

(2010) 03 DEL CK 0299

In the Delhi High Court

Case No : Writ Petition (C) No. 6880 of 2007

Pioneer Pest Control

APPELLANT

Vs

Rajbir Singh and Another

RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:

Constitution of India, 1950 — Article 22, 226, 227

Citation : (2010) 03 DEL CK 0299

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : B.K. Mishra, for the Appellant; Baidhyanath Sah, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir

1. By this petition filed under Article 226/227 of the Constitution of India, the petitioner seeks quashing of the Award dated 8.1.2007 passed by the Labour Court whereby the reference was answered in favour of the workman and against the petitioner company.

2. Brief facts as set out by the petitioner relevant for deciding the present petition are that the respondent was appointed as Pest Control Helper with the petitioner on 30.4.2001 and after 31.7.2004 he did not report for duty. Thereafter a legal notice dated 15.9.2004 was sent by the respondent workman to the petitioner alleging illegal termination of his service to which the petitioner replied vide notice dated 22.9.2004. Subsequently, an industrial dispute bearing ID No. 66/2004 was raised by the respondent and an award dated 8.1.2007, the respondent was awarded a lump sum compensation of Rs. 35,000/- in lieu of reinstatement, continuity of service and back wages. Feeling aggrieved by the same, the petitioner has preferred the present petition.

3. Counsel for the petitioner submits that he had never terminated the services of the respondent as he himself had stopped coming for duty. Counsel further

submits that the petitioner successfully proved on record that the respondent was being paid salary through cheque on monthly basis. Counsel further submits that the respondent in his demand notice and the statement of claim took a false stand of claiming non-payment of his salary, over time wages, bonus, gratuity, etc and that when it was demanded by the respondent, the petitioner management got annoyed and terminated the services of the respondent. The contention of the counsel for the petitioner is that the petitioner had been paying the salary to the respondent, as proved on record through the bank statement, therefore there was no reason for the respondent to have raised such a false claim of denial of back wages and other benefits to him. Counsel further submits that in the reply sent by the petitioner to the said demand notice, the management clearly took a stand that all his demands and charges were false and fabricated. The respondent workman was also called upon to give the complete details of his outstanding dues with proof so that the same could be verified by the petitioner and instead of giving any response to the same, the respondent preferred to raise an Industrial Dispute against the petitioner.

4. Counsel for the respondent on the other hand supports the finding of the Ld. Labour Court and as per him the same does not call for any interference by this court while exercising power of superintendence under Article 22 of the Constitution of India.

5. I have heard counsel for the parties at considerable length and gone through the records.

6. As per the case set up by the respondent workman, he was employed with the petitioner management on the post of pest controller since 28.03.1998 and was illegally removed from service on 3.9.2004, after putting in more than six years of service. It is not in dispute between the parties that the petitioner management did not set up any enquiry against the respondent workman for his absenteeism and even no letter or show cause notice was given by the petitioner management to the respondent workman so as to call upon him to show as to under what circumstances he has left the job or has started absenting himself from duties. The respondent workman, on the other hand, served demand notice dated 15.9.2004 upon the petitioner management and the same was replied by the petitioner management vide reply dated 22.09.2004 denying the demands of the respondent workman. After raising the said demand, the respondent raised an industrial dispute against his illegal termination from service.

7. Absenteeism from service is a question of intention which can be gathered from facts of each case and voluntary abandonment of service on the part of the workman cannot be readily inferred merely on account of the fact that the respondent did not join back on his duties on account of one or the other reasons. Willful refusal on the part of the workman to report back on his duties must call for some action from the side of the management which may include serving of a show cause notice and other follow up actions and in the facts of a given case, the appropriate action could have been setting up of an enquiry

against the respondent for his misconduct of unauthorized absenteeism. Abandonment of service is thus a question of fact to be determined in the circumstances of each case and if in a given case the petitioner management is successfully able to prove on record that despite repeated efforts made by the petitioner management there was refusal on the part of the respondent to join back on his duties without any sufficient cause, then, it would imply the abandonment of services by the workman. But normally no workman would abandon his employment unless there are compelling circumstances which are sometimes created by the petitioner management itself or such a workman is able to get a better job or has better opportunities for self employment. So far the facts of the present case are concerned, the petitioner management brought MW- 1 Rakesh Kishore, Proprietor, who adduced evidence on behalf of the petitioner management and in his cross-examination clearly admitted the fact that the management did not issue any letter to the respondent workman so as to call upon him to join his duties. He also admitted that no chargesheet was given to the respondent workman and no enquiry was conducted against him. The said witness also admitted that the petitioner management had employed another workman in place of the respondent workman. Hence, in the face of the said evidence of the petitioner management the plea of abandonment taken by the petitioner does not cut any ice. The respondent workman remained in the employment of the petitioner management for about six years and in any circumstances he would not have volunteered to leave his job, therefore, I find myself in agreement with the findings arrived at by the Ld. Labour Court taking a view that the services of the workman were illegally terminated by the petitioner management. The Ld. Labour Court also correctly placed reliance on the judgment of the Apex Court in *Workmen Vs. M/s Williamson Magor & Co. Ltd.* and *Anr. 1982 SCC (L&S)* and *S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka*, wherein the Apex Court took a view that the labour laws being beneficial pieces of legislation are to be interpreted in favour of beneficiaries and in case of any doubt or wherever it is possible to take two views of a provision, the benefit must go to the labour.

8. In the light of the above discussion I do not find any perversity or illegality in the award passed by the Ld. Labour Court. The case law cited by the counsel for the petitioner in support of his arguments is of no help to the petitioner in the facts of the present case. The Ld. Labour Court has already granted compensation amount in favour of the respondent workman in lieu of reinstatement to the job, continuity of service and back wages and there is no further scope to upset or reduce the amount of compensation. At the time of admission, the petitioner has already deposited the said amount of Rs.35,000/- in the FDR and it is directed that the said amount be released by the Registrar in favour of the respondent with upto date interest accrued thereon. There is no merit in the present petition and the same is hereby dismissed.