
(2014) 11 DEL CK 0091

In the Delhi High Court

Case No : Writ Petition (Civil) 3474/2012 and CM No. 12289/2013

HI-Speed Movers Pvt. Ltd.

APPELLANT

Vs

Govt. of NCT Delhi

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2014) 146 DRJ 294

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Gurpreet Singh Sethi, Advocate for the Appellant; Dhanesh Relan, Arush Bhandari and Ajit Singh, Advocate for the Respondent

Judgement

Suresh Kait, J.

W.P.(C) 3474/2012

1. Vide the present petition, the petitioner seeks setting aside of the award dated 21.03.2012 passed by the learned Presiding Officer of Labour Court-XIX, Karkardooma Courts, Delhi in I.D. No. 260/2009 and LIR No. 245/2011.

2. Vide order dated 30.05.2012 passed in C.M. No. 7326/2012, this Court stayed the reinstatement of the respondent No. 2/workman, however, declined to stay the operation of the impugned award directing the payment of back wages to the respondent No. 2 on the ground that no irreparable loss is going to be caused to the petitioner Management, when the respondent No. 2/workman, has been successful in the first round of litigation. Accordingly, the back wages have already been received by the respondent No. 2/workman.

3. Mr. Gurpreet Singh Sethi, learned counsel appearing on behalf of the petitioner Management has drawn attention of this Court to the statement of claims filed on behalf of the workman, whereby stated as under:-

"4. That the management started to get-rid to the workman, but failed and on

9.5.2009, the management called to the workman in his office and obtained the signature of workman on blank paper and voucher with revenue stamp and the management had illegally terminated the workman on same day on 9.5.2009, without paying any dues, without given any prior notice, within any rhyme or reason.

5. That after termination from the services, the workman had visited the establishment of management regularly till 12.5.2009, but on last day on 12.5.2009, the management had clearly stated to the workman that you don't come from tomorrow.

6. That after clearly stated by the management, the workman had joined union on 12.5.2009, and through the union on 12.5.2009, the workman lodged the complaint against the management for illegal termination after taking signature on blank papers and voucher with revenue stamp."

4. Learned counsel for the petitioner Management submitted that no averment has been made in the statement of claims by the respondent No. 2/workman that his signatures were taken under coercion, pressure or threat.

5. The petitioner Management filed the written statement, whereby stated as under:-

"2. That the Workman had left the service with his own sweet will and took full and final payment of Rs.31,088/- from the management and signed on the full and final settlement report after putting his signature on the said report.

3. That the Workman had also signed the full and final receipt Dt. 9.5.2009 which says that the Workman had left the service on his own accord without any pressure and coercion. He also admits that he do not have any claim whatsoever regarding his employment and also forgo his right of reinstatement or reemployment in future.

4. That besides the above the workman also signed on the various vouchers dt. 9.5.2009 as follows:-

1) Rs.3,710/- Salary for the month of April 2009 (27 days)

2) Rs.22,560/- Gratuity, Bonus for the year 08-09

3) Rs.4,818/- towards Leave encashment (35)."

6. Mr. Sethi, submitted that the respondent No. 2/workman received a sum of Rs.3,710/- towards salary for 27 days in the month of April, 2009; Rs.22,560/- towards Gratuity and Bonus for the year 2008-09 and Rs.4,818/- towards leave encashment of 35 days and the respondent No. 2/workman put his signatures on all the receipts of the aforesaid payments.

7. Learned counsel further submitted that in response to suggestion put in the cross-examination, the respondent No. 2/workman replied that:-

" It is wrong to suggest that the workman had taken full and final payment from the management on 9.5.09 after putting signatures and thumb impression on the vouchers amounting to Rs.3710/-, Rs.22560/- and Rs.4818/- respectively besides signing full and final settlement document which showing that net payable amount after deduction of Rs.3,710/-, leave encashment of 35 days, Rs.4,818/- bonus for the year 2008-2009, Rs.4690/- and gratuity Rs.17,870/- totalling Rs.31,088/-. It is wrong to suggest that management has paid me all full and final payment and nothing remains towards the salary as well as HRA, Conveyance, PF, ESI and other dues. It is wrong to suggest that all the employee/workman received the salary after putting signatures on the salary slip/salary sheet. It is wrong to suggest that management has never threatened any employee/workman to get the paper sign at the time of payment of salary. It is also wrong to suggest that no workman or employee has made any complaint against the management regarding threatening to obtain signatures on blank papers at the time or paying salary."

