

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 11th August, 2017

Date of decision : 24th August, 2018

W.P.(C) 1443/2015

ABODH NARAYAN PRASAD

..... Petitioner

Through Mr. Arun Kumar Sharma, Adv.

versus

M/S AFFORDABLE EXPORTS

..... Respondent

Through Mr. P.C. Gupta, Adv.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The W.P.(C) 1443/2015 filed by the petitioner Abodh Narayan Prasad assails the impugned Award dated 29.04.2014 of the learned Presiding Officer Labour Court – XIX (East), Karkardooma Courts, Delhi vide which the claim of the workman i.e. the petitioner herein filed against the management i.e. the respondent seeking the direction for reinstatement in service with full back wages and continuity in service and other consequential benefits was declined, it having been held that the workman i.e. the petitioner herein had himself abandoned the services of the management w.e.f. 25.11.2009 and that thus there having been no illegal termination of services by the management, was not entitled for any relief whatsoever as claimed by him.

2. The respondent having been served with the notice of the petition, put in appearance and has filed a counter affidavit of one of its partners Mr. Rajiv Kapoor.

3. The impugned Award indicates that the workman filed the claim on 06.03.2010 directly against the management alleging that he had joined the services of the management in 1998 as a Helper at a monthly salary of Rs.1500/- which was enhanced from time to time and his last drawn monthly salary was Rs.3250/- and that he had a clean service record and further contended that the management used to shift its factory from time to time and that no appointment letter, wages slip, leave book etc. were issued to him by the management despite repeated requests verbally. The workman had further alleged that on 25.11.2009 when he went at his work place at Madhu Vihar, Delhi, he was not allowed to join his duty by the Manager Sh. Raj Kapoor and thus his services were terminated and that he sent a demand notice dated 12.01.2010 to the management but the management did not respond.

4. As per the averments in the statement of claim that had been filed by the claimant i.e. the petitioner herein before the Labour Court, the claimant had contended that the claimant had joined the services of the management in the year 1998 at its factory at F-15, Madhu Vihar, Delhi -110092 and that the management had shifted his work place / factory time to time to work at 20/6/7, Site-4, Sahibabad, Ghaziabad, UP without issuing any prior notice to the workman and that the termination of the services of the claimant without any compliance of Section 25F of the I.D. Act, 1947 was illegal and unjustified and an

unfair labour practice against the principles of natural justice.

5. The respondent / management through its Written Statement submitted before the Labour Court contended that the date of appointment of the respondent with the management as a Helper was 22.10.2005 as stated in the Employees State Insurance Corporation Card and that the workman had not joined the Management as a helper in the year 1998 and that his gross last drawn wages for the month of October, 2009 were Rs.3,700/- and that he was entitled to receive wages only for Rs.25.50 days amounting to Rs.3044/- and after deduction of an amount of Rs.419/- on account of E.P.F. / ESIC, the workman received net amount of Rs.2,625/-. The respondent / management further stated through its written statement that the claimant had not taken wages for the month of November, 2009 net amounting to Rs.2,127/- for the reasons best known to him and denied that the workman was lastly working as a cutting master and rather contended that the factory of the management at Madhu Vihar, Delhi was sealed by the Municipal Corporation of Delhi in the year 2006 and after its de-sealing the workman had not reported either for duty or informed the management of the reasons of his absence from duty w.e.f. 25.11.2009.

6. Vide the written statement, it was submitted by the workman that the management had sent an employee to the residence of the workman on 10.12.2009 but despite that he did not report for duty and that the management thereafter sent letters dated 15.12.2009 and 08.01.2010 calling upon the workman to intimate reasons of his absence from duty w.e.f. 25.11.2009 but the workman had not

bothered to comply with the letters dated 15.12.2009 and 08.01.2010 and that the management thereafter had sent a letter dated 29.01.2009 by registered post at the permanent address of the workman whereby he was called to report either for duty or to inform the management of the reasons of his absence from duty w.e.f. 25.11.2009.

7. *Inter alia* the respondent / management through its written statement had submitted before the Labour Court that the claim set up by the workman was absolutely false and is actuated by malafides to harass the management and that the workman was an unskilled person and he could not be expected to be without employment and to the knowledge of the management the workman was gainfully employed in another factory situated at 189, Functional Industrial Estate, Patparganj, Delhi – 110092.

8. Vide para-3 of the preliminary objection through its written statement, the management nevertheless without prejudice to the claim of the management that it has not terminated the services of the workman and that the workman intentionally absented from duty w.e.f. 25.11.2009, nevertheless stated that the management was ready and willing to take the workman on the wage register subject to his complying with the requisite terms and conditions of the management provided through he reports for duty within three days of the receipt of the offer contained in the written statement dated 21.04.2010, which apparently is indicated to have been submitted for the date of hearing 27.04.2010.

