

(2013) 05 DEL CK 0546

In the Delhi High Court

Case No : Writ Petition (C) 795 of 2000

Water Supply and Sewage Disposal

APPELLANT

Vs

P.O. Labour Court and Another

RESPONDENT

Date of Decision : 14-05-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F
Penal Code, 1860 (IPC) — Section 379, 411

Citation : (2013) 201 DLT 50 : (2013) LLR 675

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Zeyaul Haque, for the Appellant; Anuj Aggarwal, Advocate for the Respondent workman, for the Respondent

Final Decision : Allowed

Judgement

Vipin Sanghi, J.—The petitioner management by this writ petition has assailed the industrial award dated 05.09.1998 passed by Labour Court VII, Tis Hazari Courts, Delhi in ID No. 134/1994, whereby the reference made to it by the Appropriate Government on 29.04.1994 with regard to the termination of the services of the respondent workman has been answered in favour of the workman and against the petitioner. The reference reads as under:

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

The case made out by the respondent workman in his statement of claim was that he had joined the petitioner with effect from April 1982 as Beldar. Learned counsel for the petitioner, however, points out that the respondent, in fact, worked from July 1981 onwards. The respondent stated that he was treated as a daily rated casual/muster roll worker. The respondent also stated that his services were terminated with effect from 08.05.1985 without assigning any reason. He stated that the cause for termination of his services was that the

respondent had got arrested in respect of FIR No. 157/85 registered at police station Shakarpur, Delhi police u/s 379/411 IPC. He was arrested on 06.05.1985 and released on bail on 08.05.1985. Eventually, he was acquitted by order dated 24.03.1992. The respondent alleged that the petitioner did not allow him to join duties from 08.05.1985 when he reported for duty and was kept unemployed throughout, with the assurance that in case he is acquitted by the Court, he will be reinstated in service with continuity and full back wages. The respondent claimed that the termination of his service by striking of his name from the muster roll from 07.05.1985 is illegal.

2. In its written statement, the petitioner stated that the services of the respondent had never been terminated, as alleged by him. The petitioner contended that it was a case of the respondent abandoning his services with effect from 06.05.1985 without any intimation or prior permission.

3. The first issue framed by the Labour Court was whether the workman himself abandoned his employment. The onus to prove the same was placed on the management. The second issue was as per the terms of reference. The respondent examined himself as his witness. However, the petitioner management failed to lead any evidence. They were proceeded ex-parte on 20.08.1997.

4. In the impugned Award the Labour Court takes note of the cross examination of the respondent where he states that he had reported for duty to Sh. Yash Prakash, JE on 09.05.1985, but the JE did not allow him to join duty. However, he did not produce any document to show that he had made a grievance as to his not being permitted to join duties either by addressing a complaint to the petitioner, or to the labour authorities. The Labour Court held that the plea of the management that the respondent had himself abandoned the employment was not proved, as the petitioner had failed to produce either the Junior Engineer, or the Assistant Engineer to rebut the version of the workman. It was held that the workman had not abandoned his employment of his own, but he was not allowed to join his duty by the management. The consequence of the aforesaid finding was that the respondent was held entitled to partial relief. Since he had sent his demand notice on 29.09.1992, he was held entitled to reinstatement with back wages from 01.10.1992 onwards.

5. The submission of learned counsel for the petitioner is that even though the petitioner was proceeded ex-parte and did not lead its evidence, the stand of the petitioner was brought on record before the Labour Court to the effect that the services of the respondent were not terminated and that he had, in fact, abandoned his service. Learned counsel submits that the respondent had not produced any evidence whatsoever, either to establish the so called termination of his services, or to show that he had ever reported for work after being released on bail on 08.05.1985. There was nothing to show that the respondent had ever made a grievance contemporaneously, with regard to his being prevented from serving the petitioner, on the basis of which, one could draw the

inference of his termination from service. The respondent had raised an industrial dispute by serving a demand notice for the first time in September 1992 i.e. after nearly seven years of his abandoning the services.

