

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

Date of Decision: 22.12.2015

+ **W.P.(C) 3467/2011**

NEW INDIA SANITARY WORKS

..... Petitioner

Through: Mr V.K. Tandon, Adv.
versus

KHURSHID AHMED & ORS.

..... Respondent

Through: None

**CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA**

J U D G M E N T

: SUNITA GUPTA, J.

1. The challenge in this writ petition filed by the petitioner (management) under Articles 226 and 227 of the Constitution of India is to the validity, propriety and legality of the impugned award dated 24.08.2008 passed by learned Presiding Officer, Labour Court XVI in ID No. 364/08/94 vide which a sum of Rs.3 lacs each was awarded to the respondent nos. 1 and 2 (workmen).

2. The factual matrix of the case leading to filing of the present writ petition are that both the workmen (respondent nos. 1 and 2) were working as commercial drivers with the petitioner – management. Feeling aggrieved by the termination of their services, they raised industrial dispute which was referred by the National Capital Territory of Delhi, through its Secretary (Labour) vide reference number F-24(982)/94/ Lab. 34780-85 dated 15.07.95 to the Labour Court with following terms of reference:

“Whether termination of services of Sh. Surender Singh and Khursad Ahmed is illegal and / or unjustified and if so, to what relief are they entitled and what directions are necessary in this respect?”

3. Both the workmen filed their statement of claim. Workman – Surender Singh in

his statement of claim alleged that he joined the services of the management on 01.12.1987 and was performing his duty as commercial driver. His last drawn salary was Rs.2,000/- per month. Feeling aggrieved by the complaint made by the workmen regarding non-payment of bonus, casual leaves, medical expenses and basic amenities, etc. his services were terminated with effect from 11.04.1993. Thereafter, a demand notice was sent to the management dated 22.04.1993 by registered post and UPC which was duly received by the management but no reply was sent. Hence, it was alleged that the termination of services of the workman is unjust and improper and as such he is entitled for reinstatement with full back-wages and with continuity of service.

4. The claim filed by the other workman, namely, Khurshid Ahmed was almost on similar lines except the fact that according to him he joined the services of the management on 01.12.1984 and he also alleged that he was performing his duties as commercial driver and his last drawn salary was Rs.2,000/- per month. Without assigning any reason, his services were terminated with effect from 11.04.1993.

5. The notice of the claim was sent to the management but initially the management did not appear, as such, it was proceeded ex parte. At the stage of ex parte evidence, an application was moved by the management for setting aside the ex parte order which was set aside subject to payment of costs.

6. Thereafter, written statement was filed by the management wherein it was denied that the workmen were working as commercial drivers with the management. As regards Khurshid Ahmed, it was alleged that he was engaged as daily-wager to load and unload the goods from the tempo and he was called as and when his services were required by the management. It was denied that his last drawn salary was Rs.2,000/- per month. It was alleged that the management firm is a very small firm doing a small business of sale and purchase of tiles, etc. It was denied that his services were terminated with effect from 11.04.1993 and in fact he himself absconded the services of the management. As regards workman – Surender Singh, the relationship of employee and employer itself was denied.

7. After completion of pleadings following issue was framed on 04.10.1999:

“1. As per the terms of reference.”

8. During the course of proceedings, an application was moved by the management seeking amendment of the written statement which was allowed and thereafter the amended written statement was filed wherein it was alleged that the management used to have two commercial vehicles i.e. DBL 2588 and DL IL 1237 which used to be driven by Surender Singh and Khurshid Ahmed respectively. However, both these vehicles have already been sold by the management in the year 1995 and 1997 respectively. As such, now the management is not having any commercial vehicle and, therefore, there does not exist any post of driver and on this account the claim of reinstatement of the workmen is neither maintainable nor tenable. It was reiterated that the management never terminated the services of the workmen and in fact they themselves absconded from 12.04.1993 and did not return back.

