

(2015) 09 DEL CK 0091

In the Delhi High Court

Case No : Writ Petition (C) 2966/2012 and 5621 of 2013

Jitender Chawla and Others

APPELLANT

Vs

Choudhary Cement Agency and Others

RESPONDENT

Date of Decision : 22-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 293
Evidence Act, 1872 — Section 73
Industrial Disputes Act, 1947 — Section 10(1)(c), 12(5), 25F
Stamp Act, 1899 — Section 12

Citation : (2015) 09 DEL CK 0091

Hon'ble Judges : Sunita Gupta, J

Bench : Single Bench

Advocate : Vimal Wadhwan and Party-in-Person, for the Appellant; Mohit Malhotra, Advocates for the Respondent

Judgement

Sunita Gupta, J—Writ petitions bearing Nos. 2966/2012 and 5621/2013 impugn the award dated 22.12.2011 passed by Labour Court No. XIX in ID No. 226/06/22(old ID No. 175 of 2002).

2. Shorn of unnecessary details, the case of the workman is that he was in the employment of the management since 25.11.1999 on the post of field worker at the monthly wages of Rs. 2,800/-. On 29.04.2001 while working in the establishment, he fell down from the stairs and sustained injuries in the right leg. The management did not provide any facility or funds. After recovery, he reported for duty on 02.06.2001 but the management refused to take him back on duty. Instead of making payment of its outstanding dues, the management asked him to tender his resignation and on his protest, his services were terminated illegally withholding his outstanding dues. Neither any show cause notice was served by the management nor any compensation before termination of his services was paid. A demand notice was sent to which management did not give any response. A complaint was made before the conciliation officer but the management did not show any interest, therefore, Secretary (Labour), Govt.

of NCT of Delhi in exercise of powers conferred by Section 10(1)(c) and 12(5) of Industrial Disputes Act, 1947 (hereinafter referred to as "Act") referred the dispute to Labour Court for adjudication with the following terms of reference:

"Whether the services of Shri. Jitender Chawla S/o Shri H.C. Chawla have been terminated illegally and/or unjustifiably by the management; and if so, to what sum of money as monetary relief alongwith consequential benefits in terms of existing laws/Govt. Notification and to what other relief is he entitled and what directions are necessary in this respect?"

3. On service of notice of reference, the workman filed the statement of claim alleging the termination to be in contravention of Section 25F of the Act.

4. The claim of the workman was contested by the management primarily on the ground that the service of the workman was never terminated by the management. On the other hand, he himself expressed his desire to leave the job on 14.05.2001 and consequently the management settled the full and final account of the claimant who executed a receipt in token of having settled his account. As such, he is not entitled for any relief.

5. On the pleadings of the parties, following issues were framed on 08.07.2004:

i) Whether the management settled the accounts of the workman on his asking fully and finally on 14.05.2001?

ii) Relief in terms of reference?

6. Thereafter management moved an application for amendment in the written statement which was allowed. Accordingly, on 15.03.2007, following additional issue was framed:

"1A. Whether the shop of the management had been closed in November, 2005, if so, its effect?"

7. Workman examined himself whereas on behalf of the management five witnesses were examined. An application was also moved by the management to get the disputed signatures on receipt dated 14.05.2001 compared with the admitted signatures of the workman by the handwriting expert of Forensic Science Laboratory, however, no concrete report could be given by the handwriting expert in as much as the workman did not give his complete signatures. After hearing learned counsels for the parties and perusing the evidence led by them, the Labour Court decided Issue No. 1 against the management on the ground that although the proprietor of the management Paramjeet Singh has testified that vide receipt dated 14.05.2001 workman had received full and final payment, however, MW4 Raghubir Singh admitted that the revenue receipt does not bear signatures of the workman on the document. Handwriting expert failed to give any opinion as was sought from him. The workman was not confronted with this document in his cross-examination. Moreover, the document does not disclose as to what was the outstanding dues,

what was its break-up and what was the exact amount paid to the workman.

8. As regards Issue No. 1A, the same was also decided against the management on the ground that the management failed to prove that the management was actually closed down in November, 2005.

9. As regards Issue No. 2, it was held that the management did not terminate the services of the workman illegally but the workman himself did not report for duty. Further, it was proved that the workman was gainfully employed. That being so, the workman was held not entitled for reinstatement in service or for any other consequential benefits.

