

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

+ **W.P.(C) 8933/2009**

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Reserved on: 28th August, 2012

Decided on: 6th December, 2012

DHARAM PAL

..... Petitioner

Through: Mr. V.K. Srivastava, Advocate.

versus

MANAGEMENT OF M/S J. ROY & BROS & ANR. Respondents

Through: Ms. Arundhati Katju, Advocate for R-1 with R-1 in person.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner seeks setting aside of the award dated 19th April, 2007 passed by the Presiding Officer, Labour Court No. VII, Delhi in industrial dispute ID No. 304/05 wherein the learned court had held that the workman had failed to produce any document to show that he had worked with the Respondent/Management in the year 2004 or immediately preceding his termination and has also failed to prove that he had worked for 240 days with the Management in 12 months preceding his termination and hence had refused to grant him any relief.

2. Learned counsel for the Petitioner contends that the learned Labour Court while passing the impugned award has failed to take into consideration the material available on record thereby showing complete non-application of mind. The document produced as Ex. WW1/12 establishes the fact that he was appointed with the Management Respondent in the year 1984 and

thereafter he has continuously worked with the Respondent for 32 years till his termination. Further, while terminating his services the Management has not complied with the provisions of Section 25F of the ID Act. It is lastly contended that it is only when the claim of the Petitioner is denied by the Management, he has to lead evidence to show whether he worked or not and if he did work with the Management for how long however, not in a case where the same is nowhere refuted or denied by the Management.

3. Per contra learned counsel for the Respondent No. 1 contends that the Petitioner has never been employed by the Management and therefore, there is no question of his termination from service. Respondent No. 1 has no record regarding the employment of the Petitioner either in the year 1974 or thereafter. It is further contended that the document Ex. WW1/12 does not inspire confidence as the year in the letter has been tampered with to indicate 1984 instead of 1974. The said identification certificate has not been issued by the Management and the same is fake and has been prepared by the Petitioner himself to substantiate his claim. Also, the documents annexed with the writ petition are the copies of customer's receipts and not of the Management's records and can be easily tampered with. The learned counsel lastly contends that the Petitioner has failed to prove that he has worked for 240 days with the Management prior to his retrenchment. None of the documents placed on record show that the Petitioner has completed 240 days with Respondent in 12 months preceding his termination.

4. I have heard learned counsel for the parties and perused the records.

5. Briefly the case of the Petitioner is that he was working with Respondent No. 1 as a salesman for an uninterrupted service term of 32

years on a monthly salary of Rs. 4,500/- per month. The Management never provided him with legal facilities like ESI, provident fund, bonus etc. and was indulging in unfair labour practice to deprive him of legal benefits. During his services with the Respondent No. 1 he used to handle personal, bank and petty payment works of the Management along with issuance of cash memos. On 31st August, 2004, when he went for duty, he was not allowed to join the same and was terminated illegally by the Management. On 26th November, 2004 the Petitioner sent a demand notice to the Respondent No. 1, however, the same was neither refuted nor replied by the Management and he was never informed the reasons for termination. The Petitioner thereafter, on 11th March, 2005 issued a demand notice to the Management, however, this too was not replied by them. Before the Labour Court the Respondent No. 1 failed to appear and hence, was proceeded ex-parte. On 19th April, 2007 the learned Labour Court passed its award wherein it observed that the workman has failed to prove his service with the Management and refused to grant him any relief. Against this award the Petitioner has approached this Court.

6. In *R.M. Yellatti vs. Assistant Executive Engineer, 2006 (1) SCC 106* the Hon'ble Supreme Court has held:

“17. Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman

adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls *per se* without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the Management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case.”

7. Further in *Municipal Corporation, Faridabad vs. Sri Niwas, 2004 (1) SCC 195* the Hon’ble Supreme Court has held:

“13. The provisions of the Indian Evidence Act *per se* are not applicable in an industrial adjudication. The general principles of it are, however applicable. It is also imperative for the Industrial Tribunal to see that the principles of natural justice are complied with. The burden of proof was on the Respondent herein to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment. In terms of Section 25F of the Industrial Disputes Act, 1947, an order retrenching a workman would not be effective unless the conditions precedent therefore are satisfied.

Section 25F postulates the following conditions to be fulfilled by employer for effecting a valid retrenchment :

- (i) one month's notice in writing indicating the reasons for retrenchment or wages in lieu thereof;
- (ii) payment of compensation equivalent to fifteen days, average pay for every completed year of continuous service or any part thereof in excess of six months.

14. For the said purpose it is necessary to notice the definition of 'Continuous Service' as contained in Section 25B of the Act. In terms of Sub-section (2) of Section 25B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. By reason of the said provision, thus, a legal fiction is created. The retrenchment of the Respondent took place on 17.5.1995. For the purpose of calculating as to whether he had worked for a period of 240 days within one year or not, it was, therefore, necessary for the Tribunal to arrive at a finding of fact that during the period between 5.8.1994 to 16.5.1995 he had worked for a period of more than 240 days. As noticed hereinbefore, the burden of proof was on the workman. From the Award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section 25B of the Industrial Disputes Act. Apart from examining himself in support of his contention he did not produce or call for any document from the office of the Appellant herein including the muster rolls. It is improbable that a person working in a Local Authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned period. He even did not examine any other witness in support of his case.”

8. A perusal of the records show that the workman has exhibited various documents before the Labour Court in support of his contention i.e. Ex. WW1/1 to WW1/13 as photocopy of notice, postal receipts, UPC receipts, corrigenda dated 17th May, 2005, identification certificate, visiting card etc. However, the identification certificate produced by the workman is challenged by the Management as a fake document which the management contends was prepared by the Petitioner himself to substantiate his claim. Even the learned Trial Court had observed that document Ex.WW1/12 which is Annexure P (1/A) in the present petition does not inspire confidence. This finding of the Trial Court appears to be not unfounded. Besides this document, the Petitioner has not placed any other document to show that he has completed 240 days with the Management prior to termination.

9. The Hon'ble Supreme Court in *R.M. Yellati* (supra) and *Municipal Corporation, Faridabad vs. Sri Niwas* (Supra) has held that the burden of proof lies on the workman and it is for the workman to adduce cogent evidence, both oral and documentary to discharge the said burden. Mere self-serving documents of the workman would not suffice to discharge the said burden. In the present case, except Ex.WW1/12 the workman has not placed on record any other document to show that he has completed 240 days with the Management in 12 months preceding his termination. Even Ex. WW1/12 does not show that the Respondent worked for 240 days with the management in the 12 preceding months, even if it is presumed to be correct. The cash memos dated 5th October, 1996 and 16th October, 1996

too do not support Petitioner's claim. Since the workman has failed to discharge the onus, no relief can be granted to him.

10. The writ petition is dismissed.

(MUKTA GUPTA)
JUDGE

DECEMBER 06, 2012
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