

(2014) 08 DEL CK 0121
In the Delhi High Court
Case No : W.P. (C) 2933/2014

Anil Kumar

APPELLANT

Vs

Sahara Steel

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Citation : (2014) 4 LLJ 765 : (2014) LLR 1032

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : M.N. Singh, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Suresh Kait, J.

CM. No. 6078/2014 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the instant application is allowed.

W.P.(C) 2933/2014

1. Vide the instant petition, the petitioner has assailed the impugned order dated 12.07.2013, whereby the claim of the petitioner was rejected.

2. Mr. M.N. Singh, Ld. Counsel appearing on behalf of the petitioner submits that Ld. Labour Court failed to appreciate that Ex.WW1/XM2 is forged and fabricated document.

3. Mr. Singh further submits that the findings of the Ld. Labour Court in regard to the said document as recorded in Para 14, 15, 16 and 17 are that the respondent / Management has successfully proved the same and the petitioner had resigned from the services from 12.06.2012 after taking full and final payment. These findings of this Court are absolutely perverse, untenable and

contrary to the admissible material on record.

4. Ld. Counsel further submits that Ld. Labour Court ignored the evidence of the petitioner by way of affidavit wherein in Para 2 and 5 it is stated that after 7-8 months of his employment, the respondent had taken his signature and thumb impression on several papers under the pretext of completing formalities for the ESI and kept it with themselves. The aforesaid papers prepared by the respondent thereafter were misused to fabricate the document Ex.WW1/XM2.

5. Ld. Counsel further submits that the aforesaid agreement never taken place between the petitioner and the respondent. However, the Labour Court has relied upon the same agreement. Ld. Counsel has prayed this court that the impugned order dated 12.07.2013 be set aside and the present petition may be allowed.

6. Admittedly, the workman / petitioner in his statement of claim stated that he had been working with respondent / Management for the last 3 years on the post of Karigar and his last drawn salary was Rs.5,000/-. He had been working with the respondent / Management sincerely with full devotion and dedication without affording any opportunity of complaint to the Management. Despite, the Management was not providing him legal facilities like appointment letter, minimum wages, annual and casual leaves, which were being demanded by him time and again.

7. It is further submitted that the petitioner went to his native village in the end of June, 2012 and when he came back on 28.07.2012, he visited the Management with a request to enhance his salary, on which the Management got annoyed and ousted him from the gate of factory and terminated his services without informing any reason.

8. Being aggrieved, the petitioner approached the Labour Court. The Management filed its written statement thereby taking preliminary objections that the claim of the petitioner / workman was false and liable to be dismissed.

9. It is submitted in the written statement that the petitioner was appointed on 01.04.2010 as a helper. On 12.06.2012, he tendered his resignation and thereafter signed on settlement receipt, where he put his signatures as well as his thumb impression in the presence of the witnesses and an amount of Rs.9,116/- was given to him as full and final settlement and nothing is due in his favour and against the Management. He has already received all his dues / amount and has tendered his resignation before leaving for his native village.

10. As argued on merit, it is submitted that relationships between the petitioner and the respondent / Management has not been denied. He was working with respondent / Management w.e.f. 01.04.2010 and the other facts that he was not being given legal benefits or minimum wages as alleged were also denied. Accordingly, the entire evidence of the respondent / Management is that the petitioner / workman has taken full and final payment on 12.06.2012 before leaving for his village and nothing is due against the respondent / Management.

11. The Labour Court framed issues as under:

"1. Whether the workman has taken Rs.9,116/- as full and final settlement from the Management on 12.06.2012 and has given resignation? OPM

2. Whether the services of the workman has been terminated by the Management illegally and / or unjustifiably?

3. Relief."

12. The afore-noted 1st two issues are necessary to adjudicate the instant petition. Qua issue no. 1 the onus was upon the respondent / Management to prove that the petitioner / workman had taken Rs.9,116/- as full and final settlement from the respondent / Management on 12.06.2012 and had given resignation after receiving the settlement amount. The onus on the respondent / Management was also that the petitioner / workman left the job of his own whereas the onus to prove issue no. 2 was upon the petitioner / workman as he had to prove that his services have been terminated by the respondent / Management illegally and unjustifiably.

13. Keeping in view the facts recorded above, both the issues are inter-related as finding of one issue has a direct bearing of other issue and accordingly, both the issues were decided together by the Ld. Labour Court.

