

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

Decided on March 12, 2014

+ **W.P.(C) 6151/2013**

RAJIV SINGH Petitioner

Represented by: Mr.Rajnish K.Jha, Advocate

versus

M/S. SPECIAL CABLES (P) LTD. Respondent

Represented by: Mr.Pradhuman Gautam, Advocate
with Ms.Saumitra Singhal,
Advocate

W.P.(C) 6157/2013

KISHAN KUMAR Petitioner

Represented by: Mr.Rajnish K.Jha, Advocate

versus

M/S. SPECIAL CABLES (P) LTD. Respondent

Represented by: Mr.Pradhuman Gautam, Advocate
with Ms.Saumitra Singhal,
Advocate

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

1. These two writ petitions arise from a common award dated July 06, 2013 passed by the Labour Court in D.I.D No.275/2010 and 276/2010, whereby the Labour Court has directed the reinstatement of the petitioners in the services of the respondent with continuity of service however, without any back wages.

2. The brief facts are that it is the case of the petitioners that they

were appointed as Operators in the year 1997 drawing salary less than the minimum wages i.e. ₹3890/- and ₹3790/- per month respectively. It is also their case that their services were terminated with effect from March 06, 2009 on verbal order which is in violation of Section 25(N) and 25(G) of the Industrial Disputes Act, 1947 (Act in short). A demand notice was sent on March 09, 2009 but the same was not replied to.

3. The case of the respondent before the Labour Court was that it had never terminated the services of the petitioners. According to it the petitioners themselves have abandoned their job inasmuch as their services were transferred as per the terms of appointment letter dated February 10, 2009 and were directed to report for duty at Rudrapur with effect from March 10, 2009 along with transport charges and enhanced pay of ₹500/-. Instead of joining the place of transfer, they absented from duties in an unauthorized manner. The respondent had taken a specific stand that they are still ready to take back the petitioners on duty at the transferred place reserving their right to take disciplinary action against them for their unauthorized absence/abandonment of job.

4. Four issues were framed by the Labour Court, which are as under:

(a) Whether the workman failed to report for his duty on the transferred place and thereby abandoned his job of his own, and if so, to what effect? OPM

(b) Whether the present dispute is not covered under the definition of the 'Industrial Dispute' and if so to what effect? OPM

(c) Whether the management terminated services of the workman illegally and/or unjustifiably and if so, to what effect? OPW

(d) Relief.

5. On issue Nos.1 to 3, the Labour Court had come to a conclusion that the petitioners are liable to be reinstated with continuity of service. Insofar as the relief is concerned, it denied the relief of back wages after coming to a finding that the respondent company from the very beginning was ready to take back the petitioners on duty but the petitioners deliberately were not ready to join the duty with the ulterior motive.

6. Learned counsel for the petitioner would urge that these petitions have been filed challenging that part of the award whereby the petitioners were denied the back wages. According to him, the conclusion of the Labour Court is totally perverse inasmuch as merely self employment in agriculture cannot be construed as being gainfully employed. He would rely upon the judgments reported as 2010(3) SCC 192 Harjinder Singh vs. Punjab State Warehousing Corporation and 192 (2012) DLT 517 Sukhbir Singh vs. Delhi Transport Corporation to urge that the petitioners are entitled to at least 50% of the back wages.

7. Having heard the learned counsel for the petitioners, I note from the award that the petitioners were transferred to Rudrapur. In fact this aspect has not been denied by them or by their counsel during submissions. It has also come on record that the respondent company has sent around 20 letters to the petitioners to report for duty. Unfortunately no letters have been replied to.

