
(2006) 09 DEL CK 0174

In the Delhi High Court

Case No : Writ Petition (Civil) No. 6504 of 2002

Sona Electrical Stampings

APPELLANT

Vs

The Presiding Officer and Others

RESPONDENT

Date of Decision : 19-09-2006

Acts Referred:

Citation : (2006) 09 DEL CK 0174

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Vinay Sabharwal, for the Appellant; R.B. Pandey, for the Respondent

Final Decision : Allowed

Judgement

Manju Goel, J.—The writ petition is directed against the award of the Labour Court dated 16-2-2002 awarding reinstatement with 50% back wages to the respondent who raised the industrial dispute. The respondent was a workman with the petitioner. He raised the industrial dispute alleging that his services had been wrongfully terminated with effect from 8.8.1988 without assigning any reason. The terms of reference were as under:

Whether the services of Sh. Rampal have been terminated by the management illegally and/or unjustifiably and if so, to what relief is he entitled and what directions in this respect?

2. The petitioner management took the plea that the respondent workman had remained absent with effect from 8.8.1988 and, Therefore, he was served with a notice to show cause dated 1.9.1988 and since the respondent did not respond to the notice and did not come to join his duties, the petitioner management had no option but to pass an order of dismissal on 13.9.1988. The petitioner management admitted before the Labour Court that the management had not held any inquiry into the alleged misconduct. However, evidence about the misconduct was led before the Labour Court. The petitioner produced the attendance register to show that the respondent had remained absent from duty

frequently in the years 1987 & 1988 and finally with effect from 8.8.1988. He was marked absent in the register till 12.9.1988 and, Therefore, his name was struck off from the register. He was first served with a notice to show cause and thereafter with an order of dismissal.

3. The Labour Court then proceeded to examine as to whether the respondent had abandoned the duty.

4. It is submitted on behalf of the petitioner management that the case of the petitioner was never that the respondent had abandoned his service with the petitioner management. The case of the petitioner management always has been that the respondent was dismissed from the employment on account of misconduct of being unauthorisedly absent.

5. Admittedly, the respondent did not apply for leave for the period of his absence, namely, 8.8.1988 to 12.9.1988. He may not have abandoned his service but this absence without leave is misconduct. The Labour Court has gone on an entirely wrong track by proceeding to examine whether the respondent workman had abandoned his service. After having held that there was no abandonment of the service by the workman, the Labour Court proceeded to hold that the management had failed to prove the misconduct. Thus, the Labour Court has manifested confusion between the concept of abandonment of service and misconduct of being absent without sanctioned leave.

6. The Labour Court after having held that there was no abandonment of service by the workman has proceeded to grant the relief of reinstatement with 50% back wages. Since the very finding about abandonment/misconduct is found to be incorrect, the relief granted on the incorrect premise also must be set aside.

7. On behalf of the respondent it is submitted that the respondent was absent only for a short duration and, Therefore, he should not have been dismissed. The absence in this case was not only of one month and four days from 8.6.1988 but also on previous occasions. The list of unauthorized absence submitted by the petitioner before the Labour Court shows that the respondent has been a habitual absentee.

8. The misconduct is not simply absence. Misconduct is absence without any intimation. The petitioner management waited for more than a month before striking off the name of the respondent and terminating his services in that manner. Such misconduct can entail the punishment of dismissal from service. This has been held by the Supreme Court in various judgments and the most frequently quoted of these judgments is Delhi Transport Corporation Vs. Sardar Singh, . Such a penalty cannot be said to be so disproportionate as to shock the conscious of the Court.

9. The impugned award has to be quashed as the same is based on an entirely incorrect appreciation of the dispute. The management/petitioner never pleaded that the workman/respondent had abandoned the job. Instead of considering

whether the respondent had committed misconduct it considered the aspect of abandonment which was not the case at all. Misconduct having been sufficiently proved and such misconduct being sufficient for removal, the award of reinstatement and back wages has to be quashed.

10. The writ petition is allowed and the impugned award is quashed with the above observations.