

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

% ***Date of Judgment: 19.02.2018***

+ **W.P. (C) 1535/2018**

HARI OM Petitioner

Through: Mr.Niraj Kumar Mishra, Advocate.

versus

M/S. BALAJI MECH-TECH PRIVATE LIMITED...Respondent

Through: Nemo.

**CORAM:
HON'BLE MR. JUSTICE VINOD GOEL**

VINOD GOEL, J. (Oral)

CM APPL. 6301/2018

Exemptions granted subject to all just exceptions.

CM APPL. 6302/2018

There is a delay of 213 days in re-filing the present writ petition. The delay of 213 days in re-filing the writ petition is condoned for justifiable reasons explained in the application.

The application is disposed of.

W.P. (C) 1535/2018

1. Challenge in this writ petition filed under Article 226 of the Constitution of India is to the award dated 10.03.2017 passed by the Pilot Court/Presiding Officer, Labour Court-XVII, Karkardooma Court, Delhi (in short 'Industrial Adjudicator') in a case vide LIR No.6862/2016 (old ID 76/08) in which the reference order dated 05.05.2008 issued by the Government of

NCT of Delhi was “Whether Sh. Hari Om S/o Sh. Mata Din is absenting from duty unauthorizedly or his services have been illegally and/or unjustifiably terminated by the Management; and if yes, to what relief is he entitled?”. The reference was answered against the petitioner.

2. In his statement of claim, the petitioner claimed that he was working with the respondent/Management as Peon/Godown Keeper/Field Worker since 12.03.1990 at an interim salary of Rs.2,800/- per month. He alleged that the respondent did not issue him letter of appointment, attendance card, leave book, pay slip and pay him the over-time allowance and minimum wages. When the petitioner demanded the same, the respondent started harassing him. The Management got irritated by such demands of the petitioner and ultimately on 10.09.2006 after obtaining his signatures on the blank vouchers the respondent/management terminated his services without any reason. He was also not paid his arrears of salary for the period from 01.06.2006 to 10.09.2006.
3. In its written statement, it is pleaded by the respondent/Management that the petitioner had worked with them in two spells; firstly, from 15.01.1995 to 03.02.2000 when he resigned of his own and collected his dues. He again joined the duties with the respondent/Management with effect from 06.04.2000 and worked with them till 17.07.2006 after which he started absenting from duty despite several letters

and reminders from the Respondent/Management. It is denied that the services of the petitioner were terminated by the Respondent/Management on 10.09.2006. It is pleaded that the respondent sent letters dated 27.07.2006 and 16.08.2006 to the petitioner asking him to report for duty but he failed to do so. It was pleaded that even if the workman wishes to join back he may do so immediately.

4. The petitioner filed rejoinder to the written statement denying the contents thereof and reaffirmed the averments made in his statement of claim. He reiterated that his job was illegally terminated by the respondent on 10.09.2006.

5. On 20.03.2009, the Industrial Adjudicator framed the following issues:-

“1. Whether the workman proves that he was illegally terminated on 10.09.2006?

2. Whether the management proves that the workman remained unauthorizedly absent from 17.07.2006?

3. Terms of reference.”

6. In support of his case, the petitioner examined himself as WW1. On the other hand, the respondent/Management examined its Director Shri Pramod Gupta as MW1.

7. After hearing the parties, the Industrial Adjudicator vide impugned Award decided all issues in favour of the Respondent/Management and against the petitioner.

8. In his cross-examination, the petitioner has admitted having filed a complaint Ex.WW1/M2 with the Labour Department on 28.08.2006. In this complaint the petitioner did not mention his date of termination and admittedly the petitioner had written a letter Ex.WW1/M1 on 29.01.2007 in which he mentioned that his services were terminated on 13.07.2006. In his statement of claim, the petitioner has claimed that his services were terminated on 10.09.2006. When the Respondent/Management filed the written statement and pleaded that the petitioner had worked with them till 17.07.2006 and thereafter absented himself from duty and that they have not terminated his services on 10.09.2006 as claimed by the petitioner, the petitioner preferred to file a rejoinder in which he reiterated that his services were terminated on 10.09.2006 by the respondent. The petitioner had also tendered his affidavit in evidence Ex.WW1/A in which he testified that his services were terminated by the Management on 10.09.2006. Even during his cross-examination by the respondent he did not claim that his services were terminated on 13.07.2006 as he had so claimed before the Conciliation Officer in his letter Ex.WW1/M1. The petitioner/workman did not suggest to MW1 Shri Pramod Gupta in his cross-examination that the services of the petitioner were terminated on 13.07.2006.
9. A perusal of the cross-examination of the petitioner reflected

that he had admitted that he performed his last duty with the respondent/Management on 16.07.2006. He also admitted in his cross-examination having received letters dated 27.07.2006 Ex.WW1/M8 and 16.08.2006 Ex.WW1/M9 from the respondent. Admittedly, by these letters, the respondent informed the petitioner that he has been absenting from duty w.e.f. 17.07.2006 and asked him to join his duties immediately after receipt of letter. In his cross-examination, the petitioner volunteered that he had sent replies to both these letters through the Union but failed to file copies of those replies allegedly sent to the respondent/Management.

10. Industrial Adjudicator found that a citation dated 14.03.2008 Ex.MW1/2 was got published by the Respondent/Management in the newspaper to the effect that the petitioner has been absent from duty without information since 17.07.2006. He also observed that the Attendance Register MW1/W1 for the month of July 2006 reflect that the petitioner worked with the respondent till 17.07.2006.
11. The petitioner had taken contradictory stand before the Conciliation Officer and the Industrial Adjudicator. Before the Conciliation Officer the petitioner had stated that his services were terminated by the respondent on 13.07.2006 whereas in his statement of claim, rejoinder and affidavit tendered in evidence, the petitioner had taken the stand that his services were terminated by the respondent on 10.09.2006. The

petitioner has admitted in his cross-examination that he had lastly worked with the Respondent/Management on 16.07.2006. This proves defence of the Respondent/Management that the petitioner has worked till 17.07.2006 when he started absenting from duty. The petitioner's admission about the receipt of letters dated 27.07.2006 and 16.08.2006 from the Respondent/Management informing him that he has been unauthorizedly absent from duty since 17.07.2006 and should resume the duty immediately indicate his conscious absence from duty. The respondent's stand fortified by the admission of the petitioner. The petitioner though claimed in his cross-examination that he had sent replies to these letters but failed to file copies thereof on the record. In view of this discussion, the Industrial Adjudicator has rightly come to the conclusion that the petitioner has absented himself from duty unauthorizedly and his services were never terminated by the respondent/Management as claimed by the petitioner

12. I do not find any illegality or perversity in the impugned award dated 10.03.2017.
13. The writ petition is dismissed in *limine*.

(VINOD GOEL)
JUDGE

FEBRUARY 19, 2018
DKB