

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 09.09.2014

+ **W.P.(C) 3622/2010**

CHAHAT RAM VERMA

..... Petitioner

versus

UNITECH LTD. & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Shashi Shankar.

For the Respondents : Mr Siddharth Vias.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner impugns an award dated 25.08.2009 passed by the Labour Court (hereinafter referred to as the 'impugned award') whereby the disputes referred to the Labour Court were decided against him and in favour of respondent no.1 company (hereinafter referred to as 'Unitech').

2. The principal grievance of the petitioner is that even though an award reinstating him with continuity of service was passed by the Labour Court on 16.08.2001 in I.D. No.418/1987, he has not been reinstated in the position as he was holding prior to his removal from service. It is contended that although, in compliance with the aforementioned award, the petitioner was taken back in service, he has not been paid wages as per his entitlement. According to the petitioner, he had been reinstated at the post of an 'Assistant Store Keeper' but was being paid the salary of a 'Peon'.

3. The relevant facts necessary for considering the controversy are as under:-

3.1 On 21.07.1978, the petitioner was appointed by the Unitech as an office boy. On 05.10.1984, the petitioner submitted his resignation w.e.f. 05.11.1984 for certain reasons which were described as “unavoidable circumstances in the family”. The petitioner again approached Unitech for employment and on 14.02.1986 he was re-employed as a Retainer. According to the petitioner, his wages for the period 01.12.1986 to 15.12.1986 were withheld by Unitech. It was further alleged that Unitech had also deprived him of other benefits such as leave etc. By its letter dated 30.12.1986, Unitech terminated the services of the petitioner w.e.f. 31.12.1986.

3.2 The petitioner raised an industrial dispute being I.D. No. 418/1987, that was referred to the Labour Court for adjudication under Section 10 of the Industrial Disputes Act, 1947. The terms of reference were as under:-

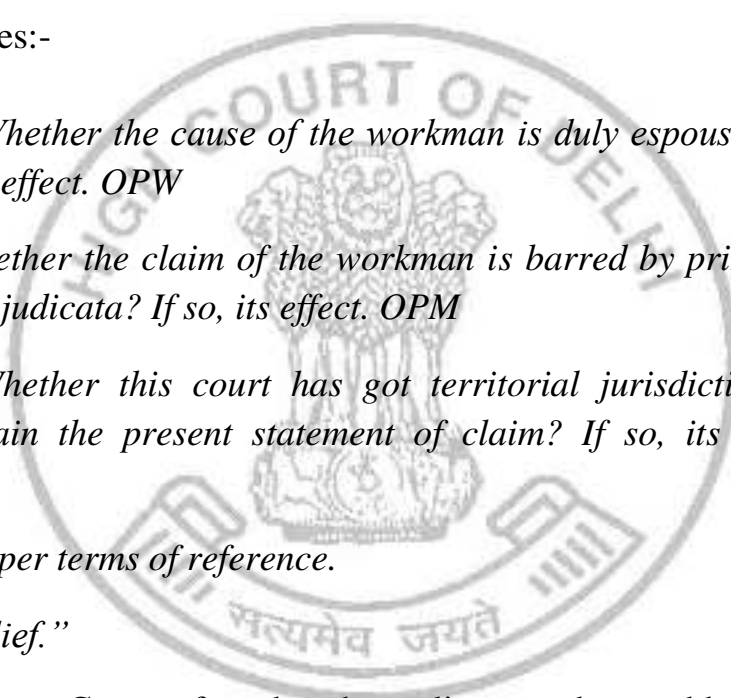
“Whether services of Sh. Chahat Ram Verma is illegally and/or unjustifiably terminated by the management and if so, to what relief is he entitled and what directions are necessary in this regard.”

3.3 The said reference culminated in an award dated 16.08.2001, which reinstated the petitioner with continuity of service. It is stated that the challenge to the said award, by the petitioner as well as Unitech, is pending for consideration in this court. The petitioner states that, notwithstanding the challenge to the said award, he was reinstated in service in compliance thereof. However, the salary paid to him was lower than his entitlement.

3.4 Consequently, the petitioner raised another industrial dispute being I.D. No. 98/2008, and the following question was referred to the Labour Court:-

“Whether Sh. Chahat Ram Verma S/o Late Sh. Beederam Verma is entitled to get the wage of Asstt. Store Keeper and if so, from which date and what directions are necessary in this respect?”