14. It is recorded in the impugned award that if the respondent / Management is able to prove this fact, then, the petitioner / workman would deemed to have been terminated from the services and if the respondent / Management is unable to prove the same, then the petitioner / workman would deemed to have been terminated from the services illegally.

15. During the cross-examination of the petitioner / workman, when the respondent / Management had directly put up the full and final receipt dated 12.06.2012 to the petitioner, he admitted that the same bears his signatures at Point "B" and thumb impression at Point "C", but denied that he had put his signatures at Point "C" and also denied his Mobile number at Point "D". The aforesaid document has been exhibited as Ex.WW1/XM2. He deposed that salary from 01.06.2012 to 12.06.2012 was due and denied that he had taken full and final settlement on 12.06.2012. He also denied the suggestion that he signed Ex.WW1/XM2 after going through the same.

16. The respondent / Management filed its evidence by way of affidavit MW1 and in examination-in-chief, MW1 relied upon Ex.WW1/XM2 as Ex.MW1/1. He was cross-examined by the representative of the petitioner on this document. In his cross- examination, this witness admitted the fact that the petitioner signed at two points, i.e., at Point "A" and "B" but denied the signatures at Point "A". He further denied the suggestion that signatures of the petitioner were obtained at Point "B" and "C" when this document was blank. He further deposed that MW1/ A was filled in his own hand writing and he can bring the ledger account of the respondent / Management for June, 2012 and denied the suggestion that the

amount of Rs.9,116/- was never paid to the petitioner / workman or he never executed MW1/A.

17. The ground taken by the respondent / Management before the Ld. Labour Court was that once the petitioner had admitted his signatures at Point "B" and his thumb impression at Point "C", the respondent / Management is no more required to prove that his signatures were forged nor there was any necessity on the part of the respondent / Management to forge his documents as the petitioner / workman has already admitted his signatures at a particular point. It was further argued that once the document has been proved by the respondent / Management that it bears the signatures and thumb impression of the petitioner / workman, then it is the petitioner / workman, who had to prove that his signatures were obtained on that document when it was blank.

18. As per the claim of the petitioner, he had gone to his native village in the end of June, 2012 after taking leave and came back to Delhi on 27.07.2012. On the next day, i.e., 28.07.2012, he visited the respondent / Management and asked them to enhance his salary. On this, the respondent / Management got annoyed and terminated his services.

19. The contention of the respondent / Management before the Ld. Labour Court was that the workman worked with them only up to 12.06.2012 and on that date, he took full and final settlement. It is not denied by the petitioner that he went to his native village on 21.06.2012. The Railway Ticket of the petitioner, which he has filed before the Ld. Labour Court is Ex.WW1/9.

20. I note, Ld. Labour Court had put specific questions to the petitioner that if he had gone to this native village on 21.06.2012, then what was his status between 12.06.2012 to 27.06.2012; whether he attended the respondent / Management up to 21.06.2012. To which the petitioner / workman straightway answered that he had not worked with the respondent / Management after 12.06.2012.

21. I further note that the Ld. Labour Court also enquired from the petitioner that if he had given any formal application for taking leave w.e.f. 12.06.2012, for which he denied, but simultaneously stated that there was no procedure for giving any leave application to the respondent / Management in writing and the Management had orally given him permission for leave.

22. Moreover, MW1 categorically stated that Ex.MW1/1, i.e., Ex.WW1/XM2 was filled up in his own handwriting, whereas the contention of the petitioner / workman to this document otherwise was that same got signed from him at that time, when that document was blank. At one point of time, he admitted that his signatures were forged and at another point of time, he admitted that although the signatures were of the petitioner / workman yet that signatures were obtained when the said document was blank.

23. Perusal of the document in question reveals that the said document is not blank rather it is a printed document.

24. Whether the document in question was a blank document or a printed one, the onus to prove that his signatures were taken on the blank not on the printed one was on the petitioner / workman, however failed to do so. The said issue has been decided by the Allahabad High Court in the case of Delta Engineering Company (P) Ltd., Meerut v. Industrial Tribunal-V, Meerut & Ors. 1998 LLR 622 wherein held as under:

"The primary burden to prove the fact that thumb impressions / signatures of the employees were obtained by the petitioner on blank papers and such papers were later on used as resignation letters always remains upon the employees at whose instance the reference was made. It is only after such evidence is adduced the petitioner is called upon to prove that the employees had voluntarily resigned."

25. Admittedly, the petitioner failed to prove that his signatures were obtained fraudulently and not voluntarily.

26. Finding no merit in the instant petition, same is accordingly dismissed in limine.