9. On the basis of amended written statement, three additional issues were framed vide order dated 07.11.2007:

- 1. Whether workman is not entitled for reinstatement in service in view of preliminary objection taken in preliminary objection no.1 of WS?*
- 2. Whether the workman had been absenting from duties and if so, to what effect?*
- 3. Relief.*

10. After going through the oral as well as documentary evidence led by the parties, learned Labour Court arrived at the conclusion that the reference is required to be answered in favour of the workmen and against the management on following grounds:

“From perusal of file my inference is that the reference be answered in affirmative i.e in favour of workman and against the management and addl. issue no. 2 be decided against the management and in favour of workman on following grounds

(i) Workman Surender Singh has alleged that he joined the management on 1.12.87 and last worked in April 1993 and his last pay was Rs. 2000/- per month. Workman Khurshid Ahmed had

stated in the statement of claim that he joined the management on 1.12.84 and lastly worked till April, 1993. He also stated that his last pay was Rs. 2,000/- per month. Initially management has denied any relationship with the workman. Late on an amended WS was filed admitting the workmen his employee however stating that they were casual labour as Drivers and worked only for 5-6 months. Perusal of WS/Reply shows that the statement of the workman Surender Singh that he joined on 1.12.87 and Khurshid Ahmed had joined on 1.12.84 were not specifically denied. It was denied that they did not join on this date. It was not stated when they joined. Hence, the denial is evasive and in the result evasive denial is no denial and thus resulted into an admission of fact.

(ii) Management denied that Surender Singh joined on 1.12.87 and also denied Khurshid Ahmed joined on 1.12.84. This denial is evasive and hence result into admission. To prove that both did not join on the given date, management could have produced wage register as well as attendance register in the form of Form 'G'. Both these registers were neither filed nor shown to this court.

(iii) Both Surender Singh and Khurshid Ahmed had stated in their statement of claim that their last pay was Rs.2,000/-. Management had stated that their last salary was not Rs. 2,000/-. However, the management has not stated what was their last pay. Management has maintained the position that they were daily wagers. However, not stated what was their daily wage. Hence, the reply filed by the management on the last pay is evasive and evasive reply also leads to an admitted fact. Hence, it is proved that the last pay of Surender Singh was Rs. 2,000/- and Khurshid was of Rs. 2,000/-. No document or register filed that the monthly pay was less than the stated pay/wages.

(iv) Workmen had stated in their statement of claim that they were not paid wages for the last 8 months till the date of termination i.e April 1993. During the cross examination they admitted that they issued no notice to the management for non payment of wages for the last 8 months. Since there was no notice, my inference is that the workman has not proved that they were not paid wages for the last 8 months.

(vi) At the time of initial WS/Reply, management had stated that there existed no relationship of employee and employer between the workman and the management. It was further maintained in

the previous WS that there was no post of Driver with the management and the workmen were employed as Helper with the management for a short period. However, in the amended WS, management has admitted that workmen were employed as Driver. This shows that the management gave false facts knowingly and deliberately and this fact goes against the management.

(vii) In the amended WS a fact was brought on record that two commercial vehicles i.e DBL 2588 and DL-1L-1237 were sold by the management in March 1995 in the name of Sh. Jagbir Singh and in September 1997 in the name of Sh. Mandeep Singh respectively and hence, after the selling of the vehicle there remains no post of Driver with the management. If this court believes that the version of the management as Gospel's truth then instead of workman covered under the subject of retrenchment could have been covered under the subject of lay off. Anyhow, the management was liable to pay lay off compensation under the Industrial Dispute Act which management has not done.

(viii) Management has taken a position that he repeatedly called the workman to join the management. If there existed no relationship between the workman and the management as earlier stated by the management in WS then what was the need to call the workman to join the management? This further shows that the management is deliberately giving false facts and this goes against the management.

(ix) Management has stated in the amended WS that the management had to sell off the vehicles no. DVL 2588 and DL-1L-1237 due to financial hardships. If that was the case, management could have placed the balance sheet or the Accounts book of the management on record to show what was the financial hardships. No financial status of the management has been placed on record. Hence, the management has failed to prove that there was financial hardships in selling off the vehicles. My impression for selling off the vehicles of the management was to avoid its responsibility towards the workmen of reinstatement. Management had stated that the workman worked only for 5-6 months. Admittedly the last working period of the workman with the management was April, 1993. Ex. WW 1/6 is a certificate issued by the management stating that workman Khurshid Ahmed S/o Sh. Suleman Ahmed is working as Driver with the management having the pay of Rs. 1500/- and this certificate is

