

(2015) 09 DEL CK 0398

In the Delhi High Court

Case No : W.P. (C) 110/2015 and CM No. 170/2015

Bliss Refrigeration Pvt. Ltd.

APPELLANT

Vs

Naseeb Alam

RESPONDENT

Date of Decision : 18-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 11, Order 11 Rule 12, Order 11 Rule 14

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 25F, 25G, 25H

Citation : (2016) 148 FLR 124 : (2015) 4 LLJ 267

Hon'ble Judges : Sunita Gupta, J.

Bench : Single Bench

Advocate : Sushant Kumar, Advocate, for the Appellant; Prabhakar, Advocate and Party-in-Person, for the Respondent

Final Decision : Disposed Off

Judgement

Sunita Gupta, J.—The petitioner has approached this Court under Article 226 and 227 of the Constitution of India challenging the order dated 3rd September, 2014 passed by the Presiding Officer, Labour Court-XIX, Karkardooma Courts in case ID No. 02402CO298242012 LIR No. 504/2012 whereby application moved by the respondent seeking production of documents was allowed.

2. The brief facts relevant for the adjudication of this petition are that the respondent/workman was in employment of the management since November, 2008 as an A.C. Technician and according to him his services were illegally terminated on 23rd April, 2012. It is further alleged by him that he is a member of the union and was deprived of various legal facilities such as annual yatra bhatta, annual increment, ESI, PF and bonus etc. His services were terminated illegally without payment of his earned wages, without giving any notice or notice pay or retrenchment compensation. It was also alleged that the services of the workman were terminated although juniors to him were still continuing with the management and same work is being taken by the juniors to the workman and

by newly appointed employees. Thus, the termination was alleged to be in violation of Section 25F , 25G and 25H of the Industrial Disputes Act.

3. The claim of the workman was resisted by the petitioner/Management on the ground that a theft of copper worth Rs. 1.5 lacs has taken place in their store on 23rd April, 2012 and when the workman was enquired about it, he could not give satisfactory answer and left the job on his own accord.

4. During the pendency of the case, an application was moved by the workman for summoning the following documents:-

(a) Attendance and payment of wage register for the period March, 2011 to April, 2012.

(b) Seniority list from the year 2008-2012.

(c) Payment of bonus register from the year 2008-2012.

5. By placing reliance on Automobile Association of India vs. PO Labour Court-II, 2006 LLR 851 Delhi, vide impugned order dated 3rd September, 2014, the learned Presiding Officer, Labour Court allowed the application by holding that the workman can call upon the management to produce documents in order to prove his case, i.e., the documents which can prove relationship between the employee and employer, salary or the length of service which are in possession of the management.

6. Feeling aggrieved, this writ petition has been filed by the petitioner/management on the ground that the limited question for consideration before the Labour Court is whether the workman was retrenched/terminated or he had abandoned the job on his own accord on 23rd April, 2013 and for adjudication of this controversy, the documents as called for by the workman are not at all relevant or significant.

7. Learned counsel for the petitioner submits that none of the documents has any relevance for adjudication of the controversy. The workman cannot be permitted to have a roving and fishing inquiry. Reliance was placed on Delhi State Industrial & Infrastructural Development Corporation Ltd. & Anr. CM(M) 404/2012 & CM No. 6267/2012; B.O.C. India Ltd. Vs. Indian Oxygen Employees Union, Bom and Sumer Singh Saini vs. Hindustan Machines and Tools Ltd. Pinjore, CR No. 669/2008 decided by the Punjab and Haryana Court.

8. On the other hand, learned counsel for the respondent/workman submitted that all the documents are necessary for adjudication of the controversy between the parties, inasmuch as, it is the case of the workman that his termination from the services is in violation of the mandatory provisions of Section 25F , 25G and 25H of Industrial Disputes Act. In order to prove violation of Section 25F , it will be necessary for the workman to prove that he had worked for 240 days preceding his termination and, therefore, the attendance and payment of wage register for the period March, 2011 to April, 2012 is necessary. He is also alleging

violation of Section 25G by alleging that juniors to him are still working and new persons have also been employed. The bonus register is necessary to prove that the workman was deprived of various legal facilities including bonus. Under the circumstances, it is submitted that all the documents are material for adjudicating the controversy between the parties. The impugned order does not suffer from any infirmity which calls for interference.

