

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 06th September, 2017

Date of decision : 18th September, 2017

W.P.(C) 7859/2017

K K CHAKRABORTY

..... Petitioner

Through Ms. Deepali Gupta, Advocate

versus

M/S. ALANKIT ASSIGNMENTS LTD.

..... Respondent

Through Nemo.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. Vide the present petition, the petitioner assails the impugned Award dated 28.01.2017 in I.D. No. 5252/2016 whereby vide the impugned Award dated 28.01.2017, the reference sent by the Government of NCT of Delhi vide Order No. F.24(39)/Lab./CD/14/217 dated 19.06.2014 to the effect that : -

“Whether the services of Sh. K.K. Chakraborty S/o Sh. H.L. Chakraborty 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?”

was answered to the effect that Sh. K.K. Chakkraborty i.e. the

petitioner herein was a workman falling within Section 2(s) of Industrial Disputes Act, 1947 but that he had himself resigned from the job of a Liaison Officer with the respondent M/s. Alankit Assignments Limited voluntarily on 26.07.2013 and that his services had not been terminated by the respondent / the management and that thus the workman / the petitioner herein was not entitled to any relief in as much as the respondent / the management has not terminated his services.

2. A bare perusal of the impugned Award indicates that the case of the claimant i.e. the petitioner herein was to the effect that he had joined the management / the respondent herein in the year 1999 as a General Worker on a salary of Rs.3,500/- per month and performed his duties on the directions of the management / respondent herein and time to time promotion was given with increments in salary and allowance apart from perks and allowances and Rs.1,000/- as conveyance charges but he was not paid his earned wages from January, 2013 onwards but despite the same he continued his duties up to 26.07.2013.

3. It has further been observed vide the impugned Award that as

per the claim of the claimant / the petitioner wherefrom he demanded earned wages from January, 2013 onwards, the matter was postponed on one pretext and other and on 26.07.2013, the Managing Director Sh. Alok Kumar Aggarwal and other staff detained him forcibly in a room and compelled to write his resignation letter under their dictation and in this manner his services had been terminated. *Inter alia* it was the contention of the claimant / the petitioner herein before the Pilot Court/POLC-XVII that the management / the respondent herein had not issued any appointment letter and had also not paid him bonus, PF, gratuity, leave encashment and other allowances. According, to the claimant / the petitioner herein, he visited the management / the respondent herein several times after 26.07.2013 to join back but he had been threatened that if he was seen again in that area then he would be got arrested in a false criminal case and since the date of his termination, he is jobless.

4. According to the claimant / the petitioner herein, a demand notice was sent on 19.09.2013, which went unreplied and the case filed before the Conciliation Officer, also remained unsettled.

5. The management / the respondent herein submitted before the

Pilot Court/POLC-XVII *inter alia* to the effect that the last designation of the claimant / the petitioner herein was of a Liaison Officer and that he had been working in a supervisory capacity and hence, he was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and he had abandoned the job on 26.07.2013 himself and had not turned back despite several follow ups.

6. Issues were framed on 09.04.2015 by the learned Pilot Court / POLC-XVII, Karkardooma Courts, Delhi to the effect : -

- “1. Whether the claimant being in supervisory cadre, is not a workman? OPM***
- 2. Whether the claimant himself abandoned his job on 26.07.2013? OPM.***
- 3. As per terms of reference.***
- 4. Relief”***

in relation to which the claimant / the respondent herein has tendered his affidavit in evidence as Ex.WW1/A and had relied upon documents were detailed in para 5 of the impugned Award, are to the effect : -

- 1. Ex.WW1/1 is reference dated 16.05.2014.***

2. *Ex.WW1/2 is the admit card of the workman.*
3. *Ex.WW1/3 is the pay slip for the month of February, 2004.*
4. *Ex.WW1/4 is the pay slip for the month of July, 2002.*
5. *Ex.WW1/5 is the pay slip for the month of April, 2004.*
6. *Ex.WW1/6 is the pay slip for the month of May, 2004.*
7. *Ex.WW1/7 is the pay slip for the month of June, 2012.*
8. *Ex.WW1/8 is the pay slip for the month of July, 2012.*
9. *Ex.WW1/9 is the pay slip for the month of Aug, 2012.*
10. *Ex.WW1/10 is the pay slip for the month of Sept, 2012.*
11. *Ex.WW1/11 is intimation u/s 143 of Income Tax Act.*
12. *Mark W1 is photocopy of reference order dated 16.09.14.*
13. *Mark W2 is photocopy of reference order dated 19.06.14.*
14. *Mark W3 is photocopy of letter from DLC office dated 16.12.14.*
15. *Mark W4 is photocopy of the POLC-V order dated 10.07.14.*
16. *Mark W5 is photocopy of the POLC-V order dated 30.10.14 & 13.11.14.*
17. *Mark W6 is photocopy of the POLC-V order dated 18.12.14.*
18. *Mark W7 is photocopy of statement of workman dated 18.12.14 before POLC-V.*
19. *Mark W8 is photocopy of Adhar Card of the workman.*