8. Learned counsel for the petitioner has pointed out that one letter written by the petitioners has come on record. On a specific query whether the same is on record, the answer was in the negative. I reproduce the following testimony of the petitioners namely Sh.Rajiv Singh and of Sh.Krishan Kumar as under:

Testimony of Rajiv Singh

“It is correct that I was given the facility of ESI & PF from the date of appointment i.e. 01.04.97. I do not made any written request for demand of any legal facilities. We were getting the leave and bonus from the management. The management has not issued any termination letter. It is wrong to suggest that the management has not terminated my services and I voluntarily abandoned the service of management. My address at Village Sharpur (Reckrana), P.O. Pisawa, Distt. Aligarh U.P. as mentioned in the WW1/M-1. It is correct that I have not mentioned the fact that I received the letter from the management which have duly relied. After receiving the said letter I came to the management to join the duty but the management did not allow me. The management has called me through the letter, however, same was only on papers. It is correct that I had not made any complaint to the labour department regarding non-joining of duty after receiving the letters. I did not count how many letters management had sent to me. I relied about 10 letters. It is correct that I have not placed the same on record. It is correct that my address in the year 2009 was gali no.49-E, H.no.1289, Mularband Extension, Badarpur, New Delhi. My address on Ex.WW1/M-13 is correct address at that time. The letter Ex.WW1/M1 did not received by me at the above said address. It is wrong to suggest that my services were transferred from New Delhi to Rudrapur by letter dt. 10.02.2009. It is wrong to suggest that I had not joined the duty at the transferred place and himself abandoned my job w.e.f. 06.03.09. It is wrong to suggest that I have received letters Ex.WW1/M-1 to Ex.WW1/M-13A and Mark-A to Mark-D. It is further wrong to suggest that neither I had relied to any letter sent by the management nor joined the duty. I cannot produce any reply, however, one such letter is on record. It is correct that no such reply is mentioned in FIR dt. 12.03.11 which is Ex.W-1. It is correct that the management has offered me to join the duty after 05.03.09. I am not aware that the management in his reply dt. 28.01.11 has called me to join on duty. It is wrong to suggest that Mark-A7 was a frivolous letter and

the same was also not sent to the management. It is wrong to suggest that Mark-A1(coll.), A-2(coll.) were stolen from the management and were fabricated afterwards. It is wrong to suggest that the management has not terminated my services. I am ready to join the duty with the management with back wages as a lag operator. I am not ready to join the duty of the management without back wages.”

Testimony of Krishan Kumar

“It is correct that I was given the facility of ESI & PF from the date of appointment i.e. 01.04.97 Ex.W-2(coll.). I do not made any written request for demand of any legal facilities. We were getting the leave and bonus from the management. The management has not issued any termination letter. It is wrong to suggest that the management has not terminated my services and I voluntarily abandoned the service of management. It is correct that I have received the letter from the management on the same address as mentioned above and I have duly replied the same. It is correct that I have not mentioned the fact that I received the letter from the management which have duly replied. After receiving the said letter I came to the management to join the duty but the management did not allow me. The management has called me through the letter, however, same was only on papers. It is correct that I had not made any complaint to the labour department regarding non-joining of duty after receiving the letters. I did not count how many letters management had sent to me. I relied about 10 letters. It is correct that I have not placed the same on record. It is correct that my address in the year 2009 was H.no.5, Dharampal Colony, Taj Pur Gaon, Badarpur, New Delhi-44. My address on Ex.WW1/M-13 is correct address at that time. The letter Ex.WW1/M1 to Ex.WW1/M-9 and Mark-A to Mark-K written by the management did not received by me at the above said address. It is wrong to suggest that I had not joined the duty at the transferred place and himself abandoned my job w.e.f. 06.03.09. It is

wrong to suggest that I have received letters Ex.WW1/M-1 to Ex.WW1/M-9 and Mark-A to Mark-K. It is further wrong to suggest that neither I had relied to any letter sent by the management nor joined the duty. I cannot produce any reply, however, one such letter is on record. It is correct that no such reply is mentioned in FIR dt. 12.03.11 which is Ex.W-1. It is correct that the management has offered me to join the duty. Vol. I was not allowed to join the duty by the management. It is wrong to suggest that I have not approached the management to join the duty after 05.03.09. I am not aware that the management in his reply dt. 28.01.11 has called me to join on duty. It is wrong to suggest that Mark-A7 was a frivolous letter and the same was also not sent to the management. It is wrong to suggest that Mark-A1(coll.), A-2(coll.) were stolen from the management and were fabricated afterwards. It is wrong to suggest that the management has not terminated my services. I am ready to join the duty with the management with back wages as a studer operator. I am not ready to join the duty of the management without back wages.”