9. Copy of the wage register from 22.10.2005 till 31.10.2009 was also placed by the management on record to belie the contention of the

workman that he was not being issued the wage slips or details of deductions on account of EPF / ESIC. As regards the contention that the claimant was working at F-15, Madhu Vihar, Delhi the factory of the management, it was submitted by the management through its written statement that the said contention was wrong and as a matter of fact, the factory of the management at Madhu Vihar, Delhi was sealed by the MCD in the year 2007 and no production was being carried out there and there was no question for reporting for duty at Madhu Vihar in as much as the workman was reporting regularly for duty till 24.11.2009 at 189, Functional Industrial Estate, Patparganj, Delhi – 110092 and the workman reiterated that the workman had absented himself w.e.f. 25.11.2009 despite repeated letters and despite the management having sent an employee also to the residence of the workman on 10.12.2009. The management also specifically denied that it had terminated the services of the workman on 25.11.2009 as alleged. The management also denied specifically that the claimant had ever been directed by the management to report for duty at the Site No. 4, Sahibabad, Ghaziabad, UP.

10. Through the replication that the claimant had filed before the Labour Court, the workman averred that the management was in collusion with the office of ESIC as a consequence of which his date of appointment was mentioned in the ESIC as 22.10.2005 and reiterated that he had joined the management as a helper in the year 1998 and denied that he joined the management as helper on 25.10.2005 and rather claimed that the officer of the management took his signatures falsely on some receipts and on some blank papers with

malafide intention to misuse the same.

11. It is significant to observe on a perusal of the replication of the workman that the specific contentions made in para 5 of the written statement of the management that the factory of the management at Madhu Vihar was sealed by the MCD in the year 2007 are not specifically denied. The specific averment made by the management that the workman was reporting regularly for duty till 24.11.2009 at 189, Functional Industrial Estate, Patparganj, Delhi – 110092 *inter alia* is also not specifically denied. The claimant has also not specifically denied the averments made by the management through the replication of having sent a letter dated 29.01.2010 by registered post qua his having not reported back to work to the management thereafter, nor has the claimant denied having signed the ESIC / EPF and wage register, nor the claimant denied the receipt of the letters dated 15.12.2009, 08.01.2010 and 29.01.2010 sent by the management at the permanent address of the claimant.

12. Vide the impugned Award dated 29.04.2014 the learned Presiding Officer, Labour Court-XIX, Karkardooma Courts, Delhi observed hereinabove, gave its findings on issues framed on 04.09.2010 which were to the effect : -

“1. Whether the services of the workman were illegally terminated by the management on 25.11.2009? OPM

2. Whether the workman has abandoned services of the management since 25.11.2009? OPW

3. Whether the workman is entitled for the relief as prayed?

4. Relief.”

13. Consequently in his testimony as WW1 recorded on 15.01.2011 before the POLC XIX, Delhi, on cross examination as conducted on behalf of the management, it was stated by the claimant : -

“I am 10th class passed. I do not know English language. I know the contents of my statement of claim. I was narrated by my AR about the contents of the same in Hindi. Ex.WW1/A was drafted by my counsel and the same was got attested in the court.

I can identify my signatures if shown to me. I admit my signatures in the wage register Ex.WW1/M1 (colly) for the month of April 2006, may, 2006, July 2006, November 2006, December, 2006, April, 2008, June, 2008, July 2008, March 2009, April 2009, May 2009, September 2009, October 2009. It is incorrect to suggest that I am deposing falsely to the extent that other wage registers do not bear my signatures. I have no documentary evidence to show that I had joined the management in the year 1998. It is correct that in Ex.WW1/I, my date of appointment has been mentioned as 22.10.2005. It is correct that I was given all benefits of ESIC as well as EPF since 22.10.2005. It is correct that vide Ex.WW1/M1 (colly) my name has been shown in the wage register from November, 2005 to November 2009 but I was not given the benefits as mentioned therein. It is correct that the factory of the management situated at Madhu Vihar was sealed by the MCD in the year 2006 and it was de-sealed in the year 2008 and no production was carried on there during that intervening period. I had never gone at the factory premises of the management situated at Madhu Vihar for joining my duty on 25.11.2009. It is correct that till 24.11.2009, I was reporting for duty regularly at 189, Functional Industrial Estate, Patparganj, Delhi. It is incorrect to suggest that I

had absented from duty at my own. It is correct that my residential address is E-44/C-98, New Seema Puri, Dilshad Garden, Delhi – 110095.”

14. On further cross examination on 19.03.2011, the claimant as WW1 denied receipt of letters Ex.WW1/M2, Ex.WW1/M3 & Ex.WW1/M4 by registered post vide postal receipt Ex.WW1/M5 and submitted that as he had not received the letters Ex.WW1/M2 to Ex.WW1/M4 and that there was no question of compliance thereof and stated that he was not in receipt of the letter vide which he was called upon to join duty at Site-4, Sahibabad, Ghaziabad, UP and denied that he had himself abandoned the services w.e.f. 25.11.2009 and stated that he had no appointment letter or any other documentary evidence from M/s. Affordable Fashions at 189, Functional Industrial Estate, Patparganj, Delhi – 110092. He denied that Affordable Exports had never asked him to perform with Affordable Fashions and submitted that the management had been deducting the PF contribution since 1998.