dated 5.08.89 and duly signed by Sh. Rajesh Jain. This certificate falsified the stand of the management that the workman Khurshid was daily wagger and was not working as Driver as in the previous WS. Ex. WW 1/10 is a certificate of dated 13.02.93 which certified the workman Khurshid Ahmed was working with the management from 1.12.84 to January, 1993 and his last salary was Rs. 2000/-. Whatever was denied by the management in the earlier WS is proved by Ex. WW 1/10. Ex. WW 1/7 (2 copies) are the repair bills of the vehicle given by the workmen. Ex. WW 1/8 is a copy of challan by the police. Ex. WW 2/2 is a copy of licence. Ex. WW 2/4 is the photocopy of the challan. Ex. WW 2/5 is a certificate issued to the workman Surender Singh certifying that Surender Singh was working with the management from 1.12.87 to January 1993. This certificate is of dated 13.02.93 and duly signed by the management. Ex. WW 2/6 and 7 are the letters received by the workman Surender Singh at the address of the management.

(x) Some documents have been filed by the management stating that the workman Surender Singh had taken advance and had not repaid the same. I have compared the signature of Surender Singh and the signature on the advance does not appear to be of Surender Singh.

(xi) A fact was stated by the workmen that in the conciliation proceedings representative of the management appeared and offered compensation. Management had denied appearance of any person on behalf of the management or to offer any compensation on behalf of management. Anyhow out of this it is proved that there was a conciliation proceedings and management knew about the conciliation proceedings and this fact goes against the management.

(xii) An application is placed on record Ex. MW 1/4 to show that workman was employed during this period. To whom the application has been made that person has not been brought in the witness box. It is further stated that the workmen used to drive Blueline vehicle but the same has also not been proved.

Hence, workman Khurshid Ahmed and Surender Singh has proved their stand that he was employed with the management and his services were terminated by the management.

(i) In preliminary objection no. 1, management had stated that the workman had left the management voluntarily and despite

sending communication failed to respond the same. The management has not placed on record any communication by which the workman has been called. The onus to prove this fact that the workman was absented was on management and management failed to prove the same. Hence, the management failed to prove that the workman voluntarily absented from the duty and failed to join despite communication.

(ii) In the second objection, it is stated that the present claim does not falls within the ambit of Industrial Dispute Act. It is further stated the dispute is not maintainable under the law. How the claim of the workman does not fall under the Industrial Dispute Act has not been stated. How the claim raised by the workman is not maintainable has not been elaborated and stated. The issue is decided against the management and it is also held that the reference is not bad in view of preliminary objection no. 1 and 2 raised by the management in its WS."

11. Accordingly, it was held that the workmen have been able to establish that they were employed with the management and their services were terminated illegally by the management.

12. During the course of proceedings, the workmen Surender Singh had died as such the compensation of Rs.3 lac was awarded to his legal heirs. As regards Khurshid Ahmed it was observed that he had stated that he is unemployed since his termination and despite best effort he could not get alternative employment. It was further observed that he has stated that he is ready to join duty with the management (although this part of the observation is wrong as the workman in his cross examination had stated that he is not ready to join duties of the employer even if he is paid back-wages). As such, it was observed that since termination took place on 11.04.1993, reinstating him would create problems as such he was also awarded compensation of Rs.3 lac.

13. Feeling aggrieved, instant writ petition has been filed by the management. Notice of the writ petition was sent to the respondent, however, they could not be served by ordinary process as such they were served by substitutive service by way of publication in newspaper "*Dainik Jagran*" despite that they failed to appear.

14. I have heard learned counsel for the the petitioner – management and also perused written submissions filed by him.

15. Learned counsel for the petitioner submits that before the Labour Court he had filed written synopsis but it was wrongly mentioned in the award that the AR of the management has not filed its written arguments despite giving opportunities as such the application for correcting the error was moved. Although correction was made in para 2 I page 10 of the award that the written arguments were filed by the management but thereafter same were not considered by the Labour Court.

16. It is further urged that the commercial vehicles were sold by the management and this part of testimony of the management witness was not controverted by the workmen. Moreover, the workman Surender Singh was gainfully employed which fact came to the notice of the management subsequently and, therefore, an application dated 18.09.2004 was moved for further cross examination of the workman on the point of gainful employment. The workman in his reply dated 01.10.2010 admitted that the documents have been signed by him and it was exhibited in the statement of the witness. As such, the workman is not entitled for any compensation as awarded by the Labour Court. Moreover, none of the workmen could prove that their termination was illegal or they worked with the employer for 240 days in order to take benefit of Industrial Dispute Act, 1947.