8. Mr. Sethi submitted that all the suggestions relating to the documents were put to the respondent No. 2/workman, who although denied the same, but admitted his signatures, however, denied that the same were not taken on blank papers.

9. The petitioner examined RW1/Jai Singh Bisht, who deposed in the cross-examination that acceptance of the resignation has been granted by the MD of the Company. Also admitted that copy of the resignation letter Ex.RW1/7 did not bear the signature of the MD. On 01.01.2009, full and final payment of all the dues was made to the workman. He further deposed that he filed two full and final receipts, which bear the signatures/thumb impressions of workman. He signed Ex.RW1/3, i.e., full and final receipt, as a witness. It is correct that the wage register for the period 01.01.2009 has not been placed on record, however, voluntarily stated that the entire record from November 2001 to May 2009 has been filed. He admitted that the full and final payment is not reflected in the wage register since a separate voucher was issued for that purpose.

10. Further stated, payment was made in cash in the presence of the entire staff. However, denied the suggestions that the workman never tendered any resignation letter to the Management or that he never received any full and final settlement dues and it is for that reason that copy of the ledger book has not been placed on record. He could not say that the payment was reflected in the daily cash book or ledger. Though admitted that no reply to the demand notice dated 13.05.2009 of the workman was given, however, voluntarily stated that the workman had already received the full and final payment on 09.05.2009.

11. Learned counsel for the petitioner Management submitted that the respondent No. 2/workman has not put any suggestion to the witness RW1 that his signatures were obtained on blank papers.

12. Mr. Sethi has drawn the attention of this Court to Ex.RW1/10, i.e., the salary

statement for the month of May, 2009, showing that all the workmen have been receiving the salary in cash, however, the learned Tribunal has not relied upon the evidence led by the petitioner Management on this issue on the ground that it is not possible that the petitioner Management has been paying the salary in cash. Learned counsel submitted that it is not the case of the respondent No. 2/workman that he has been receiving the salary by cheque or directly through his Bank Account.

13. Learned counsel for the petitioner has also drawn the attention of this Court to Ex.RW1/2, i.e., the receipt of full and final settlement, which bears the signature of the respondent No. 2/workman at mark-A on the revenue stamp. Ex.RW1/5 is a voucher showing receipt of Rs.22,560/- (Rs.17,870/- towards Gratuity and Rs.4,690/- towards Bonus 2008-09) by respondent No. 2/workman, which also bears his signature. Ex.RW1/6 bears signature of the respondent No. 2/workman and shows receipt of Rs.4,818/- towards leave encashment of 35 days. Ex.RW1/3 is the full and final receipt of Rs.31,088/-, which bears the signatures of the respondent No. 2 at mark-B and two witnesses, namely, Raj Kapoor and Jai Singh Bisht, Manager of the petitioner Management. Ex. RW1/7 is the resignation of the respondent No. 2

14. Despite the facts and evidence recorded above, the learned Tribunal has decided issued No. 1 in favour of the respondent No. 2/workman and against the petitioner observing that the aforesaid documents were never put to the workman during cross-examination and was not confronted on the signatures.

15. However, while relying upon the case of Nicks (India) Tools Vs. Ram Surat and Another, , the learned Tribunal opined that when the workman was not confronted with the documents vide which it was contended that he had voluntarily left the job, thus the workman did not have any opportunity of either accepting or denying the contents and the signatures on the said documents.

16. Mr. Sethi, further submitted that since the respondent No. 2/workman has admitted his signatures on the aforesaid documents though stated that the same were taken on blank papers, therefore, the only issue left with the learned Tribunal was whether the respondent No. 2/workman received the amount in lieu of the final settlement.

17. However, the learned Tribunal opined that these documents bear the signatures of the respondent No. 2/workmen but his signatures were obtained on these documents on 09.05.2009 on blank papers. The workman has deposed that when he came to know on 12.05.2009 that he has been terminated on the basis of signatures taken on blank papers, he immediately reported the matter to the local SHO as well as the Labour Officer vide his complaint Ex.WW1/1. The fact remains that the workman had made a complaint without wastage of time when he came to know about his signatures being taken on blank papers and conversion of the same into documents of full and final settlement.

