

(2014) 01 DEL CK 0083

In the Delhi High Court

Case No : Writ Petition (C) 161 of 2012

Prem Chand Sharma

APPELLANT

Vs

Gannon Dunkerley and Co. Ltd.

RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 25(C)

Citation : (2014) 141 FLR 448 : (2014) 1 LLJ 647 : (2014) 2 LLN 648 : (2014) LLR 518

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Shantha Devi Raman and Mr. Sanjeet Ranjan, for the Appellant; Ajay Kumar Seth and Mr. Vineet Seth, for the Respondent

Final Decision : Allowed

Judgement

V. Kameswar Rao, J.—In this writ petition, the challenge is to the Award dated August 10, 2011 passed in I.D. No. 259/2010 in a claim petition filed by the petitioner herein directly before the Labour Court, whereby the Labour Court dismissed the claim petition and not granted the relief he had sought for. The facts as can be noted from the record are that the petitioner was appointed by the respondent organization as a Junior Store Officer on the monthly salary of Rs. 8,000/- in terms of appointment letter dated June 08, 2006. It was the case of the workman that he did his job honestly without giving any complaint to the management and consequently his salary was increased to Rs. 11,702/- for his efficient work. He was transferred from Khurja to Noida on October 25, 2007 for 3 months. He alleges delay in payment of salary by the respondent.

2. It was the case of the petitioner that he was transferred from Noida to Jharsuguda, Orissa on February 13, 2008. According to him, on February 14, 2008 he was given a show cause notice alleging therein that he had remained unauthorizedly absent for certain days in the year 2006 and 2007 as shown in the said show cause notice. He gave a reply to the show cause notice wherein he

has justified his absence on certain occasions. According to him, his services were terminated on March 20, 2008 without issuing any charge-sheet. His case was that in May, 2008, he contacted the respondent and requested that he may be reinstated. Unfortunately his request was not acceded to. He alleges the termination being in violation of Section 25(C) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). He has also stated that he is liable to get LTA, Bonus, Medical, PF and Bill regarding transfer expenses amounting to Rs. 1,05,764/-. He also pleaded that he was unemployed and facing lot of hardship. He sent a demand notice on February 28, 2008 but no response was received.

3. The respondent contested the claim petition on the ground that the same is not maintainable inasmuch as when the termination was effected, he was employed in Noida, U.P. and was transferred to Jharsuguda, Orissa. Since he was not employed in Delhi, the Labour Court had no jurisdiction to entertain and adjudicate the dispute. Insofar as the merit of the case is concerned, respondent's stand was that the termination was in terms of clause No. 14(a) of the Contract which was accepted and signed by the petitioner. The respondent also justified the charges levelled against the petitioner inasmuch as the petitioner was not punctual and was in the habit to remain absent unauthorizedly without any intimation for which he was issued number of letters. The respondent also alleged that the petitioner did not report to the duty at Jharsuguda, Orissa in compliance of the transfer order issued to him. The respondent also pleaded that the petitioner has accepted his absence between November 22, 2007 to November 28, 2007 and also the fact that he has pleaded mercy inasmuch as he has stated that he shall be punctual in future. Unfortunately, he did not remain punctual and continued to remain unauthorizedly absent which resulted in the order dated March 20, 2008.

4. The Tribunal framed 2 issues, one with respect to the territorial jurisdiction and the other, whether the termination of the petitioner's services was illegal and unjustifiable and if so, to what effect.

5. The Tribunal was of the view that it had the jurisdiction to entertain the dispute raised by the petitioner. Insofar as the second issue about the justifiability of the termination is concerned, the Tribunal was of the following view:

Keeping in view the aforesaid discussion and the judgment cited as well as the terms & conditions of clause of the appointment letter where specifically explained that if the workman is absent continuously for 8 days or overstay the said sanctioned leave (beyond eight days) would be deemed to have abandoned the service voluntarily and your name would be struck off the rolls of the company without any notice to workman. The workman in his statement of claim as well as in his depositions has not been explained why he is absent continuously from 15.11.07 to 1.12.08 and 22.11.07 to 28.11.07 without any sanctioned leave from site at Noida. The workman in his cross examination

admitted that he has received a letter dated 1.12.07 vide Ex. WW1/M from the management and he sent a letter dt. 18.2.08. It is also admitted that there are clerical mistakes in the affidavit and he was on leave application or sanctioned order was being placed on record or proved by the claimant. In these circumstances, I do not find any force in the contentions raised by the workman. Accordingly, the issue no. 2 is decided in favour of the management and against the workman.

