

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WRIT PETITION (CIVIL) NO.2278/2008

Date of Decision: 21st April, 2011

SHIV NARAYAN Petitioner
Through Mr. Jai Bansal, Advocate
versus

K.C. ELECTRICALS & ANR. Respondents
Through Mr. Anurag Lakhotia, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

SUDERSHAN KUMAR MISRA, J(Oral)

1. The petitioner has challenged the award of the Labour Court dated 27th February, 2007 whereby his claim for reinstatement along with continuity of services with full back wages was rejected.

2. It is the case of the petitioner that he had joined respondent no. 1 as a Helper in 1996 and his last drawn wages were Rs. 1,937/- per month. He submits that he was neither given an appointment letter, nor provided with legitimate facilities such as weekly offs, leave with pay, medical/ESI facilities, etc. The

petitioner, thereafter, became a member of the Worker's Union so that his interest may be protected and his grievances could be taken up with the management for effective redressal. This act of the petitioner allegedly incurred the displeasure of the management of respondent no. 1 and, consequently, they did not pay him earned wages for the month of June, 1999.

3. Counsel states that on 2nd July, 1999, the management of respondent no.1 called the petitioner to their office, gave him a beating and forcibly took his thumb impressions on blank papers and vouchers, and thereafter removed him from service. Counsel further contends that the petitioner tried to lodge a complaint with the SHO, P.S. Dilshad Garden on the same day, i.e. 2nd July, 1999, but because of the inaction on the part of the police officials, it could not be registered on that day. The petitioner finally lodged the complaint on 5th July, 1999. Moreover, he also made a complaint, dated 4th July, 1999, to the Assistant Labour Commissioner requesting for appropriate proceedings to reinstate him with full back wages.

4. It is therefore the case of the petitioner that his termination is arbitrary, illegal and in violation of section 25-F of the Industrial Disputes Act, 1947 as he was neither served any notice nor paid one month's wages in lieu of notice. Further, he was

neither issued a charge sheet nor any domestic enquiry was initiated against him by the management.

5. Counsel for respondent no. 1, on the other hand, contends that the petitioner was, in fact, employed as a Beldar on 11th November, 1998 on probation for six months. He further submits that the petitioner had worked with respondent no. 1 till 22nd February, 1999 and thereafter remained unauthorizedly absent from 24th February, 1999 (23rd February, 1999 being a weekly off). On 1st July, 1999, the petitioner came and submitted his resignation letter, which was duly accepted by the management of respondent no. 1. Thereafter, he came again on 2nd July, 1999 and took full and final settlement of all his accounts, including his salary for the month of February, 1999. Counsel further submits that since the petitioner was only on probation and did not complete 240 days of continuous service with the respondent no. 1, there can be no question of illegal termination.

6. The Tribunal observed that in his cross examination the petitioner had himself admitted that the thumb impressions on the appointment letter dated 11th November, 1998 and the resignation letter dated 2nd July, 1999 was his. However, he alleged that the management had forcibly obtained his signatures/thumb impressions on blank papers and vouchers, which

were converted to appointment and termination letters etc., and later misused by the management. The Tribunal held that this plea of the petitioner cannot be believed as the appointment letter is a printed document whereas the petitioner had alleged that his signatures/ thumb impressions were forcibly taken on blank papers. The Tribunal further held that the petitioner's statement that he was not given a copy of the letter of appointment also cannot be believed as it is specifically mentioned in the said letter of appointment that he had received a copy of it. The Tribunal also pointed out that although the alleged incident had occurred on 2nd July, 1999, the petitioner had raised the plea that his signatures/ thumb impressions were forcibly taken on blank papers and vouchers for the first time on 27th September, 1999 in his rejoinder to the reply filed by the management in response to his demand notice.