10. Feeling aggrieved by the findings of the Labour Court on Issue No. 2, workman filed W.P.(C) 2966/2012 on the ground that the finding of Labour Court that workman was running a tailoring shop at 1241, Sangtrashan, Paharganj, New Delhi since 2004 and earning Rs. 96,000/- per annum was perverse as this shop was subject matter of a civil litigation. Mother of the workman was the legal owner of this shop which was in illegal possession of one Shri Shiv Kumar Sharma. There was litigation between the parties and the possession of this shop was handed over to petitioner's family only on 20.04.2007, therefore, there was no question of running a tailoring shop in that premises on 22.08.2006. The Labour Court relied upon certain affidavits and the bills produced by the witnesses. When the shop itself was not in possession of the workman there was no question of running a tailoring shop from that premises. As such, the impugned award deserves to be set aside.

11. The management also felt aggrieved by the findings of the Labour Court on Issue No. 1 and Issue No. 1A and filed writ petition No. 5621/2013 on the ground that the findings are contrary to the material existing on record. The findings that the workman was not confronted with the full and final settlement receipt dated 14.05.2001 is contrary to the record as the workman was duly confronted with this receipt during his cross-examination but he denied his signatures on the same. Furthermore, the Labour Court erred in observing that MW2 Sh.P.R. Mahal stated in cross-examination that a fact slipped from his mind that signatures of workman were not on the revenue stamp and, therefore, he did not ask him to sign on revenue stamp. No such statement was given by MW2 Sh.P.R. Mahal in his cross-examination. Furthermore, the Labour Court did not appreciate the suggestion given by the AR of the workman to MW4, Sh. Raghubir Singh that the paper on which the receipt dated 14.05.2001 was written, was taken from his office meaning thereby that the workman not only admitted the execution of this settlement cum receipt but also the fact that he had himself executed the said receipt. As regards the finding of the handwriting expert, the Labour Court failed to take note of the fact that the settlement cum declaration dated 14.05.2001 was signed by the respondent in Hindi, the workman signed all documents including pleadings and evidence before the Labour Court in English and on the application of the management, the respondent tendered his signatures in Hindi and gave incomplete signatures by mentioning only "Jitender"

whereas the settlement cum declaration dated 14.05.2001 is signed by him as "Jitender Kumar". The handwriting expert observed that there were similarities in the formation of letters so far as Jitender is concerned but since the other word i.e., "Kumar" and "date" were not available for comparison he could not give any opinion thereon. Even otherwise, the Labour Court had ample power to compare the disputed and admitted signatures of the respondent-workman which was not exercised by the Court. Further, the Labour Court did not take into consideration the admitted document dated 02.06.2001 Ex.WW1/MX1 which was an application given by the respondent seeking re-employment with the petitioner after termination of his employment on 14.05.2001. This document establishes beyond doubt that the workman himself left the employment on 14.05.2001 and thereafter sought re-employment on 02.06.2001. On material aspects, testimony of Paramjeet Singh remained unchallenged as he was not cross-examined on those points. The witness had categorically stated that the shop was demolished in November, 2005 and there was no employee since then. The witness stated during cross-examination that he can produce his sales tax and income tax record but the workman did not require him to produce the said record nor did the court give any such direction. Under the circumstances, it was submitted that the findings of the Labour Court on Issue Nos. 1 and 1A be set aside.

W.P.(C) 5621/2013

12. This writ petition has been filed by the management challenging the findings of the Labour Court on Issue Nos. 1 and 1A on the ground that the same suffers from jurisdictional errors, contains perverse finding and has been given while overlooking the material and evidence on record, therefore, is liable to be set aside. Issue No. 1 was whether the management settled the accounts of the workman on his asking fully and finally on 14.05.2001. Learned Trial Court decided this issue against the management on the ground that the receipt dated 15.05.2001 regarding full and final payment was not confronted to the workman during his cross-examination; the revenue receipt does not bear the signatures of the workman; handwriting expert failed to give any opinion as was sought from him, MW2 P.R. Mahal stated in his cross-examination that it slipped from his mind that signatures of the workman were not on the revenue stamp and, therefore, he did not ask him to sign on the revenue stamp, the document does not disclose what was the outstanding dues, its break up and the exact amount paid to the workman and no corresponding voucher or ledger was proved by the management.

