
(1991) 10 DEL CK 0046

In the Delhi High Court

Case No : Civil Writ Appeal No. 444 of 1989

Lalit Mohan Puri

APPELLANT

Vs

Pure Drinks (New Delhi) Ltd.

RESPONDENT

Date of Decision : 30-10-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2(9)

Citation : (1991) 46 DLT 118 : (1992) 2 LLJ 439

Hon'ble Judges : D.P Wadhwa, J;D.K. Jain, J

Bench : Division Bench

Advocate : A.Y. Chitale, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) By this petition filed under Article 226 of the Constitution the petitioner seeks setting aside of the award dated 29 October 1988 by which the Labour Court answered the reference in favor of the management holding that the termination of the service of the petitioner-workman was not wrong and/or illegal.

(2) The petitioner was in the respondent. He had put in 16 years service at the time the dispute arose. He was getting salary of Rs. 703.00 per month. He says though he was designated as Salesman, he was in fact driving the heavy vehicle of the respondent for the sale of soft drinks, known as Coca Cola. (In the impugned order the drink is mentioned as Campa). The petitioner says that one of the pre-conditions of his employment was that he must hold heavy vehicle driving license and his duties were to drive heavy vehicle, to supply the products to retailers, to issue cash or credit memos, to collect cash and to keep account of empties and crates etc. He says apart from his salary he was given commission on supply of Campa Cola to retailers.

(3) The petitioner narrates Incident which happened on 22 September 1977. He says he had sold 78 crates out of 100 crates of butties and when he completed

his duty he was told by Sales Superintendent to go back on his route and sell the Campa stocks brought back by him unsold. This he says he declined. He says he was asked to express regrets to the Administrative Manager on account of his refusal to go on his route duty and when he expressed his inability to do so, he was given a charge-sheet on 24/26 September, 1977.

(4) In this charge-sheet, it is mentioned that his act for not going back on route duty to sell the unsold stock constituted disobedience of his superiors and he was, Therefore, asked to explain as to why disciplinary proceedings be not initiated against him. He was given 48 Hours to reply. The petitioner gave his reply in detail on 13 October, 1977 and he asked for further information about his duty hours and stated that he had completed his duty and he also insisted that the duty hours be fixed and card punching facility made available. On 13 October, 1977 the General Manager advised him to express regrets to the Administrative Manager, but this the petitioner again refused. He then wrote a letter on 15 October, 1977 to the General Manager of the respondent company bringing this fact to his notice and complaining that the Administrative Manager was acting as a dictator and also that the petitioner was being harassed and victimised by him. He said that due to psychological effect, mental strain and mental torture caused by the injustice of the Administrative Manager he be not considered fit for driving for an indefinite period till he recovered from the shock. He even offered to get himself medically examined by Company's doctor.

(5) The respondent asked the petitioner to report for medical check up by its letter dated 1 November, 1977. The petitioner was asked to appear before Dr. Harish Bhalla on 8 November, 1977 for the purpose. The petitioner replied stating that he would like to be examined by a Esi doctor and that when he had mentioned in his letter dated 15 October, 1977 that he would like to be examined by Company's doctor he meant Esi doctor. The petitioner did not go to Dr. Bhalla for his medical check up. Again the directive of the respondent for the same purpose was refused by the petitioner. He said that Dr. Harish Bhalla was not a Company doctor. The petitioner got himself examined by Dr. Anand Prakash Wadhwa, who is also stated to be one of the Company's doctors on 23 November, 1977 and submitted his report to the respondent on 29 November 1977. It is stated that the respondent did not accept the medical certificate of Dr. Wadhwa and once again directed the petitioner to get himself medically examined by Dr. Harish Bhalla. Again the petitioner refused and said he would do so only if the respondent proved the charge of disobedience mentioned in its charge-sheet dated 24 September 1977 or withdrew the same and further the petitioner be paid wages for the intervening period. This he said in his letter dated 6 January, 1978 and again on 9 March, 1978. The respondent however kept quiet till 26 May, 1978. Now it required (he medical check up of the petitioner by Medical Officer Esi Hospital. The petitioner was asked to appear Therefore medical check up. Meanwhile, the petitioner along with his letter dated 30 May, 1978 sent a fitness certificate of Dr. Ramesh K. Gulati, consulting Psychologist. This was objected to by the respondent. The respondent did not

believe the fitness certificate given by Dr. Gulati and insisted that the petitioner be examined by the Esi doctor but the petitioner declined all this time.

