wherein as per the terms and conditions of his employment, insistence for working at organisations of his choice cannot be allowed.

16. Respondent no.2 / workman was directed to join the duty at the place assigned vide movement order dated 18.08.2005, but he did not join.

17. It is pertinent to mention here that respondent No.2 has been served by way of publication pursuant to order dated 30.08.2013, despite none appeared on his behalf. He has also not taken any steps to get the award executed and join the service of the petitioner / Management.

18. In view of the facts recorded above, award dated 06.09.2010 is hereby set aside.

19. Consequently, the petition is allowed with no order as to costs. SURESH KAIT
(JUDGE) DECEMBER15 2014 jg

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