
(2011) 07 DEL CK 0389

In the Delhi High Court

Case No : Writ Petition (C) No. 878 of 2009 and C.M. No. 1951 of 2009

Salig Ram and Company

APPELLANT

Vs

Radhey Shyam and Others

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Citation : (2011) 07 DEL CK 0389

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Arun Mehta, for the Appellant; Brahmanand, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner employer impugns the award dated 13th August, 2007 of the Industrial Adjudicator on the following reference:

Whether Sh. Radhey Shyam, Hari Nandan Singh, Ram Naresh, Binder Dev, Upender Prasad, Sahib Hussain, Hafij Ali, Azizulla, Ram Pravesh, Vakil Ahamad, Ram Ayodhya, Fikkan, Madan Pal and Taj Mohammad have resigned or their services have been terminated illegally and/or unjustifiably by the management, and if so, to what relief are they entitled and what directions are necessary in this respect?

2. Though the reference as aforesaid was made on a dispute raised by fourteen workmen but the claim before the Industrial Adjudicator was filed by seven workmen only and pursued by only five out of the said seven workmen namely Radhey Shyam, Ram Naresh, Binder Dev, Fikkan and Taj Mohammad. Sh. Sahib Hussain & Sh. Vakil Ahamad two of the seven workmen, during the pendency of the proceedings before the Industrial Adjudicator arrived at a settlement with the Petitioner employer and recording payment of Rs. 39,976/- and Rs. 42,400/- by the Petitioner employer to the said two workmen, the dispute qua them was finally disposed of and proceeded qua the claim of the remaining five workmen impleaded in this writ petition as Respondents No. 1 to 5.

3. The claim of the contesting Respondent workmen was that they were not being paid their wages within time; they were not being paid increase of Rs. 71/- as per the Notification of the Government w.e.f. 1st February, 2000; that when they demanded their salary for May, 2000, on 17th June, 2000 their signatures were forcibly obtained on resignation letters; they were not allowed to enter into the premises w.e.f. 26th June, 2000; they were not communicated the acceptance of their resignation letters; they withdrew their resignations on 27th June, 2000 but were still not permitted to join their duty.

4. The Petitioner employer contested the aforesaid claim by contending that except Sh. Fikkan, the remaining four workmen had tendered their resignations and had settled their dues fully and finally; that their resignations were duly accepted and the question of withdrawal of resignation did not arise. With respect to Sh. Fikkan, it was pleaded that he had left the services of the Petitioner employer w.e.f. 12th May, 2000 and did not report for duty thereafter.

5. The Industrial Adjudicator has held that the works of the Petitioner employer in which the Respondent workmen were employed stood closed w.e.f. 30th June, 2000; that though the Respondent workmen had stated that their resignations were taken forcibly but they were not able to show that they filed any complaint against the Petitioner employer in this regard. On the basis of the material before him, the Industrial Adjudicator found that there was some sort of understanding whereby the Petitioner employer was to pay full and final dues of the workmen against their resignations; that it was the admitted position that the settled amount was not paid by the Petitioner employer even after obtaining the resignations; that the resignation letters were duly accepted by the Petitioner employer; that after acceptance of the resignations, the same could not be withdrawn.

6. The Industrial Adjudicator after holding so held that it was not in dispute that the resignations were not absolute but the Petitioner employer was required to pay the dues of the workmen in full and final settlement in lieu of resignation and which dues were not paid. It was thus held that the dispute did not stand settled with the resignation letters. With respect to Sh. Fikkan it was held that the Petitioner employer had failed to make out a case of abandonment of employment; no notice calling upon him to join back duty was issued and short term absence could not lead to presumption of abandonment.

7. The Industrial Adjudicator further held that in view of the works of the Petitioner employer having closed down, reinstatement could not be directed. Accordingly, compensation in lieu of reinstatement was awarded to the Respondent workmen.

8. From the material on record, it is borne out that the case of the Petitioner employer is that the Petitioner employer had delivered cheques for amounts agreed to be paid in full and final settlement to the Respondent workmen. The said cheques of course remained un-encashed. The amount which the Petitioner

employer claims to be due and tendered to each of the workman in the year 2000 and the lump-sum compensation in lieu of reinstatement awarded by the Industrial Adjudicator to each of the workmen is as under:

Respondent Amount due and tendered according to the petitioner employer
Amount awarded by the Industrial Adjudicator

1. Sh. Radhey Shyam 31,794 45,000

2. Sh. Ram Naresh 36,716 50,000

3. Binder Dev 42,651 60,000

4. Sh. Fikkan Nil 50,000

5. Sh. Taj Mohammad 23,811 35,000

9. The counsel for the Petitioner employer has urged that the award is liable to be set aside insofar as qua workmen other than Sh. Fikkan for the reason that the Industrial Adjudicator having not found the resignations tendered by the workmen to have been forced and involuntary and having further found the resignations to have been accepted prior to the alleged withdrawal thereof, erred in holding the Petitioner employer to have terminated the services of the Respondent workmen and erred in awarding compensation therefore. It is contended that in view of the findings of the Industrial Adjudicator, the Industrial Adjudicator ought not to have granted anything more to the said four workmen than what had been tendered by the Petitioner employer as aforesaid. 10. Insofar as the Respondent Sh. Fikkan is concerned, the finding of the Industrial Adjudicator of Sh. Fikkan having not abandoned the employment is controverted.