6. In support of his submission that it was for the respondent to establish the termination of his service by the petitioner, and his self serving affidavit could not be regarded as sufficient evidence, Learned counsel places reliance on the decision of the Supreme Court in *The Range Forest Officer Vs. S.T. Hadimani*, . In this case, the employer had denied that the workman had worked for more than 240 days in the year preceding his termination. The Supreme Court held that in these circumstances, it is for the workman to lead evidence to show that he had, in fact, worked for 240 days in the year preceding his termination. Filing of his own affidavit by him could not be regarded as sufficient evidence by any court or tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year.

7. Learned counsel submits that since the case of the petitioner was that the respondents services had not been terminated, it was for the respondent to establish the termination of his services, which the respondent had failed to do. It is also submitted that the conduct of the respondent, of his not raising an industrial dispute contemporaneously after his being allegedly refused work (after his being released on bail) for seven years, itself establishes the fact of the respondents abandonment of his service.

8. Mr. Aggarwal, learned counsel for the respondent supports the impugned award. He submits that since the petitioner failed to lead any evidence, the plea of abandonment of his service by the respondent could not be accepted. The onus to prove the abandonment of service by the workman lies on the employer. He submits that if the respondent had abandoned his services, it was for the petitioner to take disciplinary action against the respondent, which was not done in the present case. No notice was issued to the respondent by the petitioner management questioning his conduct in not reporting for duty.

9. Learned counsel for the respondent has placed reliance on the following decisions in support of the aforesaid submission.

i) *Municipal Corporation of Delhi Vs. Sukhvir Singh and Others*, , wherein the Court has observed that once it is held that the employment of the workman was not for a specified period, the Court shall have to proceed on the basis that the denial of employment to the workman by the management, for whatever reason, shall have to be only in accordance with law. If the workman had abandoned the employment, that would be a ground for holding an enquiry against him and passing appropriate orders. That had not been done in the case before the Court.

ii) *Government of NCT of Delhi Vs. Sh. D.S. Bawa and Another* , wherein the Court rejected a similar plea of the employer that the workman had abandoned his services by not turning up for duty after 02.07.1986. The employer did not contest the proceedings before the Labour Court. The Court held that the

employer was itself to blame for its conduct. The Labour Court, on the basis of the un rebutted evidence of the workman, held that he offered his services and that the employer had failed to establish the case of abandonment. The Court further observed that abandonment amounts to misconduct, which requires a proper enquiry, which, admittedly, has not been conducted by the employer in that case. Learned counsel also points out that in this case also there was a delay of three years in raising the dispute.

10. Mr. Aggarwal submits that the delay in raising the dispute could, at best, lead to the relief being accordingly moulded by denial of a part of the back wages. He submits that in the present case, the Labour Court has restricted the back wages only for the period after the demand notice had been served. He submits that, therefore, the impugned award does not call for interference. In support of his plea that mere delay would not shut out the right of the workman to approach the Labour Court and seek appropriate relief, he places reliance on *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, .

11. He submits that in *Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana)*, , the Supreme Court has held that the reinstatement into service would be the proper relief to grant in case of breach of section 25F of the Industrial Disputes Act, 1947 ("The Act" for short).

12. A perusal of the impugned award shows that the respondent has not led any independent or credible evidence before the Labour Court to establish that his services were terminated by the petitioner. It is only his own self serving statement, which was relied upon by the respondent, on this aspect. The respondent ought to have led some other independent evidence on this aspect, particularly in the light of his subsequent conduct of not raising any grievance whatsoever, for nearly seven long years.

13. In *Chief Engineer (Construction) Vs. Keshava Rao (D) by LRs.*, , the stand of the appellant management was that the respondent had voluntarily abandoned his services and, therefore, his name had been deleted from the muster roll. The Supreme Court observed that the respondent workman had served the notice after a delay of a year and five months, and no evidence had been led by the respondent workman to show that he had made any effort to seek reinstatement, or that he had complained against the action of the Management to anyone. Accordingly, the Court set aside the order of reinstatement of the respondent workman by holding as follows:

11. We have carefully perused the notice given by the respondent and the reply thereto given by the appellant. No doubt, about a year and 5 months after the alleged termination of service, such a notice was served upon the appellant by the respondent. The High Court has observed that within a reasonable time the respondent had claimed reinstatement on the ground that his service had been illegally terminated. In the first instance, the period of 1 year and 5 months does

not appear to be reasonable time for asserting the factum of termination of employment....