(6) The things came to bead when on 31 July, 1978 the respondent served a notice on the petitioner terminating his services. The gist of order of termination is re-produced as under :

"SHRIL.M. Puri Salesman Please refer to your letter dated the 1st July, 1978 and the previous correspondence on the subject. It is clear that you are not willing to have yourself medically examined even from the E.S.I, authorities as had been requested by you. We cannot thus be satisfied about your fitness for the job of which you have been employed. In the circumstances, much as we may sympathies with you, we regret we are unable to continue you in service any more. Your services accordingly stand terminated with immediate effect. You will be paid all benefits as on simple termination and/or premature retirement. In addition to this, although you are not entitled to the same, we are also paying you compensation as on retrenchment at the rates laid down u/s 25-F of the Industrial Disputes Act, 1947. A Pay Order for Rs. 8.519.13 paise (Rupees eight thousand five hundred nineteen paise thirteen only) being your compensation and other dues as per accounts, Annexure "A" is enclosed with this letter. So far an your gratuity and provident fund are concerned, you are requested to contact the Accounts department on any working day. If there is any mistake in calculation or any other amount due to you which has not been paid, the same may be pointed out within one week on the receipt of this letter by you failing which we shall consider that the payment made to you is complete and not disputed by you. sd/- General Manager"

(7) Thus, an Industrial dispute was raised. When the Conciliation Officer failed, the matter was referred to the Labour Court with the following terms of reference:

" WHETHER termination of services of the workman Shri Lalit Mohan Puri is wrongful and/or illegal and if so, to what relief is he entitled ?"

(8) The parties filed the pleadings before the Labour Court and led their evidence. The impugned award was given on 29 October, 1988 upholding the stand of the respondent. We may note, however, that one of the issues framed was if the petitioner was a workman as defined in Section 2(a) of the Industrial Disputes Act, 1947. This issue was held in favor of the petitioner. We find that (he finding on this has not been assailed by the respondent.

(9) The termination of services of the petitioner is alleged under Sub- Clause (e) of Clause (oo) of Section 2 of the Act read with Rule 47 of the Certified Standing Orders of the respondent. Sub-clause (e) of Section 2(00) provides that where termination of service of workman is "on the ground of continued ill-health" it will not be treated as retrenchment. Rule 47 reads as under :

"47.The Company may discharge an employee on account of continued ill-health

or retire him from service prematurely if he is otherwise unfit for the job. Every workman shall retire from service on attaining the age of 58 years. Extension not exceeding one year at a time and two years in all may be given at the sole discretion of the Company."

(10) It will be seen from the facts narrated above that the charge, which was leveled against the petitioner by letter dated 24 September 1977 was not pursued. It was on account of continued ill-health of the petitioner that his services were terminated. There was no evidence either with the respondent or that even filed in the Labour Court that the petitioner was, in fact, suffering from ill-health and continued to be of ill-health till the order of termination. Narration above even would show that it was the petitioner himself who told the respondent that because of ill-treatment he had suffered a mental shock and was unable to drive heavy vehicle. This stand of the petitioner appears to have been accepted by the respondent. It was only at later stage that the respondent wanted the petitioner to have himself medically examined by a doctor. When the petitioner sent a medical certificate showing his fitness from illness, it was not accepted by the respondent. He was still being asked to appear before a doctor. The Labour Court had merely raised a presumption because of refusal of the petitioner to appear before a Esi doctor. There was no other positive evidence on which the Labour Court could have acted.

(11) We are not satisfied and in fact there is no submission why the petitioner did not appear before the Esi doctor when it was he, who himself had earlier asked the respondent to have him medically examined from Esi doctor. That, however, does not appear to us to be quite a serious matter to non-suit the petitioner. Can it be said that 16 years of service can be wiped out merely on the basis of presumption raised u/s 114 of the Evidence Act, 1872? In our view the respondents should have some direct evidence with it to show firstly that the petitioner was suffering from ill-health and secondly that he continued to be in ill-health till the time of termination of his services.

(12) Mr. Chitale, learned Counsel for the petitioner submitted that in case of refusal of the petitioner to get himself medically examined from a particular doctor may at the most amount to misconduct, but it certainly could be a ground to raise any presumption and to terminate the services of the petitioner. He says that, in fact, the services would be deemed to have been terminated on account of refusal of the petitioner to get himself medically examined. We find some substance in this submission, though we may not agree that his refusal to get himself medically examined could be a ground for holding a separate inquiry on the charge of mis-conduct. Nevertheless, we are of the opinion that inquiry should have been held if the petitioner continued to be of ill-health and the matter should not be left merely to presumptions. For this purpose the respondent was free to hold a proper inquiry where the petitioner could have been examined and even could lead his evidence to show that he was not suffering from ill-health.

(13) We are, Therefore, of the view that it was illegal on the part of the respondent to terminate the services of the petitioner and we do not agree with the conclusion arrived at by the Labour Court. Accordingly, the impugned award dated 29 October, 1988 of the Labour Court, respondent No.2, is set aside. The result is that the petitioner will be entitled to be reinstated and will also be entitled to all the back wages and other consequential benefits.

(14) Rule is made absolute. Since the respondent is not represented, there will be no order as to costs.