

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

+ W.P.(C) 21994/2005

% Reserved on: 8th November, 2012
Decided on: 22nd January, 2013

MAGT.OF M/S AMAZONE EXPORTS P. LTD. Petitioner
Through: Dr. M. Y. Khan, Advocate

versus

SECRETARY LABOUR & ANR. Respondents
Through: Mr. Rajat Sharma, Advocate

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner seeks setting aside of the award dated 8th February, 2005 wherein the learned Labour Court held that the services of the workman Respondent No. 2 were terminated without complying with the provisions of Section 25F of the Industrial Dispute Act, 1947 (in short 'ID Act') hence illegal and unjustified and thus granted him reinstatement with continuity of service and 75% of last drawn wages.

2. Learned counsel for the Petitioner contends that the learned Labour Court while passing the impugned award failed to consider that the Management had mentioned in all the proceedings and correspondence that the workman did not report on duty with effect from 27th November, 1999 as he was served with the show cause notice dated 26th November, 1999 based on the complaint of Ms. Sangeeta, his supervisor with whom he had misbehaved. The services of Respondent No. 2 were not terminated by the Management. Since the workman did not report on duty on 27th November, 1999, at about 11.00 a.m. an employee namely Vinod Bhat was sent to the house of the workman to persuade him to talk to MW1 on phone and also to

explain the reasons of his absence. However, the workman refused either to talk to MW1 or to join the duty. Hence a report dated 27th November, 1999 exhibited as Ex. MW1/4 was submitted by him to the manager of the Petitioner wherein the response of the workman was mentioned. Learned counsel further contends that the workman has in his cross-examination before the Labour Court stated that he was asked by Mr. Gupta during the conciliation proceedings to join the duty however, he refused to join because he was pushed out from the employment of the Management. The workman has further admitted that Mr. Chopra asked him to collect the salary for the period from 11th November, 1999 to 25th November, 1999 which too was not collected by him. The Management had also in their letter dated 28th December, 1999 to the Labour Inspector and 24th January, 2000 to the Conciliation Officer stated that the Petitioner is ready to pay wages of the workman from 1st November, 1999 to 26th November, 1999 and also asked the workman to rejoin his duty, which he did not. The workman has also admitted in his cross-examination that when Ms. Sangeeta made a complaint against him on 26th November, 1999 he had given an oral explanation to it. Learned counsel lastly contends that even in a case of an illegal termination reinstatement with back wages is not an automatic relief and adequate compensation sub-serves ends of justice. Reliance is placed on *Senior Superintendent, Telegraph (Traffic), Bhopal vs. Santosh Kumar Seal and others*, 2010 (125) FLR 736. The workman for the first time in his evidence by way of an affidavit before the Labour Court has stated that when he demanded his statutory facilities from the Management, the Management became annoyed and Mr. Chopra gave him beatings with legs and fists, abused him and without serving any notice, charge sheet or paying him

wages for the period of 1st November, 1999 to 25th November, 1999 his services were terminated with effect from 26th November, 1999.

3. Per contra learned counsel for the Respondent No. 2 contends that the workman never left the job on 27th November, 1999. When the workman demanded his statutory dues and claims one Mr. Chopra gave him beatings with legs and fists blows, abused him and without serving any notice, charge sheet or paying him wages for the period of 1st November, 1999 to 25th November, 1999 his services were terminated with effect from 26th November, 1999. There is no evidence that the workman has committed any misbehavior with his superior. No inquiry was conducted regarding the alleged incident nor was Ms. Sangeeta examined before the Labour Court. The Petitioner never allowed the workman to join back. There is no evidence that Vinod Bhat ever visited the workman and asked him to rejoin the services. The workman never received the letter dated 28th November, 1999 or 24th January, 2000 asking him to rejoin his duties. No show cause notice dated 26th November, 1999 was ever served on the workman. The workman filed a complaint dated 30th November, 1999 against Mr. Chopra as well as issued a demand notice dated 30th November, 1999 asking the management to take him back on duty, which was never replied to.

