

(2010) 03 DEL CK 0183
In the Delhi High Court
Case No : LPA 474 of 2009

Om Prakash

APPELLANT

Vs

Lamba Plastics

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 65A, 65B

Citation : (2010) 3 LLJ 557

Hon'ble Judges : Madan B. Lokur, Acting C.J.; Mukta Gupta, J

Bench : Division Bench

Advocate : Deepali Gupta, for the Appellant; R.K. Uppal and Anil Kumar, for the Respondent

Final Decision : Allowed

Judgement

Mukta Gupta, J.—The Appellant was in service in the Respondent management as a machine man for nearly six years when his services were terminated. In the claim petition filed before the Labour Court it is contended that as statutory benefit such as appointment letters, name on rolls, paid leave etc. were not provided to the workmen, complaints were made to the Labour Department and on general checking a report was also submitted by it. On the direction of the Labour Department, the management gave them minimum wages, as the same were not being given to them. On 12th June, 2001 the management refused employment orally to its workmen without payment of earned wages. Thereafter, the union sought intervention of the Labour Inspector vide complaint dated 13th June, 2001 for duty and earned wages etc. They also served with a protest and demand notice dated 18th June, 2001. It is stated that the three brothers Inder Mohan Singh, Davinder Singh and Balbir Singh were running the management under different names and styles at the same address. The management illegally stated that illegal strikes were being conducted by the workmen. The management also threatened the workmen for their life, if the case was not withdrawn from the Labour Department. In this regard complaints were also

made to the Labour Department and the police and thus the workmen through its union sought reinstatement with full back wages.

2. The proceedings before the Conciliation Officer failed and thus the matter was sent for adjudication. The Labour Court vide its order dated 1st September, 2008 held that the workmen voluntarily left the services of the management after taking full and final payment of their dues. Aggrieved by the said order the Appellant filed Writ Petition (Civil) No. 10015/2009. The said writ petition was dismissed on 13th July, 2009 upholding the order of the Labour Court, with the findings that the Appellant had left the service of the Respondent after receiving full and final payment and thus there was no ground to interfere with the award. The orders dated 1st September, 2008 of the Labour Court and 13th July, 2009 of the learned Single Judge are impugned before us.

3. The contention of the Appellant before us was that the impugned orders of the Labour Court and the learned Single Judge are erroneous, having ignored all the material evidence on record. It is contended that the Labour Court and the learned Single Judge of this Court wrongly held that the defence of the Appellant, that he was made to sign on blank papers under pressure was untenable, as no such plea was taken earlier. The Labour Court held that no such plea was taken in detailed pleading, examination in chief or cross-examination and none of the workmen took a stand that they had been forced to sign the above said resignation and receipt or that they were made to sign on blank papers. The learned Single Judge held that the said plea was taken by the workman for the first time when he appeared for his evidence and that the Appellant in the course of his cross examination has admitted his signatures on the full and final settlement and receipt of the payment with which he was confronted by the management.

Learned Counsel for the Appellant also relies upon a decision rendered by the Hon'ble Supreme Court in the case of Tandur & Navandgi Stone Quarries (F) Ltd. v. Their Workmen 1964 (I) LLJ 737 wherein it has been held that the fact that all aspects of the question of reference to the character of the labour's employment were not set out by the Respondents in their written statement, does not affect the credibility of the evidence led by them at the trial.

Reliance is also placed by the learned Counsel for the Appellant on the decision rendered in the case of Trambak Rubber Industries Ltd. Vs. Nashik Workers Union and Others, wherein it has been held:

6. The High Court, conscious of its limitations under Article 226/227 of the Constitution of India, went into the question whether the conclusions reached by the Industrial Court were legally sustainable. Incidentally, it went into the question whether the Industrial court ignored the material evidence on record. The one and only view that could be taken on the basis of the evidence on record, according to the High Court, is that the concerned persons whose engagement was terminated were not trainees but they were "Workmen" and

therefore, their services could not have been terminated without following the due procedure. The High Court held that the action taken by the Management was an unfair labour practice within the meaning of the Act and directed reinstatement without back wages.

8. We are of the view that the High Court has not transgressed the limitations inherent in the grant of the writ of certiorari. The High Court had rightly perceived the patent illegality in the impugned award warranting interference in exercise of its writ jurisdiction. On the facts and evidence brought on record, the conclusion was inescapable that the appellant-employer resorted to unfair labour practice. There would have been travesty of justice if the High Court declined to interfere with the findings arbitrarily and without reasonable basis reached by the Industrial Court.

4. Learned Counsel for the Respondent on the other hand supporting the findings in the impugned orders contends that there is no illegality in the order passed by the learned Single Judge of this Court and the Labour Court and hence there is no merit in the appeal.

5. Conscious of limitations in an intra Court appeal wherein interference can be if the findings of the Court below are perverse, we have perused the record and find that the inescapable conclusion on the basis of material on record is that the Respondent employer was resorting to unfair labour practice.

