
(2011) 02 DEL CK 0123

In the Delhi High Court

Case No : Writ Petition (C) 23278 of 2005

Hindustan Associates Engineer Pvt. Ltd.

APPELLANT

Vs

Sh. K.K. Aggarwal and Others

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Citation : (2011) LLR 312

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : M.S. Rahman, for the Appellant; Vikas Nagpal, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The counsel for the Petitioner states that talks of compromise are underway with the Respondent No. 1 workman. The counsel for the Respondent No. 1 workman vehemently denies that any talks of compromise are underway.

2. Faced with the aforesaid, the counsel for the Petitioner seeks adjournment for arguing the matter.

3. This writ petition impugns the award dated 14th January, 2005 of the Labour Court, holding the termination by the Petitioner of employment of the Respondent No. 1 workman to be illegal and unjustified but granting the relief to the Respondent No. 1 workman only of payment of sum of Rs. 2450/- per month i.e. the salary which the Respondent No. 1 workman was admittedly last drawing, from the date of termination (1st May, 1996) till the date of award. The counsel for the Respondent No. 1 workman informs that only a sum of Rs. 2,56,025/- is so due to the Respondent No. 1 workman under the award.

4. This Court on 9th December, 2005 while issuing notice of the writ petition had stayed the operation of the award subject to the Petitioner depositing Rs. 10,000/- towards litigation expenses. On 7th March, 2007 it was observed that the Petitioner taking advantage of the stay had not been taking steps for service of the Respondents. Accordingly, it was directed that if the Petitioner fails to

serve the Respondents, the stay shall stand vacated. On 14th August, 2007 when the Respondent No. 1 workman appeared before this Court, the parties were referred to Mediation. In the order sheet of 23rd January, 2008, it is recorded that Mediation had failed.

5. On 16th March, 2009 the counsel for the Respondent No. 1 workman stated that a sum of approximately Rs. 2,70,000/- was due under the award but the Respondent No. 1 workman without prejudice to the rights and contentions and for the sake of expediency was willing to accept a sum of Rs. 2,00,000/- only in full and final settlement of all his claims including under the award. The counsel for the Petitioner had then also sought time to obtain instructions and it was made clear that if the matter is not settled, the matter shall be heard on merits. Thereafter adjournment was sought mostly on behalf of the Petitioner and ultimately on 3rd December, 2009, the writ petition was dismissed in default. The Petitioner thereafter applied for restoration which was allowed but the writ petition was again dismissed for non-prosecution. Yet again restoration was applied for and allowed.

6. In view of the aforesaid state of affairs emerging from the order sheet, the request of the counsel for the Petitioner for adjournment cannot be acceded to. The counsel for the Respondent No. 1 workman has been heard.

7. The claim of the Respondent No. 1 workman was that he was employed with the Petitioner as a Typist Clerk since the year 1968; that he had in the year 1993 undergone bypass surgery; that he was denied increments for the year 1992-93 onwards and on 1st May, 1996 when he reported for work, he was not allowed to work.

8. The Petitioner had issued a reply dated 30th December, 1996 to the notice (dated 10th December, 1996) got issued by the Respondent No. 1 workman preceding the reference. In the said reply, it was admitted that the Respondent No. 1 workman was in the regular employment of the Petitioner from 1st August, 1993 to 31st March, 1995 at a salary of Rs. 2,450/- per month. It was however stated that the Respondent No. 1 workman had himself on 1st April, 1995 stated that owing to ill health, he be allowed to work on "part time basis" and was allowed to work on "part time basis" at Rs. 2,450/- per month. It was yet further stated that with effect from 1st May, 1996, the Respondent No. 1 workman had absented himself and thus was not entitled to the claim in the notice of being allowed to work.

9. The Labour Court on the basis of the pleadings and evidence of the parties concluded that the Respondent No. 1 workman was working with the Petitioner as a regular employee and the management had failed to produce the attendance records to disprove the case of the Petitioner of employment since 1968. The Labour Court held that since Section 25F of the Industrial Disputes (I.D.) Act had admittedly not been followed and relying on *Managing Director v. Faily Ram* 1996 LLR 645 Rajasthan and *The Executive Engineer, Irrigation*

Division-I, Jaipur v. Nar Narain 1994 LLR 538 Rajasthan held the termination of service of the Respondent No. 1 workman to be illegal and unjustified. However, it was held that the relief of reinstatement was not appropriate at that advanced stage. Hence, the relief only of payment of Rs. 2,450/- from the date of termination till the date of award was granted.

10. The Petitioner in the writ petition has urged that the Labour Court has ignored that the Respondent No. 1 workman was a "part time employee"; that from the documents produced by the Petitioner before the Labour Court, it was borne out that the amount of Rs. 2,450/- being paid to the Respondent No. 1 workman was debited towards "miscellaneous expenses" and not towards "salary"; that a cheque for Rs. 2,450/- in the name of the Respondent No. 1 workman was prepared for the month of April, 1996 but which was not paid owing to the Respondent No. 1 workman having abandoned the services. The emphasis in the writ petition is on the Labour Court having ignored the plea of the Petitioner of the Respondent No. 1 workman having abandoned the service.

11. In my view, it is irrelevant whether the Respondent No. 1 workman was in service since 1968 or not; inasmuch as regular employment at least from 1st August, 1993 to 31st March, 1995 is admitted. As far as the claim of the Petitioner of the Respondent No. 1 workman having ceased to be an employee and having been allowed to work part time with effect from 1st April, 1995 is concerned, the same does not stand to logic. When the Petitioner was paying Rs. 2,450/- per month to the Respondent No. 1 workman for regular employment, it is inconceivable that for "part time work" the same amount would be continued to be paid. Even otherwise, had the workman ceased to be an employee and fresh term been agreed upon, documentation with respect thereto would have been made. Moreover, the said question is a question of fact and this Court in exercise of writ jurisdiction, would not interfere with a finding of fact returned by the Labour Court unless found to be perverse. No such case has been made out.

12. As far as the case of abandonment is concerned, the counsel for the Respondent No. 1 workman has drawn attention to the cross-examination of the witnesses of the Petitioner in which it is admitted that no letter or notice asking the Respondent No. 1 workman to join back was issued. The case of the Petitioner is of abandonment with effect from 1st May, 1996. The case of the Respondent No. 1 workman is of having not been allowed to work since 1st May, 1996. It is admitted that the Respondent No. 1 workman at least on 10th December, 1996 called upon the Petitioner to allow him to work. Had the Respondent No. 1 workman abandoned services, the Petitioner instead of opposing the same would have allowed him to join considering the short time within which the said demand was made. Moreover, it has been held in Anil Chuttani v. ONGC 2010 (117) DRJ 433 that for abandonment also a proper enquiry has to be made and which admittedly has not been done in the present case.

13. No case for interference with the award is therefore made out. The writ

petition is without any merit and is dismissed.

14. The Supreme Court in *Abhimanyoo Ram v. State of U.P.* (2008) 17 SCC 73 and in *Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc.*, has held that the Courts at the time of final adjudication ought to balance equities arising from the interim orders made. Owing to the interim order in the present case, the amount of Rs. 2,56,025/- payable to the Respondent No. 1 workman in January, 2005 has remained unpaid for five years. There has been a sea change in the buying power of a rupee in the last five years. Unless equities are balanced, the Respondent No. 1 workman inspite of winning before this Court would remain a loser. Accordingly, it is directed that the Petitioner shall be liable to pay interest at the rate of 9% per annum on the awarded amount from the date of the interim order dated 9th December, 2005 in this writ petition and till the date of payment.

15. The costs of litigation having already been paid, no order as to costs.