

(1999) 11 DEL CK 0115
In the Delhi High Court
Case No : C.W. No. 2199 of 1997

Anil Kumar

APPELLANT

Vs

The Presiding Officer, Labour Court No. II and Another

RESPONDENT

Date of Decision : 03-11-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 1 AD 732 : (1999) 82 DLT 958

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. Rajeev Aggarwal, for the Appellant; Mr. Subhash Chand Sharma, for the Respondent

Judgement

C.W. No. 2199/97.

1. Petitioner workman has filed this writ petition against the award dated 15.11.1995 passed by the labour court No. 2 in ID No. 335/93. It is contended that the labour court exceeded his jurisdiction in traveling beyond the terms of reference as well as pleadings. To appreciate this contention it may be proper to refer to the terms of reference which reads as under :

"Whether Shri Anil Kumar has abandoned his services or his services have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect ?"

2. A perusal of the aforesaid reference shows that the dispute which was referred was as :

(a) Whether the workman has abandoned his service.

(b) Whether his services were terminated illegally and/or unjustifiably.

3. The labour court on the basis of the pleadings of the parties framed the following issues.

1. Whether Anil Kumar, the workman has voluntarily abandoned his service?
2. Whether services of the workman has been illegally or unjustifiably terminated by the management?
3. To what relief, if any, is the workman entitled ?

Issue No. 1 was decided in favor of the workman holding that the petitioner workman had not abandoned his services.

4. It may be noticed here that the case of the management before the labour court was that the petitioner workman was absent from service and his services were not terminated by the respondent management. Insofar as this aspect is concerned, the labour court while deciding Issue No. 1 held that temporary absence does not amount to abandonment of job by the petitioner-workman. For abandonment it must be proved that workman left the job with clear intention not to return on duty. Therefore, once the labour court held that temporary absence was not abandonment and the admitted case of the management itself was that it had not terminated the service of the workman, the labour court could not return the findings while deciding issue No. 2, the services of the workman were terminated legally and validly by the management. Even otherwise, such findings are beyond the pleadings. Perusal of the award on Issue No. 2 would show that the labour court proceeded on the basis that the workman petitioner had released 19 cycle rickshaws without obtaining order of competent authority and also issued G-8 receipts for releasing of the cycle rickshaws and this fact was admitted by the petitioner workman. It is not understood from where the labour court presumed that there was any domestic inquiry held against the petitioner and as a result of the said inquiry the services of the petitioners were terminated, when admittedly no such inquiry was even held against the petitioner. Moreover, the observations of the labour court are self contradictory at one stage, it is mentioned that record of the inquiry was not brought and elsewhere the labour court observed that there was no obligation on the part of the management to institute an inquiry in view of the alleged admission of the petitioner in respect of alleged misconduct. It is stated at the cost of repetition that when even the management did not plead misconduct before the labour court the question of going into this issue did not arise. Even during the arguments, it is stated by the counsel for the respondents that services of the petitioner were never terminate. Whether the petitioner committed any misconduct or not or whether he admitted any such misconduct or not or whether any inquiry was required or not such issues would be relevant only if there is termination order and the said termination order is sought to be justified before the labour court by producing evidence. In view of the aforesaid discussion the finding of the labour court on issue No. 2 are clearly erroneous. Once it is held that workman had not abandoned his service and further when it is the case of the management itself that it has not terminated the services of the workman, the only consequence was to order reinstatement of the workman. The award dated 15.11.1995 insofar as it relates to Issues No. 2 and 3 is hereby

set aside. It is directed that the petitioner workman be reinstated in service with continuity of service. As far as back wages are concerned, in view of the facts and circumstances and without making it a precedent, ends of Justice would be met by awarding 50% of the back wages. However it would be open to the respondent management to take appropriate disciplinary action against him if it so desires.

5. No order as to costs.