11. Per contra, the counsel for the Respondent workmen has contended that the language of all the resignation letters is identical; they are all in the same handwriting; there is no explanation as to how the amount tendered according to the Petitioner employer has been computed; that the other two workmen who had also preferred the claim but who ultimately settled with the Petitioner employer have been paid amounts comparable to the amount awarded by the Industrial Adjudicator and there is no explanation whatsoever as to why the said two workmen who had served the Petitioner employer for terms shorter than the Respondent workmen were paid more amount than what was tendered according to the Petitioner employer to the Respondent workmen.

12. The counsel for the Petitioner employer is not able to offer any explanation as to why the two workmen with whom the Petitioner employer had settled, were paid amounts more than those offered/tendered to the Respondent workmen. On enquiry, the counsel for the Petitioner employer informed that while according to the Petitioner employer a total sum of approximately Rs. 1.40 lacs was payable to the four workmen, the Industrial Adjudicator has found a sum of Rs. 2.40 lacs to be due to the five workmen and of which Rs. 1.20 lacs has been deposited in this Court as a condition for stay of implementation of the award.

13. At the outset I may state that I am not inclined to interfere with the award for the reason that the same is not found to be prejudicial to the Petitioner employer. According to the Petitioner employer a sum of approximately Rs. 1.40 lacs was payable by it in the year 2000. The award pronounced in the year 2007 i.e. after about seven years is for a sum of Rs. 2.40 lacs only. A sum of Rs. 1.40 lacs invested even in Government Securities would after seven years yield more than Rs. 2.40 lacs. The award does not grant any interest to the Respondent workmen. Now, a further time of nearly four years since the making of the award has elapsed without the Respondent workmen receiving any benefit of the award till date. Needless to add that once it is found that the Petitioner employer has enjoyed the sum of Rs. 1.40 lacs payable by it nearly eleven years ago, the award cannot be said to be perverse. The writ petition is liable to be dismissed on this ground alone.

14. The award as aforesaid is dated 13th August, 2007. The present writ petition was preferred only in February, 2009. There is no explanation whatsoever for the long delay in preferring the writ petition. The writ petition is thus also liable to be dismissed on the ground of laches, acquiescence and waiver. 15. Even otherwise, no merit is found in the challenge on merits by the Petitioner employer to the award. As far as the Respondent Sh. Fikkan is concerned, the plea of the Petitioner employer was of the said Respondent having not reported for duty after 12th May, 2000. The case of the Respondent Sh. Fikkan is that he had proceeded on leave for one month on 12th May, 2000 and thereafter on 26th June, 2000 his services were terminated. The Industrial Adjudicator has rightly held that no inquiry into abandonment was conducted by the Petitioner employer. It is now the settled position in law that abandonment is a facet of misconduct and to be actionable, requires inquiry and which admittedly was not conducted. Reference in this regard can be made to Anil Chuttani v. ONGC (2010) 117 DRJ 433. Thus there is no error in the award qua Respondent Sh. Fikkan.

16. As far as the remaining Respondent workmen are concerned, the Industrial Adjudicator has held that since the Petitioner employer failed to pay the amount in terms of settlement in spite of having obtained the resignations of the Respondent workmen, the Petitioner employer was in default and thus liable to pay compensation. It was further held that no closure compensation was paid.

17. I find some merit in the plea of the Respondent workmen of the resignations having been forced. It is the case of the Petitioner employer also that its works were closed down on 30th June, 2000. The factum of resignation shortly prior thereto shows that it was the Petitioner employer who wanted the Respondent workmen to resign and the resignations were not of own volition of the Respondent workmen. Finding no error in the relief granted, the deficiency even if any in the reasoning given by the Industrial Adjudicator would be no ground for interfering with the award.

18. There is thus no merit in the writ petition, the same is dismissed. The amount of Rs. 1.20 lacs deposited by the Petitioner employer in this Court

together with interest accrued thereon be released by the Registry of this Court prorata to the Respondent workmen. The Petitioner employer is granted an opportunity to comply with the award and is directed to pay 50% balance amount of the award to the Respondent workmen in terms of the award within four weeks of today failing which the Petitioner employer shall be liable to pay interest on the said 50% balance amount at the rate of 10% per annum from the date of the award till the date of payment.

It is clarified that the direction for payment of such interest is made since the Petitioner employer has availed the benefit of the interim order of this Court and to balance equities arising from the said interim order at the time of final decision of the writ petition. (See *Abhimanyoo Ram v. State of UP* (2008) 17 SCC 73 and *Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc.*,

Costs of litigation have already been paid.