

(2008) 01 DEL CK 0005
In the Delhi High Court
Case No : WP (C) No. 16237 of 2006

Sonu Lal

APPELLANT

Vs

The Management, National Foundation of India Engineers

RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Citation : (2008) 01 DEL CK 0005

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Umesh Singh, for the Appellant; Vinay Kr. Garg, for the Respondent

Judgement

Anil Kumar, J.—Rule.

2. With the consent of the parties the matter is taken up for final adjudication.

3. The petitioner has challenged the award dated 8th November, 2005 dismissing his claim after closing his evidence and consequently closing the evidence of the management and thus dismissing the claim of the workman that termination of his services by the management was illegal and unjustifiable.

4. The petitioner/workman filed statement of claim contending inter-alia that he was a workman with the management for the last six years as a driver and his last drawn wages were Rs. 3000/- per month. The petitioner contended that he was never provided facilities such as appointment letter, minimum wages, leave book, attendance card, casual leave etc and on demand management got annoyed and terminated his services on 30th May, 2002.

5. After the reply to the claim of the petitioner was filed by the management, the issues were framed on 12th July, 2004.

6. The Labor Court closed the evidence of the petitioner on 8th November, 2005 on the ground that since January, 2005 the workman was given more than sufficient opportunity to lead his evidence but he failed to do so. After closing the evidence of the petitioner, the evidence of the management was also closed and

the claim of the petitioner was dismissed.

7. The petitioner has contended that he was present on 10th January, 2005, however, the matter was adjourned to 13th April, 2005. On 13th April, 2005 the presiding officer was on leave. Since the Presiding Officer was on leave on 13th April, 2005, the case was adjourned for 6th July, 2005. On that date the affidavit of evidence of the workman was filed and a copy was also given to the authorized representative of management and the matter was fixed for the cross examination of the workman on 22nd September, 2005. On 22nd September, 2005 the authorized representative of the workman was present and the matter was adjourned for 25th October, 2005 as the workman was not present on that day. Even on 25th October, 2005 the workman was not present.

8. The petitioner workman has contended that on account of unemployment he could not come from his village and also because he was suffering from fever. He pleaded that he tried to intimate the authorized representative also who was present on 22nd September, 2005 and 25th October, 2005, however, he could not get in touch with his authorized representative. Thereafter, on 8th November, 2005 the evidence of the workman was closed.

9. The notice of the present petition was issued to the respondent however, no counter affidavit has been filed, despite opportunity given to the respondent/management.

10. The averments made by the petitioner in his petition that on 22nd September, 2005 and 25th October, 2005 he had fever and was in his native village and on account of unemployment he could not come and could not even intimate his authorized representative, though he tried to do that, has not been refuted by the respondent/management.

11. Considering the facts and circumstances it is apparent that there is sufficient cause for the absence of workman on 22nd September, 2005 and 25th October, 2005 when the matter was listed for his cross examination, as the workman could not appear on those days on account of his illness which fact has not been refuted by the respondent.

12. The observation of the Labor Court that the opportunities have been given to the petitioner workman since January, 2005 and nothing was done, is not correct in the facts and circumstances which is a manifest error in the award, as on 6th July, 2005 evidence on affidavit was filed on behalf of petitioner/workman.

13. Considering the facts and circumstances there is sufficient cause to set aside the order closing the evidence of the petitioner/workman. The error in the award dated 8th November, 2005 is also apparent as the observation that nothing was done by the petitioner/workman since January, 2005 is not correct as the evidence on affidavit was filed by the petitioner/workman on 6th July, 2005 and a copy of the same was also given to the respondent/management.

14. Consequently, in the facts and circumstances and in the interest of justice

the award dated 8th November, 2005 is set aside and the matter is remanded to the Labor Court to record the evidence of the workman. The workman is granted one opportunity to appear before the Labor Court for recording his evidence. If the evidence of the petitioner/workman is not completed on one day, the petitioner be given other opportunity to complete the same. After the evidence of the petitioner, the management shall be entitled to lead evidence. With these directions the writ petition is disposed of and the parties are directed to appear before the Labor Court-II, Karkardooma Courts, Delhi on 11th February, 2008. The Labor Court on 11th February, 2008 shall fix the date for recording the evidence of the workman. The Labor Court shall dispose of the petition expeditiously. Considering the facts and circumstances, the parties are left to bear their own costs.