20. Mark W9 is photocopy of workman's legal notice dated 18.09.13.

7. The management / the respondent herein had also examined its Authorized Representative Sh. Shantilal Chaplot as MW1, who apart from deposing in relation to the contents of the written statement also stated that the claimant / the respondent herein used to collect the amount from the Account Department for incurring expenses on Liaison work but had stopped submitting the accounts of incurred expenses for the year 2012-2013 but kept on collecting advance amount from the management / the respondent herein and that the claimant / the petitioner herein had not submitted accounts of expenses of Rs.1,23,297/- for which a reminder letter dated 28.12.2012 marked as Mark-M1 had been sent to him in which he had intimated that if he failed to furnish the amount, the outstanding amount shall be deducted from his salary but he had not rendered the account and that the management / the respondent herein had started deducting some amount from his salary and the management / the respondent herein placed reliance upon the statement of account Ex.MW1/2. It was further submitted by the management / the respondent herein that the

claimant / the petitioner herein had stopped coming to the management / the respondent herein from 26.07.2013 onwards and till that date, the amount of Rs.5,290/- had remained outstanding towards him and thus the same could not be recovered from his salary and was thus waived off.

8. Vide the impugned Award, issue no. 1 was decided in favour of the claimant / the petitioner herein holding to the effect that the claimant / the petitioner herein was a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 in as much as he had done all sundry work for the management / the respondent herein. The said findings had not been assailed by the management / the respondent herein and have attained finality.

9. Issue no. 2 was decided by the learned Pilot Court/POLC-XVII against the claimant / the petitioner herein observing *inter alia* to the effect that after analysis of the statement of the account Ex.MW1/2 and other documentary evidence led that after adjusting the salary for two months i.e. January, 2013 and February, 2013, the outstanding amount towards the claimant / the petitioner herein was still Rs.85,145/- and Rs.80,000/- had been approximately adjusted towards

his salary from March, 2013 to July, 2013 as indicated in Ex.MW1/2 and after deduction of the said amount, a sum of Rs.5,290/- was still outstanding against him. It has further been observed by the learned Pilot Court/POLC-XVII that the management / the respondent herein had rightly deducted outstanding money from the salary of the claimant / the petitioner herein and that the claimant (i.e. the petitioner herein) was not entitled to get salary from January, 2013 to July, 2013 and thus the claimant / the petitioner had no right to ask the management / the respondent herein to pay him earned wages from January, 2013 to July, 2013. The learned Pilot Court/POLC-XVII had also held that the management / the respondent herein was not bound to pay the salary for that period and that there was no occasion for the management / the respondent herein to pressurize the claimant / the respondent herein to write a resignation letter. *Inter alia* it was observed by the learned Pilot Court to the effect that the claimant / the petitioner herein had not examined any witness or tendered any document to prove that his resignation had been obtained forcibly by the management / the respondent herein.

10. It was observed vide the impugned Award to the effect that the

claimant / the petitioner had relied upon the circumstantial evidence of non-payment of earned wages from January, 2013 to July, 2013 as the motive for the management / the respondent herein to extract his resignation and Ex.MW1/2, the statement of account proved that he was not entitled to get wages for that period and that the claimant / the petitioner herein has thus failed to prove the circumstances alleged and accordingly the learned Pilot Court/POLC-XVII decided issue no. 2 against the claimant / the petitioner herein and in favour of the management / the respondent herein i.e. to the effect that the claimant / the petitioner herein had himself abandoned his job his job on 26.07.2013.

11. Consequently, issue no. 3 was also decided against the claimant / the petitioner herein and in favour of the management / the respondent herein to the effect that it was the claimant / the petitioner himself who had resigned from the job voluntarily on 26.07.2013 and there was no occasion for the management / the respondent herein to terminate his service.

