

(2006) 10 DEL CK 0051

In the Delhi High Court

Case No : Writ Petition (C) No. 11206 of 2004

Atlas Glass Pvt. Ltd.

APPELLANT

Vs

Shri Subhash Chander

RESPONDENT

Date of Decision : 05-10-2006

Acts Referred:

Citation : (2006) 10 DEL CK 0051

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Sanjay Bahl, for the Appellant; Tripta Kanojia, Proxy Counsel, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has assailed the validity of award dated 11.9.2003 passed by Labour Court-X directing the petitioner to reinstate the workman with full back wages and continuity in service.

2. Briefly, the facts are that the respondent workman raised an industrial dispute alleging that he had worked with the petitioner from September, 1996 onwards at a salary of Rs. 1900/- p.m. as a Lineman. His services were wrongfully terminated without assigning any reasons w.e.f. 1.4.1998 and he was not paid salary from 1.3.1998 to 31.3.1998. He raised an industrial dispute about his illegal termination which was referred to the Labour Court for adjudication in following terms:

Whether the services of Shri Subhash Chander 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?

3. Management disputed the claim of the respondent workman regarding termination of his services as well as date of appointment. The management pleaded that respondent was appointed as helper on 1.11.1997 temporarily on probation at a monthly salary of Rs. 1900/- p.m. He resigned from the job on

28.2.1999 and received all his dues in full and final. He made a false claim about his termination. There was no industrial dispute in existence.

4. The award has been challenged on the ground that the award was perverse and contrary to the documents and evidence placed on record by the management. No document was filed by the respondent to show that he had joined the organisation in September, 1996 while the management had filed documents and record to show that the respondent was appointed on 1.11.1997 and he had not worked for 240 days. Labour Court did not return any finding that the workman had worked for 240 days. There were two more cases of other workmen pending before the same Labour Court; one case was filed by Anand Kumar vide I.D. No. 65/1998 and another was filed by Prem Chand vide I.D. No. 100/1999 against the petitioner. Labour Court decided the other two I.D.s on the same date on which the impugned award was passed. While the Labour Court held in those two cases that organisation of the management started on 1.11.1997 and those two workmen had not completed 240 days, in this case on the same set of documents and same evidence Labour Court gave contrary decision.

5. In the counter filed by the workman, he has denied that he was appointed on 1.11.1997 or he left the service by resigning on 28.2.1998. He stated that he had completed 240 days and the plea by the management was contrary to facts. Regarding passing of other two awards by the same Labour Court and drawing contrary conclusion on the same set of documents, nothing has been stated in the counter.

6. It is argued by the counsel for petitioner that the Labour Court has not followed the judgment of Supreme Court case titled *The Range Forest Officer Vs. S.T. Hadimani*, wherein Supreme Court has clearly laid down that the onus was on the workman to prove that he had worked for 240 days and there was no onus on the management to prove that the workman had not worked for 240 days. On the other hand it is stated by the counsel for the respondent that management had placed on record, muster rolls, starting from October, 1997 and management have taken the stand that it started in November, 1997 that itself shows that management had not placed on record all muster rolls and it was in existence even prior to November, 1997 and the plea of the workman that he was working since September, 1996 has been rightly believed by the Labour Court.

7. I have heard the counsel for parties and perused the record.

8. The management had produced before the Labour Court attendance registers and wage registers which were maintained by the management in respect of the employees. Management had failed to produce the appointment letter of the respondent workman, resignation letter or receipt of full and final payment. On this basis, Labour Court came to the conclusion that from the record of the management, it was not clear when the workman left the service or tendered the

resignation. The Labour Court disbelieved the management because in cross examination of the workman the management gave suggestion to the workman that he left the service on his own on 1.4.1998. The Labour Court observed that since neither the so called resignation nor the receipt of full and final payment has been placed on record by the management, the plea taken by the management was not believable and the management had illegally terminated the services of the workman. The Labour Court did not give its findings on the issue whether the respondent had worked for 240 days or when he joined the services of the management. The same Labour Court in respect of other two workmen, who had also raised similar dispute, on the basis of the attendance registers and wage registers and on the basis of same set of documents came to conclusion that the management had proved that it came into existence around November, 1997 and the appointment of the workman was done in November, 1997. The Labour Court relying upon the judgment in Range Forest Officer v. S.T. Hadimani (supra) dismissed the claim of the workman. However, the Labour Court while deciding this I.D. on the basis of same set of documents came to a different conclusion, which is surprising.

9. It is settled law that in order to maintain a claim of illegal retrenchment a workman has to prove by way of cogent evidence that he had worked for 240 days and mere self serving affidavit of the workman would not be sufficient. The onus to prove the fact of having worked for 240 days is on the workman, this onus cannot be shifted to the management and neither an adverse inference can be drawn against the management for not producing some documents.

10. Here in this case the management had produced muster rolls and wage registers showing the period for which workman was paid wages and his attendance was marked. Contrary to this the workman had not produced any document showing that he had worked for 240 days. The only evidence given by the workman is his self serving affidavit stating that he was not given any appointment letter. In view of the documents produced by management/petitioner, no adverse presumption could be drawn against petitioner. The workman could not prove that he worked for 240 days in preceding 12 months.

11. Supreme Court in Range Forest Officer v. S.T. Hadimani (supra) has observed as under:

For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in State of Gujarat and Others Vs. Pratamsingh Narsinh Parmar, . In our opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding

his termination. Filing of an affidavit is only his own statement in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr. Hegde appearing for the department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today.

12. I consider that the award of the Labour Court is contrary to law laid down by Supreme Court and perverse. The order of the Labour Court is also contrary to its orders in other two I.D.s, certified copies of which have been placed on record by the petitioner. In both these I.D.s decided by the Labour Court on the same day in respect of the same management had relied upon the attendance and wage registers produced by the management. In this case the Labour Court deliberately did not rely upon these two documents produced by the management.

13. I hereby set aside the award dated 11.9.2003 passed by the Labour Court. The writ petition is allowed.