
(2012) 09 DEL CK 0222

In the Delhi High Court

Case No : Writ Petition (C) No. 928 of 2011

Badal Prasad

APPELLANT

Vs

The State (NCT of Delhi) and Another

RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10

Citation : (2012) LLR 1125

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Arvind K. Jha, for the Appellant; Vinod Mahla, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Ms. Justice Mukta Gupta

1. By the present petition the Petitioner seeks setting aside of the award dated 6th September, 2009 passed by the learned Labour Court wherein

it was held that the workman has failed to prove that he had worked for 240 days during the preceding 12 months and the services of the

workman were terminated illegally or unjustifiably by the management and thus he was not entitled to any relief. Learned Counsel for the Petitioner

contends that the learned Trial Court failed to peruse the documents and evidence placed on record which clearly establishes the fact that the

Petitioner/workman was employed from 10th November, 1986 and not 1st April, 1988. Even if the date of appointment is treated as 1st April

1988, the number of days till 12th May, 1989 when his services were illegally terminated would be more than 240 days, as such the learned

Labour Court has committed an error in computing the number of days on which

the Petitioner has worked. Although, the date of entry mentioned in the pucca ESI Card is 1st April, 1988, however prior to this, a kachcha ESI Card was also issued to the Petitioner/workman which confirms the fact that the workman joined much earlier. It was lastly contended that the Petitioner/workman after joining the management had applied for loan of Rs. 2,500/- vide his request dated 15th February, 1988. This application also bears the signature of Senior Engineer Mr. Wadhwa which substantiates the fact of Petitioner joining service much prior to 1st April, 1988 i.e. the date mentioned on the ESI Card. However, this document too was not taken into consideration by the learned Trial Court while passing the impugned award.

2. Per contra Learned Counsel for the Respondent contends that the burden to prove that the workman has worked for 240 days in a calendar year with the management lies on the Petitioner/workman which he has failed to discharge. Reliance is placed on Rajasthan State Ganganagar S.

Mills Ltd. Vs. State of Rajasthan and Another, ; Municipal Corporation, Faridabad Vs. Siri Niwas, ; Manager, R.B.I., Bangalore Vs. S. Mani and

Others, and R.M. Yellatti Vs. The Assistant Executive Engineer, . The Petitioner has not placed on record any document to show that he had

worked 240 days with the Respondent/management in the preceding 12 months. Also as per the ESI card issued to the Petitioner the date of

joining of his service was 1st April, 1988 and not 10th November, 1986. There is no other document on record to show that the date of joining is

10th November, 1986. It is lastly contended that the workman was given an opportunity to join duty on the direction of the learned Labour Court,

however he did not report for duty. Learned Counsel for the Respondent further contends that there was a considerable delay of 7 years in raising

the industrial dispute and a stale claim could not have been entertained by the Labour Court. Reliance is placed on All India Institute of Medical

Sciences Vs. Sanjay Kumar and Another, .

3. I have heard Learned Counsel for the parties and peruse the record.

4. Briefly the case of the Petitioner is that he was working with the management since 10th November, 1986 as "Fitter" at a salary of Rs. 637/-

per month. On 12th May, 1989 the management terminated the services of the Petitioner/workman without any notice or allegation against him.

Thereafter, the workman issued a notice of demand to Respondent No. 2 which was never replied by it. The matter was referred for conciliation

and finally a reference was sent on the following terms of reference:

Whether the services of Shri Badal Prasad 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?

