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

Date of decision: 5th October, 2018

+ W.P.(C) 10598/2018 & CM APPL. 41301/2018(*for exemption*),
CM APPL. 41302/2018 (*for stay*)

VAVASI TELEGENGE PVT LTD Petitioner
Through: Mr. Sandeepan Pathak, Adv.

versus

SEHDEV YADAV Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

% **JUDGMENT (ORAL)**

1. This writ petition impugns the Award, dated 11th April, 2018, passed by the Labour Court-V, Dwarka (hereinafter referred to as “the Labour Court”), arising from reference, dated 27th September, 2011, under Sections 10 (1) (c) and 12 (5) of the Industrial Disputes Act, 1947 (hereinafter referred to as “ID Act”).

2. The order regarding the dispute contained the following single term of reference:

“Whether the services of Sh. Sehdev Yadav S/o Sh. Jago Yadav have been terminated illegally and/or unjustifiably by the Management; if yes, to what relief is he entitled and what directions are necessary in this respect ?”

3. Statement of Claim was filed by the respondent–workman, who contended that he had been employed by the petitioner as driver on

21st May, 2004, at a monthly salary of ₹ 11,502/-, and was working for the petitioner as a driver since then. The respondent contended, further, that the petitioner had not provided facilities such as appointment letter, weekly and yearly leave, overtime, bonus and other allowances and that when the respondent demanded the same, the petitioner terminated his services on 10th March, 2011, without notice and in default of payment of salary for the period 1st September, 2010 to 10th March, 2011.

4. Consequent to his termination, the respondent sent a notice of demand dated 11th July, 2011 to the petitioner, which, predictably, met with no response. Conciliation proceedings were attempted, and on their remaining fruitless, the respondent initiated the industrial dispute which led to the passing of the impugned Award.

5. In his Statement of Claim, the respondent also contended that he had been unemployed since the date of his termination.

6. In the written statement, opposing the Statement of Claim of the respondent, the petitioner admitted the fact that the Respondent had been employed with it, but alleged that he was guilty of habitual absence from duty and also of raising certain fraudulent bills. However, the Labour Court notes, in para 9 of the impugned Award, that, in the entire written statement, there was not even a whisper of an averment regarding the issue of termination of the services of the respondent, or justifying the same.

7. Consequent on completion of pleadings, the following issues were framed, by the Labour Court, *vide* order dated 21st April, 2015:

“a) Whether services of the workman have been illegally or unjustifiably terminated by the management? OPW.

b) As per the terms of reference;

c) Relief.”

8. The respondent examined himself as WW-1, and deposed along the lines of the Statement of Claim submitted by him. He also exhibited certain documents. He was cross examined, during which, he denied the suggestion of having been ever involved in misappropriation of funds or manipulation of bills.

9. The petitioner chose not to lead any evidence. The opportunity to lead evidence, of the petitioner, was finally closed, by the Labour Court, *vide* order dated 30th January, 2018. Undisputedly, the said order has never been challenged by the petitioner. Neither does the present writ petition include any challenge to the said order.

10. Following thereupon, the Labour Court returned the following findings, on the issues framed by it:

“15. After considering the claim, reply; document and the evidence led on record, the issue wise decision of the court is as under:-

Issue No. 1: Whether services of the workman have been illegally or unjustifiably terminated by the management? OPW

16. As far as the relationship of employer and employee between the parties is concerned, the same is admitted by the management.

17. The only defence taken by the management is to the effect that the workman was involved in raising fraudulent bills with respect to service of cars.

18. However, surprisingly nothing has been stated in the WS either denying or admitting the termination of services of the workman.

19. Furthermore, the management has also failed to lead any evidence in support of the defence taken by it in the WS putting allegations upon the workman regarding forging of records.

20. Accordingly, in the circumstances, in view of willful and deliberate negligence on the part of the management to prove the allegation of misconduct on the part of the workman coupled with the factum of neither denying nor admitting the termination of the workman, the court has come to the conclusion that the services of the workman were illegally and unjustifiably terminated by the management.

21. Issue no.1 is according, decided in favour of the workman.

Issue No.2: As per the terms of reference. and

Issue No.3: Relief

22. In view of the outcome of issue no.1, the court hereby hold that the workman is entitled to reinstatement in service with full back wages along with consequential benefits.

23. Reference answered accordingly.”

11. The present writ petition is completely silent regarding the actual dispute which stands adjudicated by the impugned Award by the Labour Court. All averments in the writ petition relate to a demand

of ₹ 72,846/-, stated to have been made by the respondent against the petitioner, and the denial, of the petitioner, to the liability in respect thereof. There is no averment, whatsoever, regarding the legality or otherwise of the impugned Award, or why the petitioner chose not to prosecute the proceedings before the Labour Court, and why it allowed itself to remain unrepresented and chose not to lead any evidence.

12. The learned counsel for the petitioner has, even before this Court, sought to argue on whether any monies were due to the respondent from the petitioner.

13. It is clear that the case set up by the petitioner in this Court is completely tangential to the actual dispute which stands adjudicated by the Labour Court. The Labour Court has, noting the fact that no evidence was led by the petitioner to rebut the evidence led by the respondent-workman, accepted the said response of the respondent and proceeded to decide the reference made to it. On the correctness thereof, or otherwise, the writ petition is completely silent.

14. No submissions are to be found in the writ petition, explaining the inaction, on the part of the petitioner, in prosecuting the matter before the Labour Court. It is an admitted position that the order, closing the right of the petitioner to lead evidence, as passed by the Labour Court on 30th January, 2018, also remained unchallenged, and this, too, remains unexplained in the writ petition.

15. Learned counsel for the petitioner, too, advances no submission on this aspect of the matter.

16. In view of the above, I do not see how this Court can interfere with the impugned Award of the Labour Court, which has necessarily, therefore, to be sustained in its entirety.

17. This writ petition is dismissed with no orders as to costs.

OCTOBER 05, 2018

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C.HARI SHANKAR, J



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