

(2012) 01 DEL CK 0296

In the Delhi High Court

Case No : Writ Petition (C) No. 758 of 2007

M/s. Fateh Chand

APPELLANT

Vs

Presiding Officer, Labor Court and Another

RESPONDENT

Date of Decision : 16-01-2012

Acts Referred:

Citation : (2012) 3 LLJ 853 : (2012) LLR 468 : (2013) 2 SLJ 232

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Abhinav Jain, for the Appellant; R.K. Maan, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the award dated 30.8.2006, whereby the learned Labor Court has granted reinstatement of the respondent no. 2 workman with 40% of his salary as back wages.

2. Briefly stated, the facts of the case relevant for deciding the present petition are that the respondent no. 2 workman was working with the petitioner management as a general worker with last drawn wages as Rs. 2100/- per month. As per the workman, his services were illegally terminated by the petitioner w.e.f. 25.12.2001 without any order in writing. The workman served a legal notice dated 28.12.2001 upon the petitioner which was not replied to and an industrial dispute was raised whereby vide an award dated 30.8.2006, the respondent workman was granted reinstatement along with 40% wages. Feeling aggrieved with the same, the petitioner has preferred the present petition.

3. Assailing the said order, the Learned Counsel for the petitioner has raised the grievance that the learned Labor Court had ignored the earlier settlement dated 23.4.2005 entered into between the parties whereby the respondent had received an amount of Rs. 12,000/- towards full and final settlement of his alleged claim. The other grievance raised by the petitioner was that the

respondent no. 2 did not remain totally unemployed as after his alleged removal from the service on 25.12.2001, he was engaged in agricultural activities wherefrom he was earning substantial amount of income. It was also contended that the income from the agricultural source was within the knowledge of the respondent no. 2 and it was obligatory upon him to have disclosed his income and on his failure to do so, the learned Labor Court ought to have drawn an adverse inference against him. The counsel for the respondent on the other hand supported the award passed by the learned Labor Court and submitted that no fault can be found with the reasoning given by the Court.

4. I have heard Learned Counsel for the parties and given my thoughtful consideration to the arguments advanced by them.

5. A reference at the instance of the respondent workman was made by the Govt. of NCT of Delhi to adjudicate the dispute between the petitioner management and the respondent in the following terms.:

Whether Shri Daya Shankar S/o Shri Mithai Lal abandoned his services by remaining absent or his services have been terminated illegally and/or unjustifiably by the management, if so, to what relief is he entitled and what directions are necessary in this respect.

6. As per the statement of claim filed by the respondent no. 2/workman, he claimed his employment with the petitioner management as general worker for about fifteen years from the date of filing of the claim and his grievance was that he was illegally terminated by the petitioner management without adhering to the mandate of Section 25F of the Industrial Disputes Act. The stand taken by the petitioner management before the Labor Court was that the respondent no. 2/workman had left the job on 25.12.2001 voluntarily and thereafter he did not return back on his duty without any rhyme or reason. Both the parties led evidence in terms of the aforesaid reference and the respondent no. 2 workman examined himself as WW-1, while the petitioner management had examined one Mr. Brij Kishan as MW-1. Based on the evidence led by the parties, the learned Labor Court found the termination of the respondent workman as illegal, unjust and in violation of Section 25F of the Industrial Disputes Act. The learned Labor Court disbelieved the defense taken by the petitioner management that the respondent workman had himself abandoned his job by not returning back on his duty. The learned Labor Court found that the respondent no. 2 workman had sent a demand notice through regd. A.D. covers through which he made a request for taking him back on duty and for the payment of his outstanding dues but no reply was sent by the petitioner management. The said demand notice was proved on record by the respondent no. 2 in his evidence as Ex. WW-1/1 and the receipt of the said demand notice was also admitted by the petitioner management before the conciliation officer in their reply. The learned Labor Court further found that the respondent no. 2 was not cross-examined by the petitioner management to give any contrary suggestion to him that he never reported back to the petitioner management for joining his duty. On the other

hand, MW-1 Mr. Brij Kishan in his cross-examination duly admitted the fact that the petitioner management did not write any letter to the respondent no. 2 workman after his alleged absenteeism from 25.12.2001, calling upon him to resume his duties. The said witness had also admitted that no charge sheet was issued to the respondent workman because of his absenteeism from the duty. The Labor Court after placing reliance on the case of MCD Vs. Brij Mohan, LLR 1994, 332 came to the conclusion that it cannot be assumed that the workman had abandoned the employment as it was the duty of the petitioner management to show their readiness to allow the workman to resume his duty.

