

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

Judgment reserved on: July 28 , 2016
Judgment delivered on : August 01, 2016

+ W.P.(C) 1258/2014

VASUDEV PRASAD

..... Petitioner

Through: Ms. Rachna Aggarwal, Adv.

versus

MANAGEMENT OF M/S ASHOKA GEARS & ANR

..... Respondents

Through: Mr. Sanjoy Ghose and Ms. Pratishtha
Vij, Advs.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this Writ Petition is to the award dated 28th July, 2010 passed by the Industrial Adjudicator on a reference made by the appropriate Govt. on the following terms:

“Whether Sh. Vasudev Prasad, S/o, Sh. Ramdhani Mehto is absenting from duties unauthorizedly or his services have been terminated illegally and / or unjustifiably by the Management and if so, to what relief is he entitled and what directions are necessary in this respect.”

2. That pursuant to the reference, the petitioner had filed Claim Petition before the Industrial Adjudicator. It was his case that he was employed by

the respondents on 25th May, 1993 as a Turner and the last drawn salary was Rs.3,300/- per month. Being an active worker of Engineering Workers Lal Jhanda Union, the Management got annoyed and terminated him on 10th January, 2002. He states, he made a complaint through his Union. The Labour Inspector inspected the Establishment, but the respondents refused to take him on duty which is clear from the report dated 25th January, 2002. Thereafter, he sent a demand notice dated 4th February, 2002 which was not replied to. According to him, he was having ESIC facilities under the Management. The termination was in violation of Section 25 (F) of Industrial Disputes Act, 1947.

3. Respondent no. 1 filed its reply to the Claim Petition wherein it has taken an objection that there is no relationship of employer and employee between it and the petitioner. According to respondent no.1, petitioner was employed on 1st December, 1993 and worked up to 30th April, 1994. Thereafter, he joined on 1st January, 1995 and left on 20th January, 1995. Lastly, he joined on 1st November, 2001 and obtained a sum of Rs.1,300/- as advance on 22nd November, 2001 and thereafter absented from duties w.e.f. 23rd November, 2001. Respondent no. 1 stated that it had never refused him duties. Respondent no. 1 contested the fact that the petitioner had completed

240 days.

4. The following three issues were framed by the Industrial Adjudicator:

“1. Whether the workman has absented from duties w.e.f 23rd November, 2001 as alleged by the management?

2. Whether the workman has completed 240 days of his service with the management in the year preceding to the date of his termination?

3. As per the terms of reference.”

5. The workman filed his evidence and exhibited 37 documents. Some of the relevant documents which have been exhibited by the Industrial Adjudicator are Ex.WW1/1 report of the Labour Inspector dated 25th February, 2002, Ex.WW1/2 Claim filed before the Conciliation Officer, Ex.WW1/3 WS of the Management before the Conciliation Officer, Ex.WW1/4 rejoinder filed by the petitioner before the Conciliation Officer, Ex.WW1/5 and Ex.WW1/6 are notice dated 4th February, 2002 and its postal receipt, Ex.WW1/7 copy of ESIC Card, Ex.WW1/8 to Ex.WW1/11 medical papers of the petitioner, Ex.WW1/12 to Ex.WW1/15 in process inspection report, Ex.WW1/16 to Ex.WW1/33 job card of the petitioner, Ex.WW1/34 letter given by the Management to the MCD for issuing monthly pass, Ex.WW1/35 letter dated 27th February, 2009 given by the petitioner to the

respondent no.1, Ex.WW1/36 complaint dated 12th March, 2009 to the Assistant Labour Commissioner, Ex.WW1/37 report of the Labour Commissioner dated 13th April, 2009.

6. The Industrial Adjudicator first decided issue no.2. According to him, the case of the petitioner was that he was working with the respondents since 20th May, 1993 without any break and was terminated illegally on 10th February, 2002. The Industrial Adjudicator also notes that respondent no. 1 has admitted the relationship with the petitioner, but it had stated that the petitioner has rendered the services earlier for certain period, i.e, 1st December, 1993 to 30th April, 1994; 1st January, 1995 to 20th January, 1995 and finally 1st November, 2001 to 23rd November, 2001. He has also noted that after 23rd November, 2001, the petitioner remained absent. The Industrial Adjudicator noted the position of law that the onus is on the petitioner to prove the relationship as well as he has worked for 240 days by relying on the Judgment titled as *Nilgiri Coop. Marketing Society Ltd. V. State of Tamil Nadu, 2004 LLR 351*.