9. A perusal of application (Annexure P7) moved by the workman reveals that the same has not been moved under any specific provision of law. But since by virtue of this application, he is seeking production of documents, therefore, it is an application u/O 11 of the Code of Civil Procedure. It is settled law that before making an order under the provisions of Order 11, the following principles are to be considered by the Court:-

- (i) The documents sought to be discovered and produced have to be relevant to the matter in controversy viz. matters in question;
- (ii) The documents have to be in the possession and power of the person against whom discovery and production is sought;
- (iii) Discovery and production of the documents which are sought for are necessary at that stage of the suit;
- (iv) The discovery and production is necessary for fairly disposing of the suit or for saving costs;
- (v) The discovery and production may be general or limited to certain classes of documents as the Court in its discretion deems fit and the production will only be ordered if the Court considers it just.

10. It is also a settled law that before giving a direction to a party to discover and produce a document, the Court has to be satisfied that the document in question is relevant for proper adjudication of the matter involved in the suit and further the privilege conferred under Order 11, Rules 12 and 14 CPC is not being used for the purposes of a roving or fishing enquiry.

11. In Delhi State Industrial Development Corporation (supra), a Single Judge of this Court relied upon J.S. Construction Pvt. Ltd. Vs. Damodar Rout, ; Rajesh Bhatia and Others Vs. G. Parimala and Another, ; Mr. M. Sivasamy vs. M/s. Vestergaard Frandsen A/S, decided on 7th August, 2009 in support of finding that the production of documents should be allowed only if the same is necessary for adjudicating the controversy between the parties and not for any fishing or roving inquiry. On the facts and circumstances appearing in that case, the Court came to the conclusion that the documents which were sought to be summoned were not relevant at that stage and, therefore, order of discovery was uncalled for. Liberty was, however, granted to the opposite party to cross-examine the petitioner's witnesses on the aspects for which the documents were called. Similarly in Sumer Singh Saini(supra), the petition challenging the dismissal of the application of the petitioner seeking production of record was not interfered

with by observing that during the evidence if any document is required then, a direction can be given by the Court to produce the relevant documents. In BOC India Ltd. (supra), on the factual matrix of the case, the petition was partly allowed by allowing certain documents to be produced.

12. The learned Trial Court while allowing the application relied upon Automobile Association of India (supra) wherein it was held as under:-

"Engagement and appointment in service can be established directly by the existence and production of an appointment letter, a written agreement or by circumstantial evidence of incidental and ancillary records which would be in the nature of attendance register, salary registers, leave records, deposit of Provident Fund contribution and Employees' State Insurance contributions etc. The same can be produced and proved by the workman or he can call for and caused the same to be produced and by calling for witnesses who are required to bring and prove these records. The workman should make an appropriate application calling upon the management to call such records in respect of his employment to be produced. In these circumstances, if the management fails to produce such records, an adverse inference is liable to be drawn against the management and in favour of the workman."

13. A perusal of the claim petition and the written statement filed by the Management goes to show that there is no dispute regarding relationship of employer and employee between the petitioner and the respondent. It is the case of the workman that the Management terminated the services of the workman on 23rd April, 2012 in violation of Section 25F of ID Act. On the other hand, the case of the Management is that the workman was responsible for the goods stolen from the store of the company amounting to more than Rs. 4.5 lacs. As such, a complaint was made with Chowki Incharge, Sector-23, Sanjay Nagar, Police Station Kavi Nagar, New Delhi. The workman himself, after misappropriating the goods and funds of the management, left the job in order to escape his liability towards the management and his services were never terminated by the employer. That being so, issue framed by the learned Labour Court was whether the workman left the job of the management on his own and abandoned his job on 23rd April, 2012 or his services were terminated by the Management as per the terms of reference. There is no dispute between the parties that prior to 23rd April, 2012, the workman had not worked for 240 days, therefore, the attendance register or wage register is not required for the same reason. Although the workman has alleged that his juniors are still working and new persons have also been employed to do the same job but keeping in view the controversy involved in the instant case, the seniority list does not seem to be relevant. Similarly it is not essential to decide the controversy whether the bonus was paid to the workman or not. Therefore, at this stage, the documents which have been ordered to be produced by the management are not necessary. The impugned order is accordingly set aside.

14. However, it is clarified that if during the course of evidence, there is

requirement of production of any specific document by the management, which may be considered to be relevant by the Court for adjudication of the claim of the workman, then management can be called upon to produce the record.

15. With these observations, the petition and the application, if any, stand disposed of.