
(2006) 09 DEL CK 0156

In the Delhi High Court

Case No : Writ Petition (Civil) No. 335 of 1996

Jai Kishan Dass and Bros.

APPELLANT

Vs

The Presiding Officer and Others

RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Evidence Act, 1872 — Section 106

Industrial Disputes Act, 1947 — Section 17B

Citation : (2006) 09 DEL CK 0156

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Kailash Vasudev and Prateek Kumar, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

Manju Goel, J.—The writ petition challenges the award dated 25.5.1995 in the L.C.I.D. No. 618/1984 between the management of M/s. Jai Kishan Dass and Brothers (the petitioner herein) and the workman-Hukam Chand (respondent No. 3 herein). The terms of reference were, "Whether Sh.Hukam Chand has abandoned the services of his own or the same have been terminated by the management illegally and/or unjustifiably and if so, to what relief is he entitled and what directions are necessary in this respect"". The respondent was a workman with the petitioner management at the wages of Rs. 450/- per month. He alleges that when he asked for a raise he was dismissed from service on 10.8.1983. The petitioner management, on the other hand, alleged that the last drawn wages of the workman was Rs. 450/- per month, that the factory of the management was shifted from Kingsway Camp to Naraina Industrial Area and ever since the shifting the respondent/workman did not join his duties and remained absent. The case of the petitioner management is that the respondent abandoned his services and that it was not a case of the management terminating the employment of the workman. The Labour Court found the contention of the management to be right. However, the Labour Court, in view of

the judgment of the Supreme Court in the case of D.K. Yadav v. J.M.A. Industries Ltd. 1993 LLR 583 held that although the standing orders provided for loss of lien in case of prolonged absence, the workman was required to be given an opportunity of hearing before any punitive action could be taken. The management admittedly had not issued any notice to show cause and did not hold any enquiry. The workman was, Therefore, found to be deemed to have been in service without break. Coming to back wages it was observed that there was no evidence from the side of the management that the workman was in fact employed and, Therefore, awarded full back wages. The petitioner management have assailed both the findings of the Labour Court. It is pointed out by the petitioner that respondent No. 3 did not come for the work from 10.8.1983 that on 20.8.1983 he sent a notice to the petitioner management seeking his reinstatement and back wages, that notice was duly replied to on 16.9.1983 by which respondent No. 3 was called upon to join his duties immediately, that on 30.9.1983 respondent No. 3 sought conciliation proceedings before the Labour Court, that on 30.9.1983 the petitioner again reiterated his earlier stand and asked respondent No. 3 to join his duties failing which it may be deemed that he had abandoned his employment and that despite such a stand the reference was made to the Labour Court. Even during the pendency of the proceedings, the Labour Court passed an order directing respondent No. 3 to report for duty with effect from 30.1.1986. The petitioner says that respondent No. 3 was not interested in joining his duties and he filed an application stating that he had been prevented from joining his duties. Yet another application was moved by the petitioner asking for a direction on respondent No. 3 to join his duties. Respondent No. 3 thereafter came for duty just for a day and thereafter remained absent. The fact that he had come for only for a day was admitted by respondent No. 3 before the Labour Court.

2. Mr. Kailash Vasudev, learned Senior Counsel appearing for the petitioner, stated that the Industrial Employment Standing Order was not applicable to the petitioner. There is nothing on record to show that Industrial Employment Standing Order was applicable to the petitioner. Therefore, the principles enunciated by the Supreme Court in the case of D.K. Yadav (Supra) cannot be attracted to this case.

