
(2012) 10 DEL CK 0413

In the Delhi High Court

Case No : Writ Petition (C) No. 6098 of 2008 and CM No's. 11661 of 2008, 934 of 2009 and 3256 of 2011

P.P. Associates

APPELLANT

Vs

Mohan Lal and Others

RESPONDENT

Date of Decision : 15-10-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(cc)

Citation : (2013) 136 FLR 271 : (2013) 1 LLN 144 : (2012) LLR 1257

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Vinay Sabharwal, for the Appellant; Isha Khanna, Ms. Nidhi for R-1 and 2, for the Respondent

Final Decision : Disposed Off

Judgement

Hon'ble Ms. Justice Mukta Gupta

1. By this petition, the Petitioner challenges the award dated 7th April, 2008 passed by the learned Trial Court in ID No. 201/2001 whereby the learned Trial Court directed compensation to the tune of Rs. 2,50,000/- and 2,45,000/- to Respondent Nos. 1 and 2 respectively with interest @ 18% pa till the date of realization besides a joint litigation cost of Rs. 10,000/-. Learned counsel for the Petitioner contends that the learned Trial Court's finding that the plea of the Petitioner was abandonment of service by Respondent Nos. 1 and 2 is perverse. The Petitioner never took the plea of abandonment. The case of the Petitioner was that Respondent Nos. 1 and 2 left their duties without any permission or intimation on 23rd September, 2000 at about 3.45 PM and thereafter started absenting themselves. 11/2 months thereafter, due to a policy decision, the Petitioner's stitching unit had to be closed on 7th November, 2000 and the entire factory closed down on 1st April, 2001. In view of the absence of Respondent Nos. 1 and 2 from duty and closure of stitching unit on 7th November, 2000, it was a case of closure as defined u/s 2(cc) of the Industrial Disputes Act. 1947 (in

short "ID Act"). Thus, at best, Respondent Nos. 1 and 2 are entitled to closure compensation. Section 2(cc) of ID Act contemplates even closure of part of the establishment. As regards closure of the factory on 1st April, 2001, the Petitioner duly intimated to the authorities i.e. the Regional Provident Fund Commissioner (RPFC), Director, Employees State Insurance Corporation (ESI), Conciliation Officer and the Labour Inspector. A perusal of the cross-examination of the workmen would show that there was no rebuttal to the evidence of the management that it had closed down the factory on 1st April, 2001. The workmen in his cross-examination had admitted that he was not refused duty by the management and thus, the finding of the learned Trial Court regarding termination of service is perverse and without any basis and is liable to be set aside.

2. Learned counsel for the Respondents on the other hand contends that the case of the Petitioner is clearly of abandonment of duties. In the written statement, it is not pleaded that call back notices were given to Respondent Nos. 1 and 2 and the management for the first time in their evidence stated that call back notices have been sent. However, no receipt thereof was produced. Even the letters allegedly sent to the Government agencies regarding closure of factory on 1st April, 2001 were rightly not relied upon by the learned Trial Court as the receipts thereof with the Government departments were not proved. Though the case of the Petitioner is that it closed down its stitching and tailoring unit on 7th November, 2000 as a policy decision and on 1st April, 2001 the entire factory was closed, however, MW1 in his cross-examination stated that the management has been closed down with effect from 7th November, 2000 by closing down stitching department. Thus, there is apparent contradiction in the version of the management which cannot be thus relied upon and the learned Trial Court committed no error in discarding evidence of the Petitioner. Respondent Nos. 1 and 2 have clearly proved that they went to duty but were not permitted to join and no evidence was produced by the management to rebut the evidence of the Respondents. Hence there being no error much less an error of law in the impugned award, the present petition be dismissed.

3. I have heard learned counsel for the parties and perused the record. The impugned award was passed on a reference sent by the Government in the following terms of reference:

Whether S/Sh. Mohan Lal & Kerai Lal have abandoned their services or their services have been terminated illegally and/or unjustifiably by the management and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/Govt. Notifications and to what other relief are they entitled and what directions are necessary in this respect?.

4. Joint statement of claim was filed by Respondent Nos. 1 and 2 stating that Respondent No. 1 joined the Petitioner as a pressman on 1st September, 1997 with a salary of Rs. 2800/- and Respondent No. 2 joined as pressman on 19th January, 1997 with a salary of Rs. 2700/-. They stated that the management did

not provide any statutory facilities in accordance with Minimum Wages Act, annual earned leave, bonus, attendance card, leave card, overtime etc. On 24th September, 2000 when Respondents 1 and 2 presented themselves for duty, the management without assigning any reason and without any prior notice, told them to give resignation letter and receive their full and final settlement. On the workmen refusing the same, the management got annoyed and terminated their services without any notice or notice pay or retrenchment compensation and did not even pay their earned wages for the month of September, 2000. Though during conciliation proceedings on 15th November, 2000, the management assured to take back Respondent Nos. 1 and 2 on duty and pay their dues, however, when they went on 16th November, 2000 they were refused to join the duties.

