

(2009) 08 DEL CK 0147

In the Delhi High Court

Case No : Writ Petition (C.) No. 16880 of 2006

Workman Shri Sukhpal Singh

APPELLANT

Vs

Management of Gajra Gears Ltd.

RESPONDENT

Date of Decision : 12-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 08 DEL CK 0147

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Asha Jain Madan, for the Appellant; Jagat Arora, for the Respondent

Final Decision : Allowed

Judgement

S.N. Aggarwal, J.—The workman has filed this writ petition seeking to challenge the industrial award dated 17.12.2005 in I.D. No. 353/1998 passed by the Industrial Adjudicator by which he has been declined any relief for alleged termination of his services by the management of the respondent w.e.f. 16.07.1994.

2. The petitioner was appointed as a Driver with the respondent management w.e.f. 02.02.1981. He left the service of the respondent w.e.f. 17.09.1987. Thereafter, he was re-engaged by the respondent at an increased salary of Rs. 2,000/- per month w.e.f. 27.10.1987. He was allegedly terminated by the respondent w.e.f. 15.07.1994. Aggrieved by his termination, he had raised an industrial dispute which was referred by the appropriate Government for adjudication to the Labour Court. Before the Labour Court the management of respondent took a plea that the petitioner had resigned the service of the respondent voluntarily vide resignation letter dated 18.08.1987 and that his resignation was accepted by respondent w.e.f. 17.09.1987. The case of the management before the Labour Court was that after the petitioner had left the service of the respondent in September 1987, he was given 3-4 assignments on monthly basis and was paid for that. As per the management, the services of the

petitioner were not terminated by the respondent as alleged by him.

3. The Court below accepted the plea of the respondent that the petitioner was not entitled to any relief as he had resigned the service of the respondent of his own vide resignation letter dated 18.08.1987. This finding of the Court below is totally perverse. The case of the petitioner before the Labour Court was that after he had resigned from the service of the respondent vide resignation letter dated 18.08.1987, he was re-engaged by the respondent at an increased salary of Rs. 2,000/- per month w.e.f. 25.10.1987 and that he continued to work with the respondent as Driver till his services were terminated w.e.f. 16.07.1994. The witness of the management, namely MW-1 Shri Nawal Kishore Kundrai, in his cross-examination before the Labour Court has admitted that the petitioner continued with assignments with the respondent till 1994. It shall further be significant to mention that the petitioner had produced the salary slips (Exhibits WW1/3 to WW-1/33) before the Labour Court for the following period:

April 1989 to December 1989 (except August)

January 1990 to December 1990

January 1991 to December 1991 (Except for February, June & October)

January 1992 to April 1992.

The copies of these salary slips produced by the petitioner before the Labour Court are at pages 31-63 of the Paper Book. Not only that, the petitioner had also produced the specimen attendance slips also, copies of which are at pages 27-29 of the Paper Book. The admission of the witness of the respondent that the petitioner continued to work with the respondent till 1994 coupled with the copies of salary slips and the sample attendance slips referred above shows that the petitioner on his re-engagement by the respondent w.e.f. 27.10.1987 had continuously worked with the respondent till 15.07.1994. It was amply proved by the petitioner before the Labour Court that he was re-engaged by the respondent after he had resigned on earlier occasion. In that backdrop, the earlier resignation tendered by the petitioner had lost its significance when the Labour Court was called upon to examine the alleged termination of the petitioner after his re-engagement. A perusal of the impugned award would show that the Labour Court has passed the said award relying upon the earlier resignation letter dated 18.08.1987 (Exhibit WW-1/6) tendered by the petitioner prior to his re-engagement. Hence the findings contained in the impugned award are totally perverse and cannot be sustained in law. The material on record proves that the respondent has illegally terminated the services of the petitioner w.e.f. 16.07.1994.

4. The question that now arises for consideration is to what relief the petitioner is entitled to for illegal termination of his services by the respondent.

5. Mr. Jagat Arora, learned Counsel appearing on behalf of the respondent, has argued that the petitioner had already reached the age of superannuation of 58

years in 1994 and, therefore, according to him, the petitioner could not have even otherwise remained in service of the respondent after the age of superannuation. The learned Counsel appearing on behalf of the respondent, submits that since the petitioner had crossed the age of superannuation in 1994, he is neither entitled to reinstatement nor to any back wages.

6. Per contra, Ms. Asha Jain Madan, learned Counsel appearing on behalf of the petitioner, has contended that the petitioner was 53 years old in 1994 when his services were illegally terminated by the respondent. According to the learned Counsel appearing on behalf of the petitioner, the petitioner would have remained in the service of the respondent for another 5 years had his services been not terminated illegally by the respondent. She, therefore, submits that the petitioner is entitled to back wages at least for about 5 years for the period intervening between the date of illegal termination and the date on which he would have attained the age of superannuation.

7. On behalf of the management, it is contended that the petitioner was 58 years old in 1994 whereas on behalf of the petitioner, it is contended that he was 53 years old in 1994. The age of the petitioner in 1994 becomes a disputed question of fact in view of the above rival submissions made by the learned Counsel for the parties. For granting relief to the petitioner consequent upon his illegal termination by the respondent, it will be necessary to determine as to what was his age in 1994 when he was terminated by the respondent. This Court in exercise of its extraordinary discretionary writ jurisdiction under Article 226 of the Constitution would not like to go into this disputed question of fact as the decision on the question of age would require evidence and it will be appropriate in case parties are asked to produce their evidence regarding age of the petitioner before the Court below. The case is, therefore, to be remanded back to the concerned Labour Court/Successor Court for determining the age of the petitioner on the date of his termination, i.e., on 16.07.1994 and also to consider the relief that can be granted to the workman for illegal termination of his services w.e.f. 16.07.1994.

8. For the foregoing reasons, the impugned award is set aside. The writ petition is allowed. The case is remanded back to the concerned Labour Court/Successor Court for determining the age of the petitioner as on 16.07.1994 and also to consider the relief that may be granted to him in law on account of illegal termination of his services w.e.f. 16.07.1994. The parties are directed to appear before the concerned Labour Court/Successor Court for further directions at 2:00 P.M. on 20.08.2009. The Court below is directed to decide the matter as expeditiously as possible preferably within 8 months to be reckoned from 20.08.2009.

A copy of this order be sent to the concerned Labour Court/Successor Court for information and necessary compliance.