13. Learned counsel for the petitioner relied upon *Atlas Cycle (Haryana) Ltd. Vs. Kitab Singh*, (2013) 4 AD 46 : AIR 2013 SC 1172 : (2013) 136 FLR 893 : (2013) 2 JT 253 : (2013) LabIC 1337 : (2013) 2 LLJ 289 : (2013) 1 LLN 561 : (2013) LLR 231 : (2013) 2 SCALE 49 : (2013) 12 SCC 573 : (2013) 2 SCT 160 : (2013) 2 SLJ 452 : (2013) AIRSCW 2341 : (2013) AIRSCW 1016 : (2013) AIRSCW 4535 : (2013) 1 Supreme 786 in support of his submission that since finding on

issue No. 1 & 1A are perverse hence even while exercising writ jurisdiction, this Court can interfere. The relevant para is extracted as under:-

"When the labour court arrives at a finding overlooking the materials on record, it would amount to perversity and the writ court would be fully justified in interfering with the said conclusion. The High Court exercising writ of certiorari would not assume the role of the appellate court, however, the Court is well within its power to interfere if it is shown that in recording the said finding, the Tribunal/Labour Court had erroneously refused to admit the admissible and material evidence, or had erroneously admitted any inadmissible evidence which has influenced the impugned finding, the writ court would be justified in exercising its remedy. If a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari."

14. There is force in the submission of learned counsel for the petitioner that while deciding this issue, the learned Labour Court overlooked the material and the evidence available on record.

15. It is the case of the management that on 14.05.2001 the workman approached MW1 Paramjeet Singh, proprietor of the firm and expressed his desire to settle his account and, thereafter, he was paid dues in full and final settlement, to his satisfaction in the presence of Sunder Singh and Raghubir Singh. MW1 Paramjeet Singh testified regarding the factum of full and final settlement vide receipt dated 14.05.2001. MW4 Shri Raghubir Singh is a witness to this document and he also deposed that the account was fully and finally settled by the workman vide this receipt. The observation that the workman was not confronted with this document in his cross-examination, is belied by the record as the workman was duly confronted with this document and he denied the execution of the same. The observations regarding MW2 Shri P.R. Mahal also does not find support from the record as no such statement was made by MW2 Shri.P.R. Mahal in his cross-examination. Rather such a statement was given by MW4 Sh.Raghubir Singh in his cross-examination but even he did not claim in his affidavit or his examination-in-chief that the signature of the workman appear on the revenue stamp affixed thereon. The Labour Court did not deal with the effect of absence of signatures of workman on this receipt. Section 12 of Indian Stamp Act, 1899 deals with cancellation of adhesive stamps. This Section reads as under:

"12. Cancellation of adhesive stamps.-1(a) Who ever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again and

(b) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so

that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) The person required by sub-section(1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner."

16. A reading of this Section would show that there is no particular manner provided for cancellation of the stamps. What is important is that the cancellation should be in such a manner so that the stamps cannot be used again. In order that the stamps can be called effectually cancelled the signature should commence on the paper on which the stamps is affixed, go across the stamps and finish on the paper on the other side. If signatures are not affixed to cancel the stamp some other effectual manner of cancellation be adopted running right across the stamps, the cancellation commencing the paper on which the stamp is affixed and ending also on the paper on the other side. In *Sohan Lal Nihal Chand v. Raghu Nath Sinth and Others*, AIR 1934 Lah 606 , the court was concerned with the question of cancellation of a pronote for Rs. 20,000/-. This pronote had four one anna adhesive-stamps affixed to it. It was admitted that one of them had not been cancelled in any way and could be removed and used again. It was held that one of the stamps being uncanceled, the document should be considered as insufficiently stamped and so, no decree could be passed on the basis of such a pronote which was inadmissible in evidence. In *Hafiz Allah Baksh v. Dost Mohammad*, AIR 1935 Lah 716 the bench considered the question of a line drawn across the same being regarded as sufficient cancellation with the meaning of Section 12 of the Stamp Act. It was held that where it is possible to use such a stamp a second time, it could not be held that the cancellation was proper. This view was reiterated by the Bombay High Court in *Dhiraj Lal Mohan Lal Kathewadi and Others Vs. Ranchhod Balaram Nayak and Others*, AIR 1974 Bom 256 : (1974) 76 BOMLR 189 . The ratio of the judgments, therefore, is that the stamp in question should be examined to see whether it can be lifted from the document on which it is affixed and used again. Indeed, the requirement of the statute is that the cancellation should be in a manner that the stamp cannot be used again.