15.... The delay of a year and 5 months in issuing a notice appears to us to be significant. Apart from this no evidence was led by the respondent workman that he had made any effort to seek reinstatement or complained against the action of the management to anyone. There is no material whatsoever to suggest that he had made a grievance about it before any authority or before the Workers' Union.

14. As noticed hereinabove, the delay on the part of the respondent in making any kind of grievance in the present case is 7 years. Had the respondents services been terminated, and had it not been a case of abandonment of his services by the respondent, he would have as any reasonable and needy class four workman, immediately, or at the earliest opportunity and within a reasonable time period represented to the management, and/or the labour inspector, and/or, the labour commissioner against his termination. If so, the respondent workman would have pleaded/led evidence to this effect. However, the respondent did not lead any evidence to show that he ever raised any grievance against his alleged termination. A mere self serving affidavit by the respondent workman alleging termination of his services, filed after seven long years and more could not have been taken to conclusively establish the respondent's case of illegal termination.

15. Pertinently, no other daily wager/workman was produced to corroborate the respondent's version that he reported for work on 09.05.1985 to Sh. Yash Prakash, J.E. and that he also went to Sh. Prem Chand Bhargaw, Assistant Engineer who did not allow him to join duty. The Labour Court has ruled in favour of the respondent only on the premise that the management did not lead any evidence and did not produce Sh Yash Prakash or Sh. Prem Chand Bhargaw to rebut the version of the workman. Hence, the Labour Court held that the respondent workman had not abandoned his services.

16. In my view, this approach of the Labour Court appears to be laconic. The respondent could not have been allowed to take advantage of the belated raising of his claim, which would put the management especially where it is a governmental organisation, to grave disadvantage of the evidence getting destroyed.

17. The fact that the petitioner was proceeded ex parte is not, by itself, a grounds for concluding that the respondent's services were terminated unjustifiably. It was for the respondent to establish the same on his own. The respondent was obliged to establish his own case positively, and could not have succeeded merely because the petitioner failed to lead any positive evidence of its own to substantiate its defence of abandonment of his services by the respondent. No doubt, the petitioner management did not lead any positive evidence to establish its defence, and was proceeded ex parte at its own peril,

but what about the evidence in the form of the respondents own conduct which strongly supports the petitioners case of abandonment and raises serious doubt about the respondents plea of termination. The petitioners failure to cross examine the respondent and to lead its own evidence could not shift the onus of proof which lay on the respondent, to prove that his services had been terminated. The respondent put forward no evidence to establish that he had raised a grievance pertaining to the petitioner management's alleged arbitrary conduct in not allowing him to resume work, i.e. his services were terminated by the petitioner.

18. Even if it were to be assumed for the sake of argument that the officers of the petitioner did not permit the respondent to join duty after he was released on bail, what did the respondent do thereafter for nearly seven long years? What has to be made of his continued silence? To my mind, the only inference one can draw is that of abandonment of his service by the respondent.

19. Delay of seven years by the respondent in raising the industrial dispute, by itself, supports the inference of abandonment of services by the respondent workman as held in Keshava Rao (D) by LR's (supra). The conduct of the respondent in not raising any grievance contemporaneously supports the inference that the respondent abandoned his services. Abandonment is a matter of intention, apart from the physical act of absence from duty and, in the facts of the present case, the delay of seven years in raising the first grievance cannot lead to any other conclusion but that the respondent workman had left and given up his claim to the petitioners service of his own free will and accord.

20. I do not find any merit in the submission of the respondent that the absence of any notice or disciplinary action can lead to the inference that the respondent workman had not abandoned his services. I also reject the submission that notice should have been issued to the respondent, to enquire into his absence. A daily wage worker is paid in accordance with the number of days he reports for work, and if one daily wagger does not report for work, it is open to the management to engage another one on the day(s) of his absence. It is not open to the management to raise a grievance if a daily rated worker chooses to work elsewhere, or chooses not to report for work for whatsoever reason. This Court in Diamond Toys Co.(P) Ltd. Vs. Toofani Ram and Another , has held that it is not obligatory on the employer to serve a notice upon, or hold an inquiry against a worker, who starts absenting himself from duty.

