

Court No. - 5

Case :- WRIT - C No. - 3655 of 2009

Petitioner :- Vijay Kumar Mishra

Respondent :- The Presiding Officer Industrial Tribunal Iii And Others

Counsel for Petitioner :- Ram Sagar Yadav,Ganga Prasad Gupta,Hari Shanker Sahu,Mani Shanker Sahu,Ram Ji Prasad,Virendra Kumar Kori

Counsel for Respondent :- C.S.C.,Rajesh Srivastava,S.K.Chaube

Hon'ble Piyush Agrawal,J.

1. Heard learned counsel for the petitioner, learned standing Counsel for the State.
2. By means of present writ petition, the petitioner has assailed the award dated 07.04.2008, published on 25.09.2008.
3. Learned counsel for the petitioner submits that the petitioner was appointed on the post of 'Peon' in the office of respondent no.2 on 02.01.1987 and have worked diligently. He further submits that the respondent no.2, in the E.S.I register, the date of appointment of the petitioner has mentioned as 13.11.1991 in place of 02.01.1987 to which the petitioner requested from the respondent no.2 to correct the date of appointment as 02.01.1987. Thereafter, instead of doing correction, the respondent no.2 compelled to the petitioner to sign his resignation letter, refusing to it, the petitioner was forced not to get enter in the office on 24.02.1999 to which the petitioner filed a detailed complaint by letter dated 26.02.1999 to

the various authorities of the State i.e. S.S.P., Kanpur Nagar, S.H.O., Chakery and S.H.O., Navbasta, Kanpur Nagar as well as Dy. Labor Commissioner, Kanpur and also a copy of the said letter was sent to respondent no.2. He next submits that the letter dated 26.02.1999 of the petitioner has been treated as resignation letter by the respondent no.2 illegally as no resignation was submitted by the petitioner ever. Counsel for the petitioner further submits that thereafter, the reference was made in 2000 to which all documentary evidence was adduced on behalf of the petitioner as well as respondent no.2, but without taking proper note and the submissions made by the petitioner, an award has been passed treating the letter dated 26.02.1999, sent by the petitioner, as date of resignation, which has been accepted by the respondent no.2 and therefore, rejected the claim and passed the award illegally. He further submits that in the statement made before the Labour Court on 29.05.2023, a copy of the same has been annexed as Annexure No.3, has categorically mentioned that the petitioner has not sent any resignation; the petitioner was compelled not to do duty and the said letter has wrongly been interpreted in the award, which is bad.

4. He next submits that the signature, as alleged in the resignation letter as per other records available before the Labour Court, does not show the signature of the petitioner but without calling for expert report, the passed the award, which is bad in law. He prays for allowing of the present petition.

5. Per contra, learned counsel for the respondents supports the impugned award by submitting that by letter dated 26.02.1999, the petitioner has sent his resignation voluntarily, which was duly accepted after payment of all due charges thereof and therefore, the present writ petition is not maintainable. He prays for dismissal

of the present writ petition.

6. The Court has perused the record.

7. Admittedly, it is not in dispute that a letter was sent by the petitioner to the Manager of company i.e. respondent no.2 on 26.02.1999 as per the version of the petitioner, which was a complaint letter but not a resignation letter. Further, the record reveals that on 26.02.1999, the complaint was also sent to S.S.P., Kanpur Nagar, S.H.O. Chakery. The contents of the aforesaid letter sent to the S.S.P. and S.H.O. reveals that nothing has been mentioned with regard to the resignation. The statement of the petitioner dated 29.05.2003 has been annexed as **Annexure- 6** to this writ petition where also the petitioner has categorically denied for sending any resignation letter on the contrary, he categorically mentioned that he was made a member of the E.S.I; wherein some dispute arose about the date of appointment. This fact has been overlooked by the respondent no.1 while passing the award. By way of filing of supplementary affidavit, the letter as alleged to be of resignation of the petitioner, the signature differs from the certificate of the documentary evidence annexed with the supplementary affidavit. The said fact could not also be disputed by the counsel appearing on behalf of the respondents that the signature on the documents annexed along with the supplementary affidavit, does not match with the signature put on the certified copy of the alleged resignation.

8. In view of the facts as stated above and on perusal of the record, the impugned order cannot sustain in the eye of law and is hereby quashed. The matter is remanded back for deciding afresh.

9. Accordingly, petition is **disposed of**.

10. Since the matter is old, the Tribunal is directed to conclude the

proceedings after hearing all the stakeholders in accordance with law within a period of three months from the date of production of certified copy of this order.

11. The counsel for the petitioner undertakes to serve the certified copy of this order within three weeks from today to the court below.

Order Date :- 4.12.2023
Pravesh Mishra