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

5. Briefly the case of the Petitioner is that the workman was appointed as a field workman with the Management w.e.f. 10th November, 1993 initially on probation for six months and later on his services were confirmed. On 26th November, 1999 a complaint was received against the workman from Ms. Sangeeta, immediate supervisor of the workman that the workman had misbehaved with her, had refused to obey her instructions and

also used abusive language. A show cause notice dated 26th November, 1999 was issued to the workman seeking his explanation for his alleged misconduct. Thereafter he neither reported for duty nor sent any reply to the show cause notice. On 27th November, 1999 at about 11.00 a.m., one Vinod Bhat was sent to the house of the workman to persuade him to talk to MW1 on phone and to explain the reason of his absence, he refused to do so. A complaint was filed by the workman to the labour inspector to which the Management replied vide letter dated 28th December, 1999. A similar reply was also sent to the Conciliation Officer on 24th January, 2000. Thereafter an industrial dispute was raised by the workman which was referred under the terms of reference:

“Whether the services of Sh. Sanjay Kumar Tiwari have been terminated illegally and unjustifiably by the Management, and if so to what relief is he entitled and what directions are necessary in this respect?”

6. The workman has in his evidence by way of an affidavit stated that he was engaged with the Management w.e.f. January, 1992 as a field worker and his last drawn wages were Rs. 3,725/- per month. During his entire tenure there was no complaint against him. When he demanded legally due facilities and services, Mr. Chopra had beaten him as well his services were terminated w.e.f. 26th November, 1999. He got issued a demand notice dated 30th November, 1999 to the Management however, the said notice was never replied to. He had also filed a complaint against Mr. Chopra at Police Station Greater Kailash exhibited as Ex. WW1/5. However, in his cross-examination the workman has admitted that before the Conciliation Officer, he had been asked to join the duty however, he refused to do so. He further

admitted that Mr. Chopra had asked him to collect his dues for the period 11th November, 1999 to 25th November, 1999 which was refused by him.

8. Management witness Mr. J.S. Negi has in his evidence before the Labour Court stated that the workman had left his services of his own volition after he had misbehaved with Ms. Sangeeta. The workman refused to receive the show cause notice by hand and the same was sent to him by UPC post. The workman neither reported for duty nor submitted any reply to the show cause notice. The letter of Mr. Vinod Bhat which contains workman's refusal to join duty dated 27th November, 1999 was exhibited as Ex. MW1/4. Management had also filed a reply dated 28th December, 1999 exhibited as Ex. MW1/5 wherein they had informed that it is ready to pay wages for the period 1st November, 1999 to 26th November, 1999 and had even asked the Respondent No. 2 to join back his duty. The same stand was reiterated by the Management in their letter dated 24th January, 2000 exhibited as Ex. MW1/6. However, the workman neither reported on duty nor collected his earned wages inspite of the repeated offers made by the Management.

9. Learned counsel for the workman has argued that the services of the workman were terminated in violation of Section 25F of the ID Act. In support of his contention the workman has produced a copy of his demand notice exhibited as Ex. WW1/1 and police complaint exhibited as Ex. WW1/5. On the other hand the Petitioner has contended that the workman refused to join his duties after a show cause notice dated 26th November, 1999 was issued to him. The Management has however, produced a copy of his reply to the Labour Inspector Ex. MW1/5, to the Conciliation Officer Ex.

MW1/6, letter of Sh. Vinod Bhat Ex. MW1/4 and show cause notice Ex. MW1/2.

10. Learned counsel for the workman has contended that the Management has neither produced Mr. Vinod Bhat nor Ms. Sangeeta to support their claims as well as they have failed to show that the show cause notice was served on the workman and Petitioner has failed to discharge the onus that the workman had abandoned his services. This contention of the learned counsel does not find favour with me. Although the Management has not produced the said witnesses, it has exhibited various documents to show that through out the proceedings the workman was given ample opportunities to resume his services and/or to collect his dues for the period from 1st November, 1999 to 25th November, 1999, however, the workman refused to do so. The workman has also in his cross-examination before the Labour Court admitted this fact that he was asked by Mr. Gupta during the pendency of the conciliation proceedings to resume on his services as well as by Mr. Chopra to collect his dues however, he had voluntarily refused to do so. In such a position, non-examination of the aforesaid witnesses would not have an adverse effect on the Management's case. The workman has failed to show that his services were terminated by the Petitioner illegally. Thus the impugned award cannot be sustained and is set aside accordingly.

11. The petition is disposed of.

(MUKTA GUPTA)
JUDGE

JANUARY 22, 2012
'vn'