12. During the course of the submissions made on behalf of the petitioner, it has been submitted that the learned Pilot Court had come

to the findings that the claimant / the petitioner herein had himself resigned from the job voluntarily, which findings were erroneous and was also contended on behalf of the petitioner that the learned Pilot Court / POLC-XVII, Karkardooma Courts, Delhi had failed to appreciate that the oral termination of the services of the claimant / the petitioner herein by not permitting him to join after 26.07.2013 was illegal and unjustified and without the compliance of the Section 25(f) of the Industrial Disputes Act, 1947. It was further submitted on behalf of the petitioner that the learned Pilot Court / POLC-XVII, Karkardooma Courts, Delhi had observed that none of the parties had placed on record any resignation letter of the claimant / the petitioner herein but it was held that the claimant / the petitioner herein had voluntarily resigned from the services of the management / the respondent herein.

13. It was further submitted on behalf of the petitioner that the learned Pilot Court / POLC-XVII, Karkardooma Courts, Delhi had failed to appreciate that the management / the respondent herein had alleged that the claimant / the petitioner had demanded earned wages from January, 2013 onwards, however, the matter was postponed on

one pretext and other and on 26.07.2013, the Managing Director Sh. Alok Kumar Aggarwal and other staff detained him forcibly in a room and compelled to write his resignation letter under their dictation and in this manner his services had been terminated. Thereafter, the claimant / the petitioner herein, visited the management / the respondent herein several times after 26.07.2013 to join back but he had been threatened that if he was seen again in that area then he would be got arrested in a false criminal case and since the date of his termination, he is jobless. Thereafter, the claimant / the petitioner herein, a demand notice was sent on 19.09.2013, which went unreplied and the matter was filed before the Conciliation Officer, also remained unsettled and hence, the management / the respondent herein had itself illegally and unjustifiably terminated the services of the claimant / the petitioner herein.

14. During the course of the initial submissions made on behalf of the claimant / the petitioner herein, in reply to a specific Court query, counsel for the petitioner had submitted that there was no document available with the claimant / the petitioner to show that there was any resignation letter signed by the claimant / the

petitioner herein and that it was stated that infact, the claimant / the petitioner had been confined forcibly in a room by the Managing Director Sh. Alok Kumar Aggarwal and other staff had detained him and compelled him to write his resignation letter under their dictation and in this manner his services had been terminated on 26.07.2013 when he demanded earned wages from January, 2013 to July, 2013 and thus under the threat and pressure of the management / the respondent herein, he had given the letter as dictated by the management.

15. It is thus apparently clear that even according to the petitioner, the resignation letter had been written by him as detailed in para no. 6 of the petition.

16. In reply to a specific Court query during the hearing of the present petition, it was submitted on behalf of the petitioner that no criminal complaint was lodged by the petitioner against his alleged forcible detention and threats meted out to him by the management / the respondent herein. The same itself detracts from the veracity of the averments made in the petition.

17. The observations in the impugned Award are based on the

analysis of the evidence led before the learned Pilot Court / POLC-XVII, Karkardooma Courts, Delhi and as laid down by the Hon'ble Supreme Court in *Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Anr*, AIR 2000 SC 1508 and in as laid down by the Hon'ble Supreme Court in *R.K. Panda vs Steel Authority Of India, 1994 SCC (5) 304* that the Labour Court and Industrial Tribunal are the competent fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them and whilst exercising its jurisdiction, this Court would not ordinarily re-appreciate the evidence and come to a different conclusion. The impugned Award has taken into account the entire evidence led by either side and there is no infirmity in the analysis of the evidence by the learned Pilot Court / POLC-XVII, Karkardooma Courts, Delhi in I.D. No. 5252/2016.

18. Thus, it is held that there is no infirmity in the impugned Award dated 28.01.2017 in I.D. No. 5252/2016 of the learned Pilot Court / POLC-XVII, Karkardooma Courts, Delhi and it is apparent that the evidence on record establishes that the claimant / the petitioner herein himself resigned from his job voluntarily on 26.07.2013 and he has

rightly been held not entitled to any relief by the learned Pilot Court / POLC-XVII, Karkardooma Courts, Delhi and that thus consequentially his services have not been terminated by the management at all and consequently, the petitioner / the claimant is not entitled to any relief.

19. The W.P.(C) 7859/2017 is dismissed.

ANU MALHOTRA, J

SEPTEMBER 18th, 2017/mk