9. That apart the finding of the Labour Court is reproduced hereunder:

“24. The management though have sent several letters dt. 12.02.10, 23.01.10, 09.01.10, 21.12.09, 10.12.09, 10.11.09, 29.10.09, 11.09.09, 27.08.09, 18.08.09, 08.08.09, 27.07.09, 17.07.09, 10.07.09, 26.06.09, 16.06.09, 23.3.09, 18.03.09, 14.03.09 and 10.03.09 to the claimants to report on duty but there is no acknowledgment to show that the workmen personally received the said letters for report for duty. The letter Ex.WW1/M-1 to M-9 and Mark-A to Mark-K out of which some are letters are sent by the management, relied by workmen. The management contended that they have offered to the workmen to join on duty but they are not ready to join duty without back wages. The workmen have stated that they are ready to join the duty alongwith back wages, without back wages they are not ready to join the duty while the management has offered to claimants to join

the duty from very beginning.

25. From the perusal of the material placed on record, there is no such averment that the management refused the claimant to join their duty. The workmen have testified through their affidavit that they have gone/approach to the management to resume their duties. Even though while deposing they were ready to join the duty in the management's office with their back wages. There is no written termination letter was issued by the management nor there was no such abandonment have been proved on record by oral or documentary evidence. It is also matter of record that the workman have approached to competent authority under the Minimum Wages Act for payment of the back wages vide order dt. 27.12.10. The competent authority directed to management to pay the minimum wages alongwith penalties. The management accepted its liabilities and ready to pay Minimum wages due of workmen and other benefits etc. In these circumstances, workmen are liable to be reinstated with continuity of service. Accordingly, all the three issues are decided in favour of the workmen."

10. Insofar as the reliance placed by the learned counsel for the petitioner on the judgment of Harjinder Singh's case (supra) is concerned, the same is not applicable to the facts of this case inasmuch as in the said case the Supreme Court has upheld the finding of the Labour Court of termination being unlawful awarded reinstatement with 50% back wages. In the said case, it was not the stand of the respondent corporation that they were ready to take the petitioner back on duty, whereas in the case in hand, it has come on record that the respondent company stand's since beginning is that they had not terminated the services of the petitioners and they were called upon to join the duty which they did not. It was under such circumstances that the back wages were denied. In Sukhbir Singh's case (supra), a penalty of removal was

imposed pursuant to a charge-sheet issued to workman for misbehaving with the Time-Keeper. The High Court relying upon Harjinder Singh's case (supra) and General Manager, Haryana Roadways vs. Rudhan Singh 2005 (5) SCC 591 had granted 50% back wages. It is not a case where despite called upon to join the duties, the petitioner did not join the duties which resulted in denial of back wages. Rather it was a case where the removal from service was held to be bad. The consequences of the removal being held as bad that the petitioner would be entitled to back wages. In this case, this Court had held that the petitioner would be entitled to 50% back wages.

11. I note for benefit a judgment of this Court reported as 2006 (108) FLR 1082 Trina Engineering Company (P) Ltd. vs. The Secretary (Labour) and Ors., wherein learned Single Judge of this Court on similar facts where letters were sent by management to the workman to come and join the duty and who had not join the duty has observed as under:

13. Once the service of these letters is proved, effect thereof is stated by the Labour Court itself, namely:

“Of course, all these letters taken together prima-facie would make the court believe that the management was interested in providing duty to the workman but the workman was not interested.”

14. For all these reasons, I am of the view that the impugned award dated 17th February, 1990 holding that the services of the workman were terminated cannot be sustained. On the other hand, the evidence would show that it is the workman who started absenting himself from the duty and did not join back the services inspire of letters sent to him. The award is accordingly set aside and the reference answered against the workman.”

12. The view taken by the Labour Court based on evidence and a plausible view, this Court would not like to interfere with such a

conclusion of the Labour Court in exercise of power under Article 226 of the Constitution.

13. The writ petitions are accordingly dismissed without any order as to costs.

(V.KAMESWAR RAO)
JUDGE

MARCH 12, 2014
km