3. Mr. Kailash Vasudev invokes the theory of "useless formality" by referring to the aforesaid dates on which respondent No. 3 was asked to join his duties and respondent No. 3 failed to comply with such demand. It is also pointed out that before the Conciliation Officer respondent No. 3 was warned that in case he did not join his duties it can be presumed that he had abandoned his job. The fact that respondent No. 3 had abandoned is more than evident from the above details. Inspire of repeated demand from the petitioner requiring respondent No. 3 to join his duties, he did not join his duty and preferred to remain absent while at the same time he agitated his claim before the Labour Court. The facts of this case are very similar to the facts in the case of Aligarh Muslim University and Others Vs. Mansoor Ali Khan, . In that case an employee who was on leave was

given an extension clearly conveying that in case he did not join at the end of the extended period he would be deemed to have vacated the post. Inspire of this he did not come back to join his post. The Supreme Court found that in this situation the employee was not entitled to the relief of reinstatement. The court traced the history of development of useless formality theory. In the case of S.L. Kapoor Vs. Jagmohan and Others, the Supreme Court held that if the impugned order does not cause any prejudice the order should not be interfered with even if the rules of natural justice had been violated while passing the order. Going a step further in K.L. Tripathi Vs. State Bank of India and Others, the Supreme Court held that the prejudice caused by an order in violation of natural justice should be a de facto prejudice. Accordingly unless some real prejudice is caused to a workman he cannot be heard to say that he has to be reinstated simply because the rules of natural justice, namely, giving him an opportunity to explain and holding proceedings to enquire into the misconduct, were not complied with. The same view was taken by the Supreme Court in the case of State Bank of Patiala and others Vs. S.K. Sharma, .

4. In the case of Syndicate Bank Vs. The General Secretary, Syndicate Bank Staff Association and Another, , the Supreme Court noticed the judgment of D.K. Yadav v. J.M.A. Industries Ltd. (Supra), relied upon by the Tribunal and yet held that the employee who had failed to respond to a notice issued by the management to explain his absence and to join his duties could not take the plea that his termination without holding any enquiry or in violation of principles of natural justice.

5. In the present case the fact that respondent No. 3 himself abandoned the service is more than established by the repeated notices by the management/petitioner to respondent No. 3 asking him to join his duties. The uselessness of complying with such formality was also recognized by the Supreme Court in the case of Punjab and Sind Bank and Others Vs. Sakattar Singh, which was quoted with approval in the latest judgment of the Supreme Court in the case of V.S. Banaras Hindu University v. Shrikant 2006 (6) SCA 66.

6. In view of above findings, I have no option but to hold that the Labour Court has not applied the correct principles of law. The Labour Court itself had directed respondent No. 3 to join his duties. Despite that respondent No. 3 failed to do so. Therefore, he was neither entitled to reinstatement in service nor back wages.

7. The Labour Court granted back wages on a finding that there was no evidence that the workman was in fact employed and, Therefore, awarded back wages. This is no more the correct view. The Supreme Court referring to Section 106 of the Evidence Act has held that the onus to prove that the workman was unemployed was on the workman as decided in the case of U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, .

8. Even this Court in the case of Thankur Singh Rawat and Ors. v. Jagjit Industries Ltd. 2006 2 AD (DELHI) 225 held that full back wages would not be

awarded unless the workman has pleaded and proved that he was unemployed after the illegal termination of his services.

9. I have, Therefore, no hesitation to hold that respondent No. 3 was neither entitled to reinstatement nor back wages and the order of the Labour Court deserves to be set aside.

10. However, there is yet another aspect of the case. The petitioner in compliance with the order u/s 17-B of the Industrial Disputes Act has paid wages for nearly one year to the workman during the pendency of the writ petition. It is submitted by the petitioner that even if the termination is invalid the same need not necessarily be replaced with an order of reinstatement and that he can be sufficiently compensated in terms of money. It is submitted that respondent No. 3 has sufficiently manifested that he is not interested in the job. Therefore, the payment made to him may be deemed to be sufficient compensation for the wrongful dismissal.

11. In spite of such an offer of the management I deem it appropriate to allow the writ petition and set aside the order of the Labour Court and to hold that respondent No. 3 had abandoned his service and even if that is seen as termination, the same was not illegal and unjustified and that respondent No. 3 was not entitled to any relief. It is ordered accordingly.