6. Allegedly an incident took place on 30th May, 2001 wherein it is alleged that the workmen of the Respondent were abused, beaten and signatures on blank papers were taken from them. In this regard a complaint was lodged to the local police station on 30th May, 2001 itself, which was duly placed before the Labour Court in evidence, while confronting the management witness Inder Mohan Singh MW1 and same is marked as mark M2. To appreciate the finding that the Appellant for the first time took the plea that the signatures were taken on the blank papers in evidence alone, the entire sequence has to be visualized as to when the Appellant had the first opportunity to use the complaint dated 30th May, 2001. The Appellant in his claim alleged that his services were illegally terminated in view of the complaints made to the Labour Department, which complaints were duly exhibited by him. The Respondents in their reply stated that the workmen left their job on their own after taking all dues from the management company. No reference was made to these receipts in the written statement. The Appellant in his evidence by way of affidavit has categorically stated that he had not left the services nor received any full and final dues from the management and even the wages for the month of May, 2001 were given by the management before the Labour Inspector. It is only in the cross-examination of the Appellant that these receipts were put to him. As the said documents bore his signatures, he admitted the signatures. However to substantiate his claim that his signatures were taken forcibly on blank papers, the Appellant has put this complaint dated 30th May, 2001 alleging forcible signatures on blank papers, to the management witness on the first available opportunity, that is, in the

cross- examination of the management witness. In our view the Labour Court and the learned Single Judge erred in coming to the conclusion that the plea of forcible signatures on blank papers was taken belatedly in evidence only, by ignoring this vital aspect of the evidence.

7. The learned Single Judge also noted that in cross-examination the workman has admitted his signatures. In fact, it is the case of the workman itself that they were made to sign on the blank papers and thus he admitted his signatures, however, the same cannot be used to the disadvantage of the Appellant workmen.

8. The finding of the Labour Court that it is nobody's case that the workmen were made to sign on blank paper or printed proforma, is wholly erroneous not only in view of the management witness having been confronted with the complaint dated 30th June 2001 marked "M2" but also in view of the relevant portion of the cross-examination of the management witness which reads as:

It is incorrect to suggest that all the documents which have been filed on record were forcibly got signed from the workers and the workers had made a complaint to the police in this respect. I cannot say anything about the letter mark M2 addressed to the SHO PS Paschim Vihar.

It is correct that once a labour inspector had visited the premises of the management and had conducted the general checking. It is incorrect to suggest that we were upset about the said checking, therefore, we had terminated the services of the workers on 12.6.01. It is correct that the workers were paid salary for the month of May, 2001 in the presence of the labour inspector. It is incorrect to suggest that besides the payment of said salary there was nothing paid to any of the workmen. It is incorrect to suggest that before the conciliation officer in Karampura, the management had refused to take the workmen on duty. Vol. we were not in a position to take the workmen back on duty because they were constantly extending threats to us and also for the reason that the management had closed its business in June, 2001.

9. Both the learned Single Judge and the Labour Court ignored the relevant admission of the management witness which has come in his cross- examination that the Labour Inspector had visited the premises of the management and had conducted the general checking and the workers were paid salary for one month for May, 2001 in the presence of the Labour Inspector. Though the management witness in his cross-examination had denied the suggestions that they had terminated the services of the workers on 12th June, 2001 and that before the Conciliation Officer the management had refused to take the workmen on duty, however, it has been categorically stated voluntarily by the management witness that they were not in a position to take the workmen back on duty because they were constantly extending threats to them and also for the reason that the management had closed its business in June, 2001. Thus, if the management was not in a position to take the workmen on duty and had closed its business in June, 2001, the plea of a willful resignation of the workmen with full and final

settlement is untenable.

10. The management witness has been confronted with yet another document on record, a letter dated 13th June, 2001 of the management, sent to the Appellant and his co-workers with copy to Assistant Labour Commissioner, wherein it is stated that the workmen have gone on illegal strike on 13th June, 2001 without notice and they are being asked to return on duty, failing which legal action would be taken. Though the management witness has not admitted the signatures of his brother on the document, but he clearly admits the same to be on the letter pad of the management.

11. To come to the conclusion that the Respondent has received full and final payment from the management, the learned Single Judge has also held that the finding of the Court below is corroborated by the books of accounts of the management Ex.MW1/WX1 and Ex. MW1/WX2. As per the learned Counsel for the Appellant the said documents are only computerized sheets allegedly of the accounts of the management Ex. MW1/WX1 and Ex. MW1/WX2, which fact has not been rebutted by the learned Counsel for the Respondent. Though strict rules of evidence are not required to be followed before the Labour Court, in which case these computerized sheets of the books of accounts had to be proved by resorting to Section 65A and B of the Evidence Act, however, the least that is required as per the principles of natural justice and fair play is that the same are certified to be the computer generated true copies of the accounts maintained in the course of day to day business.

12. In our view, the finding that the Appellant had left the service after taking full and final payment is erroneous not only being contrary to the evidence on record but arrived at by ignoring material evidence on record. It is evident from record that the management was not complying with the statutory requirements and admittedly there were reports of the Labour Department against them in this regard thus indulging in unfair labour practices. The services of the Appellant were terminated illegally. We therefore, set aside the impugned order dated 13th July, 2009 passed by the learned Single Judge and the award dated 5th September, 2007 passed by the Labour Court.

13. We would also like to note that though the management witness has stated that they have closed down the management in 2001, however the Appellant has placed on record the evidence and fresh address of the Respondent, from where it is running its business.

14. The appeal is allowed with the directions to the Respondent to reinstate the Appellant with back wages with effect from 1st September, 2008 the date of Award of the Labour Court.