17. At the outset, the conduct of the petitioner – management is worth-noting as it was the case of the workmen that they were working as commercial drivers with the management. As regards Surender Singh is concerned, the management initially denied any relationship of employer and employee between the parties. Qua Khurshid Ahmed it was alleged that he was working as daily wager to load and unload the goods from the tempo and he used to be called as and when his services were required by the management. However, subsequently, written statement was amended wherein it was admitted that both the workmen were working as commercial drivers on two commercial vehicles kept by the management. Even if both the vehicles were subsequently sold in March, 1995 or September, 1997 as alleged, the same is of no consequence because the

termination of the workmen had taken place much prior thereto in April, 1993. The workmen had alleged that Surender Singh joined the management on 01.12.1987 whereas Mr Khurshid Ahamd joined on 01.12.1984. There was no categorical denial of this fact in the written statement and it was not even alleged as to when did they join the management. Both the workmen had taken the plea that they continued to work till April, 1993 when they were terminated. That being so, there was no issue between the parties as to whether the workmen had worked for 240 days continuously in the preceding year when they were terminated from their services. Rather the case of the management was that the workmen themselves had stopped reporting for duty and, therefore, it was alleged that communication was sent to them to join but despite that they failed to join. However, as observed by the Labour Court, no communication was placed on record by the management. A plea was taken in the statement of Mr Navin Jain, proprietor of the petitioner company that he himself had gone to the house of the workers asking them to report for duties. This suggestion was denied by both the workmen and no such plea was taken in the written statement. Under the circumstances, learned Labour Court rightly observed that the services of the workmen were terminated illegally by the management.

18. As regards relief, workman – Surender Singh had expired during the pendency of proceedings. Khurshid Ahmed had stated that he is not ready to join back the management. He had further stated in his affidavit that he was unemployed since his termination, therefore, instead of passing any order for reinstatement or back-wages, a compensation of Rs.3 lac was awarded which does not warrant any interference.

19. As regards, the workman – Surender Singh is concerned, his legal heirs were also awarded compensation of Rs.3 lacs. However, record reveals that an application under Rule 15 of Industrial Dispute (Central) Rules, 1957 was moved for recalling Surender Singh for further cross examination on the point of gainful employment alleging that the management has come to know that previously the workman was driving bus number 817 of Shri Pramod, Village Nilwal, Najafgarh, Delhi till the year 2002 @ Rs.450/- per day. Thereafter, he drove bus number 247 of Shri Ajit Singh Solanki, Krishna Vihar, Dharam Kanta, Delhi from 2002 to 2003 @ Rs.325/- per day. Thereafter he was working in bus number 817 of Shri Rajesh, Village Nangli,

Sakrawati, Nazafgarh, Delhi since January, 2004 and getting Rs.450/- per day. Along with the application, documents were also filed including Ex.MW1/4. In reply to this application dated 01.10.2004, although workman denied all these averments but admitted that the aforesaid details mentioned in the form were filled up by his son in order to show experience to gain employment. Record reveals that no order was passed on this application. However, Mr Navin Jain in his statement reiterated the averments made in the application. Despite several opportunities granted to the workman, he did not cross examine the witness in this regard. As such, in the absence of challenging the testimony of Mr Navin Jain regarding gainful employment by Surender Singh, this aspect of the matter could not have been brushed aside by the Labour Court while awarding compensation of Rs.3 lacs to him. In fact, no reason has been given as to why Rs.3 lac was awarded to this workman. Under the circumstances, so far as workman Surender Singh is concerned, since the termination was illegal as such compensation of Rs.50,000/- will meet the ends of justice.

20. In the result, the award dated 24.08.2009 is modified to the extent that compensation of Rs.3 lac be paid to the workman Khurshid Ahmed while compensation of Rs.50,000/- be paid to the legal heirs of workman – Surender Singh within eight (8) weeks from the date of this judgment.

The petition stands disposed of accordingly.

(SUNITA GUPTA)
JUDGE

DECEMBER 22 2015/rd