6. Learned counsel appearing for the petitioner would attack the conclusion arrived at by the Tribunal by stating that the same is perverse and without application of mind. She would state that show cause notice issued to the petitioner on February 08, 2008 only alleges the petitioner's absence till September 18, 2007. According to her, the petitioner's absence between the period November 22, 2007 to November 28, 2007 was not even alleged against him. She would further state that clause 14(a) of the terms of contract invoked by the respondent is not even applicable in the facts of the present case. She would alternatively plead that even clause 14(c), which empowers the respondent to take action against an employee in the eventuality he remained absent is only applicable if such an employee remained absent from duty continuously for 8 days or over-stay the sanctioned leave. According to the learned counsel for the petitioner, the petitioner remained absent only for 7 days in the month of November, 2007 and since the same is short of 8 days, the respondent could not have invoked the said clause at all.

7. Unfortunately the Labour Court had over-looked such an important aspect and relied upon the absence of the petitioner between the period November 22, 2007 and November 28, 2007 to justify the termination of the petitioner. She would contend that the petitioner is entitled to reinstatement with full back wages. Alternatively she would plead that given the background, in which the petitioner was terminated, it would be appropriate that a sufficient compensation be awarded in his favour. She had also brought to my attention that an amount of Rs. 1,19,441/- is outstanding, which the respondent was to pay to the petitioner under different heads like salary for March, 2008, HRA for March, 2008, 3 months' notice pay, LTA for 2 years", medical for 2 years" and Bonus for 2007-08. She states that this amount has to be independently given to him apart from the compensation this Court may award.

8. On the other hand, learned counsel for the respondent would justify the termination showing that the petitioner remained unauthorizedly absent without any sanctioned leave. He would also state that the petitioner had not joined the place of posting for over 1 month. He states that the petitioner is not entitled to any relief as prayed for.

9. Having considered the rival submissions on behalf of the parties, I am of the view that the learned counsel for the petitioner is right in stating that the termination of the petitioner invoking clause 14(a) of the terms of the contract is illegal inasmuch as 14(a) does not stipulate termination on the ground of

absence. In fact 14(a) only stipulates that the employment can be determined with 3 months' notice or payment in lieu of such notice equivalent to 3 months' salary by either side. In the case in hand, neither such notice nor such payment was given to the petitioner to justify the termination under such clause.

10. Even otherwise, I am of the view that the stand which has been taken by the respondent before the Tribunal for justifying the termination and accepted by the Tribunal i.e. absence of the petitioner between the period November 22, 2007 to November 28, 2007 is totally extraneous as the same was not part of show cause notice issued by the respondent on February 14, 2008. In any case, the clause 14(c) of the terms of contract stipulates that it is only when an employee remained absent for 8 days or over-stay the leave sanctioned, action against an employee would be justified on that ground. In the case in hand, since the respondent remained absent only for 7 days, the termination even on that ground cannot be justified. It is true that the respondent was transferred on February 13, 2008. Unfortunately, without giving him sufficient time to join the place of posting, the respondent had issued a show cause notice dated February 14, 2008. Hence, the contention of learned counsel for the respondent that the petitioner did not join the place of posting is of no consequence as before he could join the place of posting, a show cause notice was issued as to why appropriate disciplinary action be not taken against the petitioner for misconduct. I note that the respondent having not conducted a regular inquiry to come to a conclusion, the absence of the petitioner was wilful, which is prerequisite for taking action under such circumstance, could not have terminated the petitioner. In fact, I may only note here that the issue of absence was only for the period between November 22, 2007 to November 28, 2007 and not from November 15, 2007 to December 01, 2008, as was considered by the Tribunal.

11. Even if it is true, no explanation was sought, for the said period and serious action i.e. termination of services has been effected on the petitioner, which is totally unjustified. The Award of the Tribunal need to be set aside. I do so accordingly.

12. The question now arises is what should be the appropriate relief in the facts of the case. Given the background in which the termination has been effected and the litigation between the parties, it would not be appropriate for this Court to give reinstatement in service of the petitioner with the respondent.

13. The Supreme Court in its latest opinion reported as Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh, after analysing the legal position, has held that before exercising judicial discretion, the Labour Court has to keep in view all relevant factors including mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute before grant of relief in an industrial relief.

14. As noted above, dues outstanding in favour of the petitioner amounting to

Rs. 1,19,441/- have not been paid by the respondent. The learned counsel for the respondent states that it is only Rs. 55,647/- which are due to the petitioner. He would state insofar as the LTA and medical reimbursement are concerned, the same are not to be paid to the petitioner as he had not submitted supporting bills. The counsel for the petitioner dispute this position. According to him, the necessary bills have been submitted to the respondent. I do not want to go into this dispute as to what outstanding dues are payable. Suffice to say, keeping in view the fact that the petitioner had worked for two years on a regular nature of job and he has been terminated for the reason of unauthorized absence which was not even alleged against him in the show cause notice, I deem it appropriate that an amount of Rs. 2,25,000/- which includes the outstanding dues, as referred above, be paid to the petitioner in lieu of reinstatement with back wages. The same shall be paid to the petitioner within a period of six weeks from the date of receipt of the copy of this order failing which, the interest @ 10% p.a. would accrue on the aforesaid amount of Rs. 2,25,000/-.

15. The writ petition is accordingly allowed in terms of the above. No costs.