7. In this connection, the Tribunal referred to a decision by the Hon'ble Bombay High Court in **Laffans India Pvt. Ltd. v. Pancham Singh Rawat & Anr.** 2003 LLR 147 wherein it was held that the resignation of a workman will be considered to be voluntary when he does not raise any alarm or protest even after four months of its acceptance. Applying the ratio of this case, the Tribunal concluded that since the petitioner did not raise any alarm or protest from 2nd July, 1999 to 27th September, 1999, it must be

presumed that the petitioner had voluntarily resigned vide resignation letter dated 1st July, 1999 and the same was duly accepted by the management on that very day.

8. The Tribunal further held that the onus was on the petitioner to prove that he had worked with respondent no. 1 for 240 days and, since he failed to discharge this onus, therefore, he is not entitled to the benefit of section 25-F of the Industrial Disputes Act, 1947. It concluded that since the petitioner failed to prove that his thumb impressions on the appointment letter were taken forcibly, it must be concluded that the petitioner joined the services of the respondent from 11th November, 1998 as mentioned therein. Again, it was the petitioner's own case that he had worked with the respondent till 2nd July, 1999. This means that he worked from 11th November, 1998 till 2nd July, 1999 i.e. for 234 days only. The petitioner, thus, failed to discharge this burden. In view of the above facts and circumstances, the Tribunal also concluded that the petitioner's services were not terminated illegally and he had, in fact, resigned.

9. The petitioner's grievance, therefore, is that his signatures/thumb impression was forcibly obtained by the respondent on blank papers on 2nd July, 1999, and on that day itself, he was removed from service. On the other hand, it is the

case of respondent no. 1 that the petitioner voluntarily put his thumb impressions on the documents while tendering his resignation on 1.7.1999; that he was not removed from service and, in fact, he had voluntarily tendered his resignation.

10. The petitioner states that he made a complaint to the Assistant Labour Commissioner on 4th July, 1999 and on 5th July, 1999 he lodged a complaint with the Police Station Dilshad Garden to that effect. It is the petitioner's own case that the complaint was written on 3rd July, 1999 wherein he had mentioned the incidence of beating and forcible signatures. Yet, on the very next day i.e. 4th July, 1999, when a complaint was sent to the Assistant Labour Commissioner, none of these incidents were mentioned therein. Counsel states that this document, which is also Ex. WW1/2, was admittedly written at the petitioner's behest and carries his thumb impression, but the facts regarding the beating and having forcibly obtained his thumb impressions, as mentioned in the complaint drafted on 3rd July, 1999, were not mentioned here. Counsel for the petitioner explains that the reason why it was not mentioned in the complaint filed before the Assistant Labour Commissioner was probably because he was afraid he might lose his job. He further explains that normally these labourers, which come from U.P., Bihar and other states, work with these companies either on contract basis or daily basis. The labourers are, therefore, afraid of the

company people and this was probably the reason why the petitioner approached the police directly.

11. I cannot accept this explanation of the petitioner that he feared for his job. When the petitioner wrote the complaint to the police on 3rd July, 1999 he mentioned these incidents of beating and his signatures/thumb impressions being taken forcibly. This means that he did not fear for his job then, but, on the very next day i.e. 4th July, 1999, he started fearing for his job and did not mention these incidents in the complaint he filed before the Assistant Labour Commissioner. In any case, the petitioner cannot give a fresh and unique explanation for the first time in a writ proceeding with regard to the reasons why he left out these key aspects in the complaint. The trial has already taken place, and if there was some discrepancy, the onus was on the petitioner to explain it. Even in the demand notice sent by the petitioner, dated 13th September, 1999, no such allegation has admittedly been made. In fact, it is only in the rejoinder dated 27th September, 1999, filed in response to the management's reply to the demand notice, that the petitioner raised this plea of beating and of the thumb impressions being taken forcibly, for the first time.