18. Learned counsel for the petitioner submitted that after tendering resignation

and receiving the settlement amount under his signatures, the respondent No. 2/workman went to the Union Office, where he might have been suggested to lodge a complaint before SHO and the Labour Department and thereby he would get more amounts from the petitioner Management. In that situation, the respondent No. 2/workman made the complaint to both the Authorities, mentioned above.

19. Moreover, the learned Tribunal recorded that the payment was made in cash, which is quite surprising for a concern like petitioner Management, as such payments are generally made by cheque. RW1 failed to depose if the payment is reflected in the daily cash book or ledger and also deposed that the service compensation was also included in the full and final settlement. However, the same does not find mention. Accordingly, these documents have been rejected by the learned Tribunal and held that the signatures of the workmen have been taken in blank at any prior time before their alleged execution.

20. Learned counsel for the petitioner Management submitted that the learned Tribunal has relied upon the case of M/s. Nicks (India) Tools (supra), which is not relevant to the facts and circumstances of the present case.

21. In para 15 of the aforesaid case, the Apex Court has held as under:-

"15. Having heard the learned counsel for the parties and having perused the records we notice that the factum that the workman was in the service of the management till 22nd of April, 1993 is not disputed. While, the workman contends that his services from that day were wrongfully terminated, the appellant contends that the workman voluntarily left the services of the appellant having taken all his dues. Since the respondent workman was in the service of the appellant management at least up to the 22nd of the April, 1993, the burden of proving that he voluntarily left the services then falls on appellant management. This the appellant contends is satisfied by the oral evidence adduced by the management and the documentary evidence produced in the form of the receipt M/X (M3) purportedly executed by the workman and the entries in the bonus register M/X. The Labour Court considering the said document, which is said to be a receipt executed by the respondent, noticed the fact that the original of this document was never produced by the appellant and what was produced was only a photocopy. Even this photocopy was not confronted to the workman when he was in the witness box and the signature found in the said photocopy as also in the photocopy of the bonus register shows that though two documents came into existence simultaneously the ink with which the respondent workman is supposed to have signed the two documents was different. In such circumstances, it held that it was not safe to rely upon the said document to accept the case of the appellant. The High Court in this regard held though it may not be necessary to apply the strict rule of evidence in regard to production and proof of a document still the workman ought to have been provided with an opportunity to explain his version as to the alleged receipt having been executed by him and such opportunity not having been offered by

confronting the document to the workman the appellant in effect has violated the principles of natural justice and hence by its act of default the workman's case cannot be prejudiced."

22. Learned counsel submitted that in the aforementioned case, there were photocopies of the documents, signatures of the workman were in different inks and no opportunity was given to the workman to explain his case. Further submitted, since all the aforementioned three grounds are not applicable in the case in hand, therefore, the learned Tribunal has wrongly relied upon the said judgment.

23. On the other hand, Mr. Ajit Singh, learned counsel appearing on behalf of the respondent No. 2/workman submitted that the petitioner Management has taken signatures of the workman on 09.05.2009 on blank papers. Thereafter, when respondent No. 2 went on duty on 12.05.2009, he was stopped by the petitioner Management. Hence, on the same day, he made a complaint to the SHO regarding the signatures taken on the blank papers and sent the same complaint to the Labour Department.

24. Learned counsel for the respondent No. 2/workman submitted that if the respondent No. 2 received the amount noted above towards full and final settlement, there was no occasion for him to approach the SHO or the Labour Department on 12.05.2009. The respondent No. 2 has not received any amount whatsoever of settlement except the salary for the month of April, 2009. All the documents showing dues to respondent No. 2 have been prepared by the petitioner Management. Moreover, RW1 Jai Singh Bisht, witness of the petitioner Management also admitted that service compensation has not been mentioned in the settlement.

25. Learned counsel submitted that since the signatures taken on the blank papers were not confronted to the respondent No. 2, therefore, the signatures of the respondent No. 2 have not been established on the alleged payments made by the petitioner Management. Hence, these documents cannot be relied upon as has been rightly held by the learned Tribunal.