21. This court has considered a similar submission regarding the need to hold an enquiry in K.L. Malik & Sons P. Ltd. v. Ram Prabandh Tiwari, WP (C) No. 7790/2003, decided on 19.02.2013 and rejected the argument that an enquiry is required to be held in every such instance of absence. In the aforesaid case, it was observed that "It is only when the employer wishes to take punitive action against the workman that he needs to hold an enquiry after issuance of a charge sheet under the rules, or in compliance with the principles of natural justice, as the case may be."

22. A similar argument was also considered by this Court in *Mgt. Of Horticulture v. Hakoo & Jagar Khan* in WP (C) No. 880/2004 decided on 21.03.2013 and in *Satpal v. Delhi Jal Parday And Mal Vyayan Sansthan* in WP (C) No. 14/2009 decided on 15.04.2009 where the Court rejected the submission that the management was obliged to serve a notice and hold an enquiry to establish a case of abandonment. In *Mgt. Of Horticulture* (supra) it was observed as follows-

17. The observation of the learned Industrial Adjudicator that the management is obliged to serve a notice and thereafter hold an inquiry into the reasons for the absence of the daily rated/muster roll/casual workers, in my view, is erroneous. A daily rated/muster roll/casual worker has no obligation to report for duty every day. He is completely free to report for work or not to so report. Therefore, if he does not report for duty on any given day, or continuously for any length of time, the management cannot raise a grievance and is not obliged to serve a notice or hold an inquiry against him. The management has the right to take the work from any other casual worker in case a casual worker, who has earlier been serving, stops reporting for work. The management is not obliged to wait for him and, in the process, let the work suffer. The situation would be different in the case of a permanent worker since, in the case of permanent worker, there is a binding obligation both on the employer as well as the employee, whereunder the employer is obliged to offer work to the workman and pay him his wages, and the workman is equally obliged to work for the employer for the wages that he receives. The management gets the right to serve a notice and to take action against a permanent worker on account of the said binding obligation of the workman. If a permanent workman does not report for duty continuously, the work of the management would suffer. The same cannot be said in respect of a daily rated casual worker on muster roll, as the absence of such a worker entitles the management to engage another person as a replacement. A daily rated/muster roll/casual worker is not bound by the rule of discipline which requires him to report every day for work, unlike in the case of a permanent workman. So, if the daily rated casual worker does not report for work, why should the employer be saddled with the duty to serve a notice upon him? As aforesaid, the situation would be different where the daily rated casual workman raises a grievance contemporaneously regarding his disengagement. In that case, his conduct would demonstrate his intention to keep his job as a daily rated casual employee.

23. The decisions relied upon by the respondent are of no avail. The Respondent's reliance on *Sukhvir Singh & Ors.* (supra) is misplaced as it has no application to the facts of the present case. The aforesaid was not a case where there had been an extremely long delay in raising a grievance. Therefore, in that case, an inference could not have been drawn against the workman that he had abandoned his services. However, in the present case, a delay of seven years in raising any claim, grievance or an industrial dispute leads to a reasonable inference that the respondent was not interested in working with the petitioner and had, in fact, abandoned his services.

24. The reliance on D.S. Bawa & Anr. (supra) by the respondent is also misplaced. In the aforesaid case, the stand of the respondent workman was that his services had been terminated whereas the petitioner management controverted the respondent's stand by claiming that he had abandoned his duties with effect from 2.07.1986. The industrial dispute had been raised by the respondent workman after three years of his alleged abandonment. It is pertinent to note that in the aforesaid decision relied upon by the respondent, the Court observed in Para 12 that "the delay gives credence to the plea of the petitioner, though not substantiated, of abandonment/absenteeism on the part of the respondent No. 2 workman. In the present case, the delay is so large that, in my view, the conduct of the respondent itself is sufficient and it does not need any further substantiation. Moreover, this decision does not notice the earlier judgment of the Supreme Court in Keshava Rao (D) by LRs (supra).