12. Counsel for the petitioner also contends that the writing on the resignation letter does not even amount to a

resignation. I do not agree. A perusal of this document shows that the words "*...jo bhi mera hisaab banta hain usse dilane ki kripa kare*" have been used. This is the usual expression used by an employee to say that he intends to leave his job, therefore, all his accounts may be settled. Furthermore, if this was a forged document, as has been alleged by the petitioner, the management would have put it down with greater precision. If the management had indeed forcibly taken the petitioner's thumb impressions and then written a resignation letter above that, surely they would have written a proper resignation. I am, therefore, not impressed by the argument that the words were added later on or that the words used do not amount to a resignation letter. Furthermore, for all the above reasons, the petitioner has also been unable to satisfy this Court that his thumb impression was obtained on a blank document.

13. Counsel for the petitioner, however, insists that the petitioner had worked for 240 days and in support of this claim he has referred to the statement of one Mr. Zakir Hussain, who was produced by the petitioner before the Labour Court wherein he had deposed that the petitioner had joined the service of the management in June/ July, 1996. I do not find any force in this because, although the Evidence Act does not apply specifically in these matters, the general principles of the law of evidence and

trials certainly apply. Thus, if there has to be evidence of a fact which exists, the evidence has to be direct. In its written statement, respondent no. 1 has clearly stated that the petitioner did not fulfill the basic requirement of having worked for 240 days which would entitle him to protection under the Industrial Disputes Act. The petitioner was, therefore, clearly put on notice that this is one of the grounds on which the management seeks to defeat his case. Having known that, it was open to the petitioner to either bring some evidence on his own by way of examination in chief or to seek the summoning of the relevant records from the management. If the petitioner had sought, and obtained, an order directing the management to produce the relevant records, and if that was not produced despite such orders, then perhaps he could have invited the Labour Court to draw an adverse inference against the management to the effect that if the records were produced, they would have proved his case. Since this was not done at the trial before the Labour court, the writ court cannot find fault with the proceedings of the Labour Court. If the petitioner raises a proposition, which is based on certain facts, he has to make good that proposition. It was for the petitioner to avail the opportunity available before the Labour Court; and not having done so, he has only himself to blame. Thus, clearly, the finding that the petitioner has not worked for 240 days cannot be assailed. If he has not

worked for 240 days, the question of any termination of a workman's service being unjustified or illegal, at least in terms of the Industrial Disputes Act, does not arise.

14. Counsel for the petitioner has now raised another argument which was admittedly not raised before the trial court. He submits that the management has filed Form 6 under the Employees Provident Fund Scheme 1952, being the annual statement of contributions for the period 1st April, 1998 to March 1999. He states that the name of the petitioner has been indicated in this document at serial no. 52. Since this aspect was not raised before the Tribunal, I do not see how the petitioner can now be permitted to raise it here, or to impugn the decision of the Labour Court on this ground. Moreover, it is the management's own case that the petitioner was employed on 11th November, 1998 and he resigned on 2nd July, 1999. It is also the management's own case that the petitioner had gone on unauthorized leave from 24th February, 1999 to 2nd July, 1999. The petitioner, thus continued to remain on their rolls till 1999. Since this annual statement of contributions is from 1st April, 1998 to March 1999, it would naturally have the petitioner's name in it as the date on which he joined falls within this period and, till March, 1999, he was still on the rolls of the management. He was removed from the rolls only in July, 1999.

15. The petitioner, has failed to prove that he had worked with respondent no. 1 for 240 days to claim the benefit of Section 25-F of the Industrial Disputes Act, 1947. He also failed to produce any evidence in support of his contention that his signatures/ thumb impressions were forcibly taken on blank papers and vouchers and that they were later misused by the management. I might also notice that although before the Labour Court it was the case of the petitioner that his '*signatures*' were forcibly taken, in the writ petition he has changed the stand and now states that his '*thumb impressions*' were taken forcibly.

16. For all the reasons stated above, I agree with the Labour Court that there is no force in the argument that the signatures/ thumb impressions of the petitioner were taken forcibly. I do not find any infirmity or perversity with the impugned award. The writ petition is, therefore, dismissed.

SUDERSHAN KUMAR MISRA, J.

April 21, 2011