17. A perusal of receipt dated 14.05.2001 goes to show that although the revenue stamp does not bears the signatures of the workman but there is a cross on the revenue stamp and, therefore, the same can be regarded as sufficient cancellation within the meaning of Section 12 of the Stamp Act.

18. Moreover, in view of the denial by the workman of his signatures on this document, an application was moved by the management for taking the signatures of the workman and for getting it compared by a handwriting expert of forensic science laboratory. The signatures were taken and were sent to the forensic science laboratory. The report was given by Ms.Deepa Verma, Senior Scientific Officer which is admissible in evidence under Section 293 of the Code

of Criminal Procedure. The handwriting expert compared the questioned signatures with the specimen signatures and observed similarity in the formation of letters such as "Ja", "Ta", half Na & Da etc. The receipt is signed as "Jitender Kumar" however the workman gave his signatures in the court only as "Jitender". Since the other letters i.e., "Kumar" and figures of date i.e. "14.05.2001" was not available for comparison as such, no opinion could be given. Learned counsel for the petitioner has relied upon M/s. Rohtas Industries Ltd. v. The Presiding Officer, Industrial Tribunal Bihar and Anr. 1978 LAB. I.C. NOC 30 (PAT.) for submitting that under Section 73 of the Evidence Act the Court has power to compare disputed signatures with admitted signatures even without aid of handwriting expert. However, no such power was exercised by the Court. In fact, no specific finding was given regarding the settlement receipt dated 14.05.2001.

19. Furthermore, the petitioner had placed on record a document Ex.WW1/MX1 dated 02.06.2001 which was an application written by the workman seeking re-employment with the petitioner. This is a short application given by the workman to Sardar Paramjeet Singh, proprietor of Choudhry Cement Agency and the English version of the same is as under:

"I have worked in your shop Choudhry Cement Agencies, West Patel Nagar from 25.11.1999 or 14.05.2001. I want to come back again to join the work. Permission may kindly be granted."

20. This application is dated 02.06.2001. It is pertinent to note that the execution of this document is admitted by the workman in his cross-examination by stating that it is in his handwriting and also bears his signatures but he denied that the date appearing in the application is in handwriting. He further deposed that he had given this application for re-employment in November, 1999 in response to an advertisement in the newspaper given by the management. This explanation is not convincing. It is not in dispute that an advertisement was given by Paramjeet Singh in newspaper pursuant to which the workman had joined the management in the year 1999. However, the contents of this application clearly goes to show that this application was not given in the year 1999 in response to the advertisement given by management because it is written by the workman that he seeks re-employment with the petitioner after termination of his employment with the petitioner on 14.05.2001. That being so, his bald denial that the date 02.06.2001 was not written by him is of no consequence. This document also establishes that the employment of the respondent with the petitioner ceased on 14.05.2001. This document has not by at all been considered by the court below.

21. On material aspects, the testimony of MW1 Paramjeet Singh goes un rebutted. No suggestion was given to this witness that Ex.WW1/MX1 is a forged document or was not given by the workman to the petitioner on 02.06.2001 or that receipt dated 14.05.2001 is a forged and fabricated document and does not bear the signatures of the respondent. It is settled law

that non cross-examination of the management witness on any material point goes adversely against the workman as observed in Nand Lal Vs. Bakshi Transport Corporation and Others, (2013) 1 LLJ 442 : (2013) LLR 181 . Under the circumstances, the finding on this issue by the Labour Court is perverse and cannot be sustained.

22. Issue No. 1A : This issue was framed in view of the plea taken by the management that it has closed its business in November, 2005. It was rightly observed by learned Labour Court that the onus of proving this issue was on the management and except the averment that the shops where the business was being run was demolished in November, 2005, no other document was placed on record by the management to show that the business had been closed. The management did not place on record any document to show that any letter of request was sent to income tax and sales tax authorities that it has stopped running the business. That being so, the mere fact that the shop was demolished does not ipso facto prove that the business had also been closed. The workman had placed on record the photographs to show that the management was still running, however, since the management was not confronted with the photographs, as such, the Labour Court was of the view that the court cannot take cognizance of these photographs. Be that as it may, in the absence of placing on record any document regarding closing of the business, the management failed to prove that the business was actually closed in November, 2005. This finding does not suffer from any infirmity which calls for interference.

23. The result is that the writ petition is partly allowed.

W.P.(C) 2966/2012

24. Feeling aggrieved by the findings of the Labour Court on Issue No. 2 whereby the Labour Court observed that the workman had failed to prove that the management had terminated his service illegally and that he was gainfully employed and, therefore, not entitled for any relief, this writ petition has been filed.