3.5 After completion of pleadings, the Labour Court framed the following issues:-

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- “1. Whether the cause of the workman is duly espoused? If so, its effect. OPW*
 - 2. Whether the claim of the workman is barred by principle of res-judicata? If so, its effect. OPM*
 - 3. Whether this court has got territorial jurisdiction to entertain the present statement of claim? If so, its effect OPW*
 - 4. As per terms of reference.*
 - 5. Relief.”*

3.6 The Labour Court referred to the earlier award passed by the Labour Court on 16.08.2001 in I.D. No. 418/1987 and observed that the dispute referred was concluded against the petitioner in that proceeding and accordingly, decided the reference against the petitioner.

4. I have heard the learned counsel for the parties.

5. It was contended by the learned counsel for the petitioner that although the petitioner had joined the services of Unitech as an office boy,

he was subsequently promoted as an Assistant Store Keeper. It was contended that the Labour Court in I.D. No. 98/2008 had erred in not appreciating the letter dated 29.09.1982 which purportedly offered the position of an Assistant Store Keeper in a sister concern of Unitech (Unitech Builders Pvt. Ltd.), to the petitioner. The learned counsel for the petitioner also contended that the petitioner had been reinstated as an Assistant Store Keeper by virtue of the award dated 16.08.2001.

6. The perusal of the above mentioned award dated 16.08.2001 in I.D. No. 418/1987 indicates that, by an order dated 05.09.1989, the Labour Court had struck the following issues, for adjudicating the disputes that were subject matter of those proceedings:-

- “1. Whether the services of the workman came to an end by resignation on 5.10.84 as alleged by the management?”*
- 2. Whether the workman was given promotion as Assistant Store Keeper on 29.9.82 as alleged by the workman?”*
- 3. Whether the workman had only a retainership with the management as alleged by the management? If so, its effect.*
- 4. As in terms of reference.”*

7. Issue no.2 is germane to the disputes now raised in the present petition. In the earlier round (I.D. No. 418/1987) the Labour Court had referred to the letter dated 29.09.1982, which was described by the petitioner as a letter of promotion appointing the petitioner as an Assistant Store Keeper and held that the said document did not show that the

petitioner was promoted. The relevant extract of the award dated 16.08.2001 is as under:-

“The said document Ext.MW1/W1 is dt. 29.9.82. It reads that w.e.f. 1.10.82 he was offered an appointment as Assistant Store Keeper with Unitech Builders Pvt. Ltd. and that his services with United Technical Consultant Pvt. Ltd. were not required. I fail to understand as to how the letter can be said to have conferred any promotion on the workman. Further, as I have already observed, the workman himself is not clear as to whether it is document Ext.MW1/W1 dt. 29.9.82 or Ext. MW1/7 dt. 14.2.86 by which he was already promoted. In any case both the documents do not in anyway show that the workman was promoted.

This issue is accordingly denied (sic) in favour of the management and against the workman.”

8. It is seen from the above that issue no.2 i.e. *“Whether the workman was given promotion as Assistant Store Keeper on 29.9.82 as alleged by the workman?”* was decided against the petitioner, by the labour Court after considering the documentary as well as other evidence.

9. The Labour Court in I.D. No. 98/2008, noted that the question, i.e. whether the petitioner had been promoted as an Assistant Store Keeper, had been decided against the petitioner after considering the documentary and other evidence, in the earlier round. The witness on behalf of Unitech also deposed that there was no post of an Assistant Store Keeper and the petitioner had never worked in that capacity. The Appointment letter produced by Unitech also undermines the petitioner’s contention that he

was working as an Assistant Store Keeper. The Labour court appreciated the said evidence, before rejecting petitioner's claim. It is well settled that this court, in exercise of powers under Article 226 of the constitution of India, will not sit in appeal over the findings of fact, which are returned by the Industrial Adjudicator after appreciating the evidence and supplant its opinion over that of the said authority.

10. In the present case, neither the findings returned in the impugned award are erroneous nor the decision making process flawed. I find no reason to interfere with the impugned award.

11. Accordingly, the petition is dismissed. The parties are left to bear their own costs.

SEPTEMBER 09, 2014
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VIBHU BAKHRU, J