26. I have heard learned counsel for the parties.

27. On perusal of the statement of claims filed by the respondent no.2 workman, it is revealed that nowhere it is stated that his signatures were taken under coercion, pressure or threat. The case of the respondent no.2 is that he had joined Workers' Union on 12.05.2009 and through the Union on the very same date he lodged the complaint against the petitioner management for illegal termination after taking signature on blank papers and vouchers with revenue stamp. The respondent no.2 workman received a sum of Rs.3,710/- towards salary for 27 days in the month of April, 2009, Rs. 22,560/- towards Gratuity and Bonus for the year 2008-09 and Rs.4,818/- towards leave encashment of 35 days.

28. On perusal of the aforesaid documents, it is revealed that the signatures are of the respondent no.2 which have been admitted, however, denied that the aforesaid signatures were taken on blank papers.

29. Exhibit RW-1/10 proved the salary statement, for the month of May, 2009, of the workman working with the petitioner establishment and he has been receiving the salary in cash. However, the learned Labour Court has not relied upon this document and opined that it is not possible that the petitioner management have been paying the salary in cash. Exhibit RW1/2 is the receipt of full and final payment which bears the signature of respondent no.2 at mark-A on the revenue stamp. Exhibit RW1/5 is a voucher showing receipt of Rs.22,560/- (Rs.17,870/- towards Gratuity and Rs.4,690/- towards Bonus 2008-09) by respondent No. 2/workman, which also bears his signature. Ex.RW1/6 bears signature of the respondent No. 2/workman and shows receipt of Rs.4,818/- towards leave encashment of 35 days. Ex.RW1/3 is the full and final receipt of Rs.31,088/-, which bears the signatures of the respondent No. 2 at mark-B and two witnesses, namely, Raj Kapoor and Jai Singh Bisht, Manager of the petitioner Management. Ex. RW1/7 is the resignation of the respondent No. 2. However, the learned Labour Court opined that this document bears the signatures of the respondent no.2 but his signatures were obtained on this document on 09.05.2009 on blank papers. It is a fact on record that the respondent No. 2 made no complaint either to SHO concerned and the Labour Department, however, made complaint on 12.05.2009 on the date he joined the Workers' Union. It establishes that respondent No. 2 went to the union office where he might have been suggested to lodge a complaint before the authorities mentioned above, thereby he would get more amount from the petitioner management. When the petitioner management placed the record of the salary of the workman before the Labour Court in that eventuality there was no occasion before the Tribunal not to rely upon the statement made by RW1 that the management were paying salary in cash. The respondent No. 2 also has been receiving the salary continuously for 9 years, i.e., from the date he joined the establishment.

30. Keeping in view the facts recorded above, it appears that the learned Labour Court has wrongly relied upon the case of M/s. Nicks (India) Tools (supra) wherein there were photocopies of the documents, signatures of the workman were in different inks and no opportunity was given to the workman to explain his case. Whereas in the case in hand, the respondent no.2 had not put any suggestion to the witness MW 1 regarding taking his signatures on blank papers.

31. Thus, the learned Labour Court ignored the evidence advanced by the petitioner and passed the award in favour of the respondent No. 2 workman.

32. Accordingly, this Court sets aside the impugned award dated 21.03.2012 passed by the learned Labour Court except the back wages.

33. Before parting with the judgment, I note that vide order dated 30.05.2012

passed in C.M. No. 7326/2012, this Court stayed the reinstatement of the respondent No. 2/workman, however, declined to stay the operation of the impugned award directing the payment of back wages to the respondent No. 2 on the ground that no irreparable loss was going to be caused to the petitioner Management in a case where the respondent No. 2/workman, who has been successful in the first round of litigation, received wages becoming payable to him under the impugned award. Accordingly, the back wages have already been received by the respondent No. 2/workman. I hereby make it clear that this order does not give any right to the petitioner to recover back wages which have already been received by the respondent No. 2 from the petitioner.

34. In view of the above, the petition is allowed to the extent that reinstatement of the respondent No. 2 is set aside as granted vide award dated 21.03.2012.

35. No orders as to costs.

CM No. 12289/2013 (U/s 17-B ID Act)

With the disposal of the instant petition, this application has become infructuous. The same is accordingly dismissed.