

(2011) 12 DEL CK 0050

In the Delhi High Court

Case No : Writ Petition (C) 2866 of 2011

Nabi Rasool @ Hafiz Ji Bindi Wale

APPELLANT

Vs

GNCT of Delhi and Another

RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Industrial Disputes Act, 1947 — Section 10(4A)

Citation : (2011) 12 DEL CK 0050

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Kumar Sushobhan, for the Appellant; H.S. Sachdeva, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Bhasin, J.—The petitioner-management, a proprietor firm of Nabi Rasool, is aggrieved by the award dated 30th August, 2008 passed by the learned Labour Court whereby the termination of services of the respondent no. 2-workman by the petitioner-management has been held to be illegal and he has been directed to be reinstated in service with continuity but with payment of only 25% of the back wages.

2. The respondent no. 2-workman was employed with the petitioner as a karigar from 1st May, 2000 and as per his case his services were terminated by the petitioner-management on 2nd May, 2004, which action of the petitioner-management was claimed by him to be illegal and unjustified. So, he approached the Labour Court directly by filing a claim statement u/s 10(4A) of the Industrial Disputes Act. The petitioner-management had contested the claim of the respondent no. 2-workman by filing its written statement on 9th December, 2005 in which it denied the very relationship of employer-employee with the respondent no. 2. The pleadings of the parties had led to the framing of the following issues by the Labour Court for trial:

1. Whether there existed any relationship of employer and employee between the parties?
2. Whether the respondent is not running an industry within the ambit of I.D. Act?
3. Whether the services of the workman were terminated illegally and/or unjustifiably by the management w.e.f. 2.5.2004?
4. Relief.

3. Thereafter, respondent no. 2-workman had submitted his affidavit before the Labour Court to be read as his examination-in-chief but he was not cross-examined on behalf of the management as its authorized representative had stopped appearing in the matter and consequently the management was proceeded against ex-parte on 15th January, 2008. The workman's evidence thus remained unchallenged and there being no evidence in rebuttal of the petitioner-management the learned Labour Court accepted the workman's claim that he was employed with the petitioner-management and that his services had been illegally terminated and consequently vide impugned award dated 30th August, 2008 ordered his reinstatement in service.

4. The petitioner-management moved an application sometime in February, 2010 for setting aside the ex-parte award but the same was rejected since by the time it came to be filed the award had been published and became enforceable. While rejecting that application the Labour Court had relied upon the judgment of the Supreme Court in "M/s Sangham Tape Company Vs. Hans Raj?", 2004 Labour Law Reporter 1098 in which it was held that after the expiry of period of thirty days from the date of publication of the award the Labour Court becomes functus officio and so cannot entertain an application under Order IX Rule 13 of the Code of Civil Procedure.

5. In the present writ petition, it is stated that after the written statement had been filed on behalf of the petitioner-management before the Labour Court the father of the proprietor expired at his native place in Balia District (U.P.) and so the proprietor Nabi Rasool had to go there. Nabi Rasool himself also fell sick there and so he had to remain there. On coming back to Delhi Nabi Rasool contacted his counsel but he did not give any proper information about the case and so another counsel was engaged who then came to know about the passing of the ex-parte impugned award.

6. I do not consider the reason given by the petitioner-management for not contesting its case before the Labour Court to be sufficient justifying setting aside of the award which the respondent no. 2-workman had got in his favour. As noticed already, the petitioner-management has simply pleaded that after the filing of written statement on 9th December, 2005 the proprietor Nabi Rasool had to go to his native place due to the death of his father there and he had to remain there for quite some time. However, no details were given as to when

Nabi Rasool went there and when he came back to Delhi and why he could not remain in touch with his counsel for about three years. Nabi Rasool not contacting his counsel for about three years shows gross negligence on his part and so I am not inclined to set aside the impugned award. Since there was no evidence adduced by the petitioner-management before the Labour Court in support of its case that there was no employer-employee relationship between the parties the learned Labour Court was fully justified in passing the impugned award in favour of the respondent no. 2-workman. This writ petition being devoid of any merit is dismissed.