5. In the written statement, the claim of the management is that Respondent Nos. 1 and 2 left their duties without any permission or intimation on 23rd September, 2000 at 3.45 PM and never reported for duty thereafter. The management gave intimation to the Labour Inspector regarding their unauthorized absence vide letter dated 18th October, 2000. Further the management closed its factory on 1st April, 2001 and intimation whereof was duly given to all Government authorities like RPFC, Director, ESI, Conciliation Officer, Labour Inspector etc. Respondent Nos. 1 and 2 were also informed about closure of the unit. Further, the stitching unit had already been closed on 7th November, 2000 and since the industry ceased to exist, there is no industrial dispute in existence. It is the case of closure and Respondent Nos. 1 and 2 are entitled to closure compensation only.

6. On the basis of pleading s of the parties, following issues were framed:-

1. Whether workman left their duties without any permission or intimation on 23/09/2000?

2. Whether management has been closed down w.e.f. 01/04/2001?

3. Whether S/Shri Mohan Lal & Kerai Lal have been abandoned their services or their services have been terminated illegally and/or unjustifiably by the management and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/Govt. Notifications and to what other relief are they entitled and what directions are necessary in this respect?

7. A perusal of the statement of MW1 Anil Sharma shows that he has not been able to prove receipt of call back notices to Respondent Nos. 1 and 2. He admitted that copy of closure notice Ex. MW1/7 was not delivered to Respondent Nos. 1 and 2. The grievance of the management against the workmen appeared to be that they used to come late and in this regard though no memo or chargesheet was given, however, letter of warning was given. However, the relief of no such letter was proved. Neither any attendance register nor any chargesheet was proved. MW1 further stated that the management closed down the stitching unit with effect from 7th November, 2000.

8. The date of joining and the date of last presenting for duty on 23rd September, 2000 have not been disputed. The only issue that remained for consideration before the learned Trial Court was whether it was a case of termination or unauthorized absence from duty. On the basis of evidence on record, learned Trial Court came to the conclusion that the management has failed to prove the genuineness of MW1/5 & 6. It has also failed to prove that call back notices were served on the Respondent Nos. 1 and 2. It was further held that the management withheld the best evidence which was in its possession and thus the first issue as to whether the workmen left their duties without any permission or intimation on 23rd September, 2000 was held against the management. On the basis of evidence on record and the fact that the Petitioner has not been able to prove any of its documents, I find that there is no illegality committed by the learned Trial Court in arriving at the finding regarding first issue against the Petitioner.

9. As regards the second issue whether management has been closed down w.e.f. 01/04/2001 or not, learned Trial Court came to the conclusion that in view of the contradictory reply and false plea of the management, the said issue is required to be decided against the Petitioner. This finding of the learned Trial Court is contrary to the record. MW1, the witness of the Petitioner has proved on record the letters to the various authorities like the Labour Conciliation Officer, Regional Provident Fund Commissioner and ESIC along with the acknowledgement due. Further there is no contradiction in the testimony of MW1 and the written statement. MW1 in his testimony has stated that the management closed down with effect from 7th November, 2000 by closing down stitching department and on 1st April, 2001, the management closed down completely.

10. As regards the third issue, the learned Trial Court came to the conclusion that it was not the case of abandonment but of illegal termination. As per the Petitioner it was the case of unauthorized absence and neither termination nor abandonment. In this connection it may be noted that admittedly as per both the parties, Respondent Nos. 1 and 2 did not work beyond 23rd September, 2000. The management has not been able to prove the call back notices sent to Respondent Nos. 1 and 2. The workmen sent the demand notices by Regd. A.D. cover and UPC dated 28th September, 2000 and lodged a complaint with the Assistant Labour Commissioner on 5th October, 2000. Complaint was further lodged with the Labour Conciliation Officer on 17th November, 2000. Thus, the evidence of the Respondents is unrebutted. Even if the finding of the learned Trial Court is contrary to the facts on record on the first issue, however, that is of no avail to the Petitioner. The closure of the stitching unit took place on 7th November, 2000 and complete closure took place on 1st April, 2001, much later than the date of illegal termination of the Respondents. It is the case of the Petitioner that the Respondents were negligent in attending the duties and not that their services were discharged due to closure.

11. The scope of interference in a writ petition against the order of the Trial Court is limited. This Court can interfere with the findings of the learned Trial Court only if the finding is perverse or based on no evidence or the Trial Court omits to consider material evidence on record. After hearing learned counsel for the parties and perusal of the record, I find no irregularity much less any illegality or perversity in the above findings of the learned Trial Court on issues No. 1 and 3. As regards the relief of compensation, I find no error in granting compensation to the tune of Rs. 2,50,000/- and Rs. 2,45,000/- to Respondent Nos. 1 and 2 respectively, however, grant of interest @18% pa is unwarranted. Thus, the impugned award is modified to the extent that the Petitioner shall pay interest @ 9% pa on compensation amount from the date of the award, besides a joint litigation cost of Rs. 10,000/- to the Respondents. Since the Petitioner has already deposited 25% of the award amount in terms of order of this Court dated 22nd August, 2008, which has been ordered to be kept in the fixed deposit, the petitioner is not required to pay interest on that amount. The registry shall release the said amount deposited by the Petitioner in this Court along with interest to the Respondents/workmen forthwith. The Petitioner shall pay the remaining 75% awarded amount along with upto date interest to the Respondents/workmen within six weeks from today. The petition and applications are disposed of accordingly.