
(2020) 01 DEL CK 0664

In the Delhi High Court

Case No : Civil Writ Petition No. 1125 Of 2020, Civil Miscellaneous Application
No. 3733 Of 2020

Neeraj Kashyap

APPELLANT

Vs

M/S Ece Industries Limited Elevator Division

RESPONDENT

Date of Decision : 29-01-2020

Acts Referred:

Citation : (2020) 01 DEL CK 0664

Hon'ble Judges : Najmi Waziri, J

Bench : Single Bench

Advocate : Sarfaraz Khan

Final Decision : Dismissed

Judgement

Najmi Waziri, J

1. This petition impugns the order of the learned Labour Court dated 27.07.2019 in LIR No: 3068/16, insofar as the petitioner's claim for

reinstatement in service has been rejected. He was employed with the respondent as a sales executive on 30.03.2011. He was kept on a probation

period which was subsequently extended by six months on 03.04.2020. The extension was on account of a certain incident in the workplace for which

the petitioner apologised, by way of a letter dated 07.04.2012. There was another altercation which, according to the petitioner, was such that he could

not attend office thereafter. He refrained from attending the office from 18.04.2013. He sent four letters requesting for extension of time in rejoining,

as he was allegedly not keeping well. None of the letters were supported by any medical certificate stating that he was unwell. Each of the letters

seeking extension read as under:

2. In the circumstances, proceedings were initiated against the petitioner, as to why his services should not be terminated. He chose not to participate in the proceedings, as he desired to dictate as to who should be in the inquiry committee, as well as the place where the said inquiry ought to be conducted. His various letters to the company, which are reproduced hereunder, would show that his attitude and intent was only to challenge the management in its manner of functioning.

3. He addresses the senior management of the company as a "gang of people who are out to destroy him". In his application to the learned

Labour Commissioner, the only relief he sought was:

4. He did not seek any reimbursement and without demure or caveat accepted the entire amount paid to him. The impugned order has dealt with the issue as under:

"Issue no. 2. Whether the workman himself abandoned the job by remaining unauthorizedly absent from duty as claimed by the management, if so, its effect? O.P.M and

Issue no. 3. Whether the services of the workman were terminated by the management illegality and unjustifiably, if so, its effect? O.P. W.

Since both the issues are interconnected, hence, the same are taken up together for the purpose of their disposal.

The onus to prove issue no. 2 was upon the management whereas the onus to prove the issue no. 3 was upon the workman.

From the cross examination of the workman as well as documents placed and proved on record by him it has become manifestly clear on record that

the workman had not joined his duties since 20.04.2013. Rather in his replication filed to the written statement of the management, the workman had

claimed in para no. 2(b)(note) that his poor health condition as well as unfavorable office environment had compelled him to go on medical leave.

However, it shall be further pertinent to mention here that the workman had failed to cite any serious ailment or disease from which he was suffering

which required his bed rest and he himself had claimed that it was due to non-congenial work environment which had prompted him to apply for leave.

Hence, it becomes amply clear that workman was having no intention to work at the said place rather he was looking for one excuse or the other to

remain away from his place of employment. It shall be further pertinent to

mention here that workman had admitted the document Ex. WW1/M1 which was the letter dated 27.06.2013 written by him and addressed to Labour Inspector, wherein the workman had nowhere demanded the reinstatement but only an amount of Rs. 61,501/- from the management. Similarly, the workman had also admitted his email dated 07.04.2012 which has been placed on record as Ex. WW1/M2 which was basically an apology tendered by him to his Senior Manager Sh. Tarun Singhal. Even from the communication dated 03.05.2013 Ex. WW1/9, it becomes amply clear that workman was not adhering to the official decorum and discipline in his correspondences and even he had dared to refer the tea boy as the person who had misbehaved with him and called his seniors as a ""gang"", which behaviour on his part, by no stretch of imagination and considering the standards, cultures and working environment in an organization like present management, could be considered as acceptable or tolerable for running the administration smoothly.

Not only this, but also it shall be further pertinent to mention here that workman had never sent any demand notice to the management after termination of his job which also shows that he was having no requirement of reinstatement in the job as well as consequential benefits arising therefrom.

In this regard, I am further guided by the judgment of our own Hon'ble High Court of Delhi in case titled as S.N.Tiwari v/s Govt. of NOT, Delhi & Anr., W.P. (C) No. 593/2008, wherein the Hon'ble High Court of Delhi speaking through Hon'ble Mr. Justice S.N.Aggarwal (as his lordship then was), was pleased to observe as under:

Â ""3. The Labour Court in its impugned award has relied upon a judgment of the Supreme Court in Sindhu Resettlement Corporation Ltd. Vs.

Industrial Tribunal of Gujarat AIR (1968) SC 529 and also upon two judgments of this court, one of Division Bench in Fedders Loyal Corporation Vs.

Lt. Governor of Deihi and other of Single Bench in Nagender Sharma Vs. Management of M/s Rajasthan Timbers Corporation, ILR (2006) 1 Delhi

1030 and on the strength of these three judgments, it was held that since the petitioner had not made a demand for his reinstatement prior to filing of

claim for his reinstatement before the Conciliation Officer, industrial dispute between the parties does not exist.

Hence, I have no hesitation in holding that in the absence of a valid demand notice sent by the workman to the management, there was no industrial

dispute in existence at any point of time whatsoever. Therefore, I have no hesitation in holding that it was the workman himself who had abandoned

the job and was not terminated either illegally or unjustifiably by the management.

Accordingly, issue no. 2 is answered in affirmative and decided in favour of the management and against the workman, whereas, issue no. 3 is

answered in negative and decided in favour of the management and against the workman.â??

5. What emanates from the above is that the workman abandoned the work all by himself and chose neither to resume his duties nor to report back to

the company, accordingly, his services were terminated. Hence, for the period during which he had not carried out his work, there would be no monies

payable. The same did not amount to an industrial dispute at any time whatsoever and hence, there would be no lis to be adjudicated.

6. There is no merit in the petition. Accordingly, it is dismissed alongwith pending application.