5. The said reference was proceeded ex-parte qua management leading to passing of award dated 6th December, 2001 directing the management

to reinstate the workman with continuity of service and 50% back wages. This award was set aside by the Trial Court vide order dated 30th

September, 2002. On revival of the proceedings on 8th October, 2003 an order was passed on the undertaking of the management wherein the

management stated that the workman was never terminated from services and if he is willing to join the duties then he can join the management at

any time as per his convenience. On the next date, that is, 6th November, 2003 the workman stated that although he had joined duty but he was

given a post of a helper and not his previous post of Fitter. The reference proceedings continued thereafter wherein the written statement was filed

by the management, issues were framed, evidences were produced, examination and cross-examination of witnesses held. On 14th September,

2010 management's right to cross-examine was closed. Further the management also failed to lead any evidence. Finally the arguments were

advanced on 24th September, 2009 leading to the passing of the impugned award on 6th October, 2009 wherein it was observed that since the

workman has failed to prove his case he not entitled to any relief.

6. In R.M. Yellatti (supra) the Hon'ble Supreme Court has held:

17. Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings u/s 10

of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this Court has

repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is

discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral

and documentary. In cases of termination of services of daily-waged earners,

there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case.

7. In Range Forest Officer Vs. S.T. Hadimani (supra) their Lordships have held:

3. 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 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 favour 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.

8. A perusal of the evidence on record shows that the Petitioner/workman has in his cross-examination on 25th January, 2007 before the learned

Labour Court deposed that he is in a possession of an ESI card to show his employment with the management prior to 1st April, 1988 and also a

proof that he was working as a Fitter with the management. However, he further stated that he had neither brought both the documents nor had he

filed the proof of his working as a Fitter on the Court record. As regards the contention of Learned Counsel for the Petitioner that the labour Court

has failed to appreciate the copy of kachcha ESI card and his application for loan from the management dated 15th February, 1988 bearing the

signature of the senior Engineer of the management Mr. Wadhwa which substantiate the fact that he was in the services of management from 10th

November, 1986 and not 1st April, 1988, it may be noted that the said two documents were never produced as evidence before the learned

Labour Court and were not exhibited as evidence. Thus, these documents cannot be relied upon at this stage. In fact, the Petitioner/workman has

got exhibited the documents from Ex. WW1/1 to WW1/15, that is, ESI card, receipts, demand notice, UPC, other demand notice and registered

AD. It is the case of the workman that he joined the services of the management on 10th November, 1986, whereas the documents which he has

placed on record such as ESI card Ex. WW1/1 shows that he was appointed on 1st April, 1988.

9. Even in his cross-examination the workman has failed to show any document to prove that he has worked for 240 days during the period from

13th May, 1988 to 12th May, 1989, that is, date of his termination. He has even failed to tell/recollect his date of termination. A perusal of the

record shows that on 25th January, 2007 and 26th May, 2009 the workman has in his cross-examination stated that he has not applied for job

anywhere after his termination. The management had on 8th October, 2003 given an undertaking/offer to the workman, during the pendency of the

reference, to join at anytime as per his convenience with the management. On 6th November, 2003 it was stated by the workman that he has

joined with the management as Helper although he was previously working as a Fitter which fact was contested by the management. However, the

workman had failed to report on duty with effect from 6th November, 2003 without giving any kind of intimation, nor had he submitted any

application for leave when he was asked to report for duty with the management during the pendency of the case. The management had also sent a

letter to the workman to report for duty as per Ex. WW1/M1, however the said document had returned undelivered.

10. The Hon''ble Supreme Court in R.M. Yellati (supra) has held that the burden of proof lies on the workman and it is for the workman to adduce

cogent evidence, both oral and documentary. Merely filing affidavit or self-serving statements made by workman would not suffice. A perusal of

the documents shows that nothing has been placed by the Petitioner to prove that he has worked for 240 days with the management. Hence, in the

light of the above-discussion and judgments of the Hon''ble Supreme Court aforementioned, I find that there is no error committed by the learned

Labour Court in coming to the conclusion that the Petitioner has failed to discharge the initial burden cast on him. Since the Petitioner has not been

able to substantiate on the first point itself, there is no necessity to go into the issue of a stale claim being entertained by the learned Labour Court

as raised by the Learned Counsel for the Respondent. The writ petition is dismissed being devoid of merit.