7. Nothing illegal and perverse has been pointed out by the petitioner management to assail the said findings arrived at by the learned Labor Court. It is a settled legal position that the labor courts are the final fact finding courts and unless the findings given by the labor court are illegal or perverse on the very face of it, this Court in exercise of its powers under Article 227 of the Constitution of India will not interfere to reverse such findings. It is also no more res integral that even in a case of unauthorized absenteeism or to prove abandonment of service on the part of the workman the management must place on record necessary material to prove that enough efforts were made by it to call upon the workman to resume back his duty and the workman has shown his clear reluctance for the same. Here it would be relevant to refer to the judgment of the Apex Court in the case of M/s. Scooters India Ltd. Vs. M. Mohammad Yaqub and Another, where the workman when reported for duty was not allowed to join and according to the standing orders automatically terminated, the Court held that it was not a case of absenteeism but retrenchment in the following para:

12. The question which then arises is whether the principles of natural justice were followed in this case. As has been set out hereinabove Mr. Swarup had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that the principles of natural justice have been complied with in this case. However, the material on record indicates otherwise. The Labor Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met the Chief Personnel Officer he was still not allowed to enter the premises. The evidence is that in spite of slip Ext. W-2, he was prevented from joining duty when he attempted to join duty. The slip Ext. W-2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence the appellant has not led any evidence to show that the workman had not reported for duty. Even though the slip Ext. W-2 had been proved by the workman, the Security Inspector, one Mr. Shukla, was not examined by the appellant. Further the evidence of the Senior Timekeeper of the appellant established that the workman had worked for more than 240 days within a period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspection report,

which was marked as Ext. 45-A. It was on the basis of this material and this evidence that the Labor Court came to the conclusion that there was retrenchment without following the provisions of law. As the workman was not allowed to join duty, Standing Order No. 9.3.12 could not have been used for terminating his services.

13. In this view of the matter, in our view, the decisions of the Labor Court as well as High Court are correct and require no interference. Accordingly, the appeal stands dismissed. There will, however, be no order as to costs.

Undoubtedly, unauthorized absenteeism is a ground for termination and has been held to be misconduct in a catena of judgments. But when is it an unauthorized absenteeism is to be determined from the facts and circumstances of each case. Here it would be relevant to refer to the judgment of the Division Bench this Court in the case of Ram Niwas vs. Union of India 2010 (4) A D (Delhi) 281 where in the facts of the case the petitioner was compulsorily retired on the ground of unauthorized absenteeism, but the court held such action illegal as the petitioner was prevented from coming to work as he was not paid his wages and it cannot be said to be unauthorized absenteeism. It would be relevant to reproduce the said para here as under:

It is evident from the factual narration noted above, that the petitioner was compelled to go on serving the respondents despite not receiving wages for the work which he had already done for the previous months. It was only when he reached such a stage of penury and object deprivation, that he was unable to bear the expenses of commutation to his place of work, that the petitioner unable to report for duty. In these facts, there is substance in the submission of the petitioner that he was not absent unauthorisedly from his place of work, but was prevented by the conduct of the respondent in accessing his place of work.

The action of the respondents in compelling him to perform duties and refusing him to pay for the same, has to be held to be unconstitutional. The absence of the petitioner from service from 16th January, 2004 onwards in the circumstance noticed above was clearly not actionable. The impugned order is therefore unsustainable in law.

Similarly, in the facts of the case at hand, the respondent was also prevented from reporting on duty and thus it cannot be said to be a case of absenteeism as contended by the counsel for the petitioner.

8. It is also a settled legal position that abandonment of service is different from absenteeism. Abandonment of service is the voluntarily relinquishment of ones services with the intention not to resume the same. It is a matter of inference to be drawn from the facts and circumstances of each case and mere absenteeism for a continuous period does not mean that the employee has abandoned his service. The management has to bring on record sufficient material to show that the employee has abandoned the service and abandonment cannot be attributed to the employee without there being sufficient evidence. On the failure to report

for duty, the management has to call upon the employee and if he refuses to report, then an enquiry is required to be ordered against him and accordingly action taken. In the absence of anything placed on record by the petitioner management, no presumption against the respondent can be drawn. No enquiry in this case was set up by the petitioner management and even no letter was sent by the management to the respondent workman calling upon him to resume his duty. The case in hand is a clear case of violation of Section 25F of the Industrial Disputes Act as the petitioner management failed to adhere to the procedure prescribed u/s 25F of the I.D. Act before dispensing with the service of the respondent workman. The plea taken by the petitioner management that the respondent workman after having absented himself from the duty was working as an agriculturist is a plea worth outright rejection. If the petitioner management had not permitted the respondent workman to join back on his duties and during such period even if he had worked as an agriculturist to sustain and survive himself, the same cannot be taken against to deprive the respondent workman to claim back wages. The learned Labor Court has already been considerate enough to grant 40% of the back wages instead of granting full back wages.

9. So far the plea taken by the petitioner management that the dispute between the parties was settled on 23.4.2005, it would suffice to mention that the said settlement had nothing to do with the above claim raised by the respondent no. 2 u/s 10 of the I.D. Act as the said settlement relates to the LCA No. 47/2002 whereby only the differential amount of wages was paid by the management to the respondent no. 2 workman.

10. In the light of the aforesaid discussion, this Court does not find any merit in the present petition, and the same is accordingly dismissed.