7. In the proceedings, before the Industrial Adjudicator, respondent no. 1 has filed on record the applications given by the petitioner for appointment and the various letters of appointment as well as vouchers evidencing full

and final settlement. These documents were put to the petitioner during his cross-examination wherein he had admitted his signatures on the documents being Ex. Ex.WW1/M1 to Ex.WW1/M7. The Industrial Adjudicator concluded that on the perusal of the letters reveals that petitioner had given his application for appointment and accordingly, appointment letters dated 1st December, 1993 and 1st January, 1995 were issued to him. The Industrial Adjudicator also refers to a voucher dated 20th January, 1995 Ex. Ex.WW1/M4, which is the voucher for full and final payment. The Industrial Adjudicator had also referred to Ex.WW1/M6 which is an application for appointment given by the petitioner dated 1st November, 2001 and Ex.WW1/M7 is the voucher of advance dated 22nd November, 2001.

8. The Industrial Adjudicator held that all the documents on which the petitioner has admitted his signatures clearly goes to prove the averments of the management that petitioner had worked intermittently for different periods with the management from 1993 to 2001. The Industrial Adjudicator held that it is not the case of the petitioner that the management has ever obtained his signatures on blank papers and vouchers and has converted these documents nor he has pleaded that these documents are forged and fabricated. According to the Industrial Adjudicator in the absence of such a

plea, it is proved that the petitioner had lastly given the application for appointment on 1st November, 2001 and has also taken the advance on 22nd November, 2001 from the Management. He accordingly calculated the period of employment during the year prior to the date of his termination from 10th January, 2002 backwards and held that the petitioner had not worked for 240 days with the respondent during the year preceding the date of his termination so as to attract the provisions of Section 25(F) of the Industrial Disputes Act. He relied upon Ex.MW1 which is the record pertaining to the ESIC of the year 1993-1994, Muster Roll record of 1994 and November, 2001, Wages record of April, 1994 and November, 2001 to substantiate the defence of the management. MW3 Officer of the ESIC Department had produced the Returns of the Management for the year 18th May, 2001 to 20th October, 2001 and 20th November, 2001 to 19th April, 2002. In the ESIC returns from May, 2001 to October, 2001, the name of the petitioner did not figure, however in the ESIC returns, Ex.MW3/2, the name of the petitioner figures at serial no. 32. He ultimately held that since the petitioner had failed to prove that he had worked 240 days with the respondent Management, the provisions of Section 25(F) of the I.D. Act. would not come to his aid and decided issue no.2 against him. In so far as

issue no.1 that the petitioner had absented from duty w.e.f 23rd November, 2001 after taking advance on 22nd February, 2001 is concerned, respondent no.1 has placed on record the extracts of the Muster Roll as well as Wages Register from November, 2001 showing the absence of the petitioner from 23rd November, 2001. He held that these documents could not be controverted by the petitioner to show that he had worked with the respondent Management after 23rd November, 2001. The said issue was also decided against the petitioner. Issue no.3 was also decided against him and the Claim Petition was dismissed.

9. Learned counsel for the petitioner has drawn my attention to Pages 171 onwards which are job cards to show that the petitioner was engaged by the respondents. She has also drawn my attention to pages 150 onwards in that regard. Suffice to state that the documents which have been referred to by the learned counsel for the petitioner are for the period when the petitioner was engaged intermittently by the respondent no.1.

10. The issue which falls for consideration is whether the petitioner had worked beyond 23rd November, 2001 till his termination dated 10th January, 2002. On a specific query whether any evidence was placed/led to show that petitioner had worked beyond 23rd November, 2001, learned counsel for the

petitioner sought to draw my attention to page 133 of the paper book, which is the statement of MW3 Sh. Dharam Singh Saini, Assistant working in the ESIC, Maya Puri, Delhi, wherein he deposed that he brought the summoned record, i.e., attested copy by Branch Officer, Mayapuri for the period from 1st April, 2001 to 30th September, 2001, which was Ex.MW3/1, attested copy by Manager ESIC Local Office, Maya Puri from the period from 1st October, 2001 to 31st March, 2002 Ex. MW3/2. According to the witness, the said attested copy also include declaration form and leisure sheet of the Department for payment of ESIC benefit to the workman Sh. Vasudev, the petitioner herein for an accident met in employment of the management on 23rd April, 1996.

11. The deposition of the said witness would also not help the case of the petitioner. The only aspect which has come on record in his testimony is that the he has brought the attested copy of Ex.MW3/2 which is a attested copy by Manager ESIC, Local Office, Maya Puri, for the period 1st October, 2001 to 31st March, 2002, running into four pages. The said attested copy also includes declaration form and leisure sheet for payment of ESIC benefits to the workman on an accident met in the employment of management on 23rd April, 1996. There is nothing to suggest during the period from 23rd

November, 2001 till 10th January, 2012, the petitioner had worked and any contribution was made. In the absence of any evidence, the conclusion arrived at by the learned Industrial Adjudicator that the petitioner has not completed 240 days and the rigors of Section 25(F) are not applicable is justified. The Industrial Adjudicator has rightly answered the issues against the petitioner and dismissed the Claim Petition.

12. I do not see any merit in the Writ Petition. Same is dismissed.

V. KAMESWAR RAO, J

AUGUST 01, 2016

jg