25. No doubt, delay in approaching the court cannot shut out the workman's right to approach the Labour Court, as there is no period of limitation prescribed in the Act, however, the delay may have ramification on the merits of the workman's case. For example, in a given case the workman may have contemporaneously complained about his retrenchment to the management and/or the Labour Authorities, but for justifiable reasons, may have belatedly raised the dispute about his retrenchment. In such an eventuality, the claim may be allowed while restricting the relief appropriately. It is one thing to say that the relief is barred by delay or laches and another thing to say that the conduct of the workman in raising the dispute of this kind, highly belatedly, belies the claim of the workman. The aspect of inordinate delay must be juxtaposed with the facts of the present case, where the primary submission of the management is that the workman had abandoned his services. In such a situation, the delay in raising the grievance will only strengthen the inference of abandonment, as already discussed hereinabove.

26. I have considered the aforesaid aspect in Mgt. Of Horticulture v. Hakoo & Jagar Khan, WP (C) No. 880/2004, decided on 21.03.2013. In the aforesaid case, the stand of the respondent workmen was that they had been employed by the petitioner management on 22.07.1998 as daily rated/muster roll/casual workers. Their case was that on 08.06.1999, Sh. Kesar and Sh. Bodh Raj, Supervisors verbally instructed them to stop reporting for work. They claimed that their retrenchment was in breach of Section 25-F of the Industrial Disputes Act, 1947 (the Act), since they had completed 240 days of employment in the year preceding their termination.

27. On the other hand, the stand of the petitioner management was that from 09.06.1999 onwards the workmen had voluntarily chosen not to report for work. The first demand notice served by the workmen was after 2 1/2 years of the alleged date of termination/retrenchment. The relevant extract from this decision reads as follows-

16. In the present case, the respondents raised their grievance with regard to

the so called termination for the first time by their demand notice dated 31.12.1991, i.e., well after the expiry of a period of 2 1/2 years. The natural course of human conduct does not support the respondents' plea of their being illegally retrenched by the management, when they have themselves raised a grievance in that respect after a period of 2 1/2 years and more. On the contrary, it establishes the petitioner's plea of abandonment of their service by the respondents. The reasoning adopted by the Industrial Adjudicator cannot be accepted and is laconic, as the delay in raising the grievance after 2 1/2 years is clearly indicative of the intention of the respondents to abandon their service. Pertinently, the respondents have not sought to even offer an explanation for the delay in raising their demand so belatedly. Looking to the economic background from which the respondents hail, it is not acceptable that the respondents remained unemployed as casual workers after the date of their alleged retrenchment. The scarcity of Government jobs should, in fact, have been a reason for the respondents to raise a flutter, in case they were unjustifiably deprived of their employment, and not a reason for them to go into a slumber. Is it to be believed and accepted that persons who eke out a living on a daily wage, would keep quiet particularly when, according to them, they were entitled to be regularised, unless they had voluntarily abandoned their service. It is well-known that daily rated casual workers on the muster roll, who are Class-IV employees are migratory in nature. The possibility of the respondents having taken up some other employment or having gone back to the native places/villages, on account of their personal circumstances cannot be ruled out. In fact, in the facts and circumstances of the case, the same is highly probable. How else would a daily wage survive in this expensive Metropolis.

28. In *G. T. Lad and Others Vs. Chemical and Fibres of India Ltd.*, , the Supreme Court observed as follows-

7. From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In *The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another*, it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus, whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.

(Emphasis supplied)

29. In the present case, the delay of raising the industrial dispute is seven years. It cannot be accepted that for seven years the respondent workman was running

from pillar to post requesting the petitioner to resume his services, without having made any complaint to either the petitioner, the Union, or the labour authorities. The survival of a daily wage muster roll worker, and that of his family is wholly dependent on the wage he earns for the day, and his need to survive would have led him to raise a hue and cry on being denied his right to work. The only inference that can be drawn, in the absence of any complaint being made by the respondent, is that he abandoned his services for whatever reason. There is nothing to suggest apart from the respondent's ipse dixit, that the respondent was ever denied employment, or that he was ever given an assurance that he would be taken on work after his acquittal. Even if the respondent's submission was to be believed though he was acquitted on 24.03.1992, yet he sent a demand notice after a delay of six months even thereafter. This conduct of the respondent also supports the inference that he was not interested in pursuing employment with the petitioner and had abandoned the same. In the light of the above discussion, the writ petition is allowed and the impugned Award is set aside. However, considering that the respondent workman has had to contest this petition, which had earlier been dismissed in default, the respondent is held entitled to costs of Rs. 10,000/-. The same be paid within four weeks.