

(2011) 01 DEL CK 0297

In the Delhi High Court

Case No : Writ Petition (Civil) No. 7204 of 2010

Ramdhan Vaishno Prakash and Sons

APPELLANT

Vs

Ashok Kumar and Another

RESPONDENT

Date of Decision : 17-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0297

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Avinash C. Bhasin and Amit Bhasin, for the Appellant; Sujata Kashyap, for the Respondent

Final Decision : Dismissed

Judgement

Sudershan Kumar Misra, J.—The Petitioner, which happens to be a sole proprietorship firm, has impugned an award of the Labour Court which has found that the first Respondent is entitled to reinstatement in service with full back wages.

2. The first Respondent had moved the Labour Court claiming that he had worked continuously with the Petitioner from the year 1984 to January, 1997. He claimed, inter alia, that he was illegally removed from service on 14th January 1997, and that the management had refused to pay his statutory dues. After giving an opportunity to the parties to lead evidence, the Labour Court concluded that while the workmen had admittedly worked for more than 240 days and hence was entitled to the protection of Industrial Disputes Act, the Management failed to prove its allegations of misappropriation of funds and abandonment of work. In addition, admittedly, no show cause notice was issued to the workman on these grounds and nor was any enquiry conducted by the management in this behalf. Consequently, the Labour Court held that the Respondent workman is entitled to reinstatement and service with full back wages.

3. Before this Court, the entire emphasis of counsel for the Petitioner has been

on the allegation that the Respondent workman is a man of questionable integrity and that, "for the past some time, the workmen had adopted the habit of misappropriating and utilising the cash being collected by him from different customers", and that, after the Petitioners caught him misappropriating money in this manner, he stopped coming to work under the apprehension that legal proceedings are likely to be initiated against him. This, it is alleged, is the circumstance that prompted the workman to abandon his employment, and even an invitation sent by the Petitioners calling upon the workman to rejoin service in reply to the workman's notice failed to persuade him to do so.

4. The Labour Court has examined these contentions. It has found that the Petitioner Management has admittedly failed to initiate any enquiry into the misconduct alleged. To my mind also, both misappropriation of funds and abandonment of service constitute misconduct. The management was obliged to conduct a proper enquiry after due notice to the workman before arriving at any definite finding either with regard to the alleged misappropriation of funds or the abandonment of service by the workman. Admittedly, this was never done. Furthermore, no document that could convincingly establish the fact of abandonment of service by the workman was proved by the management. All that is relied upon is a reply sent by the management on 19 January 1997 to the notice sent by the workman dated 14 January 1997. In this reply, the management is stated to have called upon the workman to rejoin his duties. The workman has admitted receipt of reply by the management to his aforesaid notice. He has however refuted the allegation that he never approached the management to rejoin duties after receiving the reply to his notice. He has also denied all allegations of misappropriation of funds in his cross-examination. He has further said that, although he did not remember the exact date, in fact he had approached the management sometime after 14th January, 1997 for resuming his duties but not only was he not taken back, he was also beaten. While he admits that he made no report to the police about this; I notice from the cross examination that it is the management's own case that in fact a serious altercation had taken place between the workman and the management regarding some money.

5. Admittedly, the management failed to produce either the payment register, attendance register or any other record pertaining to the year 1997. Furthermore, the Petitioner also admitted that no complaint was made by it to the Labour Department regarding the workman's alleged abandonment of service. Admittedly, the conciliation officer approached the management and inspected the premises. Even before the conciliation officer, the management did not offer to reinstate the workman.

6. Be that as it may, if the workman was indeed misappropriating funds, and that too on a regular basis as alleged, it is highly unlikely that any rational employer will be willing to reinstate him. Even if it is presumed that such an offer was made by the management in its reply to the notice sent by the workman,

although the Petitioner has not bothered to annex any copy of that reply, I cannot believe that the management genuinely intended to reinstate the workman. To my mind, both the facts, i.e., the fact of habitual misappropriation of funds, and the fact of the willingness of the management to reinstate a workman who, it knows is in the habit of misappropriating funds, cannot coexist at the same time.

7. Since the management failed to conduct any enquiry into the allegations, and also failed to produce any relevant record demonstrating either abandonment or misappropriation, and has also failed to produce records regarding attendance, wages and G form 15 on the ground that these records were missing, but did not take any steps to record their loss either with the police or by publication in the newspaper, I cannot find any infirmity in the conclusions reached by the Labour Court. At the trial, the management even failed to produce the acknowledgement allegedly given by the workman in writing stating that he owed Rs. 5000/-.

8. The only other thing asserted by counsel for the Petitioner is that the workman had started working as a plumber, however, no details of this fact are mentioned anywhere. Nor has he been cross-examined on this aspect before the Labour Court. Therefore, I do not consider it necessary to go into this aspect of the matter any further.

9. Under the circumstances, to my mind the impugned award does not suffer from any perversity or such infirmity that warrants interference in the exercise of writ jurisdiction of this Court.

10. The petition is dismissed in limine.