25. It is submitted by counsel for the workman that the workman had sustained injuries having fallen down from stairs on 29.04.2001 during the course of his employment, therefore, he could not join his duties. When he reported for duties on 02.06.2001, he was not allowed to join and his services were terminated illegally. On the other hand, the management denied that the workman sustained injuries on 29.04.2001 having fallen down from the stairs of the management or that when he reported for duty on 02.06.2001 he was not allowed to join the duties and his services were terminated. After scrutinizing the evidence on record. The Labour Court observed that the workman failed to prove that he sustained injuries having fallen in the establishment of the management on 29.04.2001 as claimed by him. No details of the treatment taken by him were given in the statement of claim nor any medical record was proved by him except for placing on record the photocopy of OPD prescription slips which also reflected

that the workman himself removed the alleged plaster. It was the case of the management that the workman himself came to the office on 14.05.2001 and expressed his inability to work further and, therefore, the accounts were fully settled. After appreciating the evidence, the Labour Court came to the conclusion that the workman failed to prove that his services were illegally terminated on 02.06.2001. The findings does not suffer from any infirmity which calls for interference.

26. Besides that, the documents placed on record by the workman shows that he himself is not sure as to when he was terminated as he himself has placed on record the complaint made to SHO, PS Patel Nagar Ex.WW1/1 dated 22.08.2000 alleging that his services were terminated on 22.08.2000. Thereafter, there is another complaint dated 15.06.2001 Ex.WW1/2 wherein he alleged that when he came to join duties on 02.06.2001 he was not allowed to join the duties and the services were illegally terminated. On the other hand, as stated above, the management has placed on record the receipt dated 14.05.2001 showing that the accounts were finally settled. Thereafter the workman himself sought re-employment on 02.06.2001 vide Ex.WW1/MX-1 mentioning therein that he worked with the management from 25.11.1999 to 14.05.2001. In view of these documentary evidence, no fault can be found in the findings of the Labour Court that the management had not terminated service of the workman but the workman himself had not reported for duty.

27. As regards the findings of the Labour Court that the workman was gainfully employed, much stress has been laid by counsel for the workman for submitting that the shop in which the business of tailoring is being done was under dispute and it was vacated only in the year 2007 pursuant to the orders passed by this Court and, therefore, there was no question of running a tailoring shop in that premises on 22.07.2006. Such a plea was never taken before the Labour Court nor any such document was filed with the Labour Court. Under the circumstances, such a plea which was never taken before the Trial Court cannot be allowed to be taken in these proceedings. On the other hand, MW-1 Paramjeet Singh had testified that the workman started his tailoring shop by the name of Glory Ladies Tailor at 1241, Sangtrashan, Paharganj, New Delhi-55 in the year 2004. He placed on record the bills of that shop issued by the workman to various customers Ex.MW1/1 to MW1/3. He also proved the affidavit signed by the workman Ex.MW1/4 and Ex.MW1/5 and the documents Ex.MW1/6 and Ex.MW1/7. There is no challenge to the testimony of Paramjeet Singh regarding execution of the affidavits Ex.MW1/4 and Ex.MW1/5 wherein the workman admitted doing the business of ladies tailor. Similarly, vide Ex.MW1/7 the workman gave an application to the Commissioner of Industries, Udhog Bhawan dated 17/04/2008 stating therein that he is running his business of ladies tailoring under the name and style of M/s. Glory Ladies Tailor having three employees and earning Rs. 8,000/- per month. The management also examined MW2 Sh.P.R. Mahal, Oath Commissioner who attested the affidavit Ex.MW2/1 and MW3 Gurudev Singh, Oath Commissioner who attested the affidavit

Ex.MW3/1 executed by the workman. Besides that, MW5 Smt. Seema was examined to prove the bill Ex.MW5/1 issued by the workman to prove that the witness got stitched 3-4 ladies suits from the workman. The mere fact that this witness is related to Paramjeet Singh is not sufficient to discard her testimony when issuance of this bill is not denied by the workman. Under the circumstances, it was rightly observed that the workman was gainfully employed. That being so, since the workman himself had left the job and was not terminated and was gainfully employed, therefore, he was not entitled for any relief. These findings does not call for interference.

28. In the result, while the writ petition bearing No. 2966/2012 is dismissed, writ petition No. 5621/2013 is partly allowed. Both the petitions stand disposed of.