15. MW1 Mr. Rajiv Kapoor Partner of M/s. Affordable Exports / Management vide his testimony tendered his affidavit as Ex.MW1/A and relied upon document Ex.WW1/M1 to Ex.WW1/M4. This witness *inter alia* stated that the salary is paid to the employees after getting their signatures on revenue stamps and this practice is done on the procedure under the rules and if any particular employee does not report for duty he is informed telephonically as well as by sending an employee of the company alongwith a letter and that thereafter a letter is also issued to him and that the present workman had also sent a

letter to this effect vide Ex.WW1/M2 and Ex.WW1/M4 and Ex.WW1/M5 and that a special Messenger was also sent by their company at the address of the workman for informing him about his absence from duty. The witness also admitted that gate pass Ex.WW1/2 related to his company and that gate passes are issued to the employees of the company and stated that gate passes Ex.WW1/2 (colly) are fabricated and are not issued by his company and that the rubber stamp affixed on the said gate passes do not relate to his company.

16. The claimant through the present petition has submitted that the offer of the respondent was not clear even in the written statement wherein the respondent had put a three days condition without giving any order to the petitioner and that the petitioner had asked for some more time, more than 3 days to join the services and they refused to allow him to join the services and that the management witness did not testify that the petitioner should report for duty at the establishment.

17. The petitioner has also submitted that the respondent has not contended that the gate pass issued by the M/s. Affordable Fashions at 189, Functional Industrial Estate, Patparganj, Delhi – 110092 was forged and fabricated. It was also contended by the petitioner that there was no delivery report of any letters that had been produced as stated to have been sent by the respondent. The petitioner reiterated thus that his services had been illegally terminated w.e.f. 25.11.2009.

18. Qua the contention of the workman that he had been asked by the management to work at the factory at M/s. Affordable Fashions

situated at Site-4, Sahibabad, Ghaziabad, UP and the gate pass allegedly issued by the said establishment Ex.WW1/2 (Colly) as rightly held by the learned Presiding Officer Labour Court – XIX (East), Karkardooma Courts, Delhi, admittedly the gate passes had not been proved on record by any competent authority from the said company nor was it the case of the workman that he had ever been appointed nor was there any documentary evidence produced by the workman to show that he was directed by the management to work there and furthermore M/s. Affordable Fashions had not even been arrayed as a party to the claim. The gate passes relied upon by the workman i.e. the petitioner herein also did not bear the signatures of the officers or representative of the company which was also admitted by the petitioner through his cross examination.

19. The witness of the management MW1 had also categorically denied in his cross examination that the gate passes had been issued by the management and denied that the rubber stamp on it belonged to his company and rather deposed that the same were fabricated and no suggestion was given to him to the contrary. The contention of the workman that he was ever asked by the management M/s. Affordable Fashions to report to duty thus cannot be accepted.

20. The factum that the letters sent through registered post Ex.WW1/M2, Ex.WW1/M3 & Ex.WW1/M4 by the management to the petitioner after his failure to resume duties from 25.11.2009, which were sent through registered post with the postal receipt being on record and having been sent at his residential address which he admitted to be correct in his cross examination as being

E-44C-98, New Seema Puri, Dilshad Garden, Delhi-110092 which is the address mentioned on his claim and in his affidavit and in his cross examination as well as on the memo of parties in the instant petition, the contention of the petitioner that he was not so served with the said letter sent by the employer in the circumstances, cannot be accepted as laid down vide the verdict of this Court in *Trina Engineering Company (P) Ltd. Vs. The Secretary (Labour) and Ors in W.P.(C) 46/1991* a verdict dated 26.07.2005 and thus the necessary presumption that has to be drawn is that the petitioner was served with the letters sent by the management in the instant case on 10.12.2009, 15.12.2009, 08.01.2010 and 29.01.2010 at his permanent address.

21. In the circumstances thus, it is apparent that the petitioner herein has to be held to have himself voluntarily absented from services w.e.f. 25.11.2009 as laid down vide the verdict of this Court in *Diamond Toys Co. (P) Ltd. Vs. Toofani Ram and Ors in W.P.(C) 4501/04 decided on 07.02.2017* as rightly relied upon by the learned Presiding Officer Labour Court – XIX (East), Karkardooma Courts, Delhi.

22. In the facts and circumstances of the instant case, it is apparent that there is no merit in the petition. The petition bearing no. W.P.(C) 1443/2015 and its accompanying applications are thus declined.

ANU MALHOTRA, J

AUGUST 24th, 2018/mk