

\$~
*
%

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 07.08.2019
Judgment pronounced on : 09.12.2019

+ LPA 232/2019

RAGHUBIR SINGH

..... Appellant

Through Mr. S.D. Wadhwa, Advocate.

versus

M/S. KAY INTERNATIONAL

..... Respondent

Through Ms. Amita Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J.

1. The present appeal has been filed by the appellant seeking to set aside the common judgement passed by the Learned Single Judge in W.P.(C) 1730/2015 and W.P.(C) 8680/2015, whereby the learned Single Judge has allowed the writ petition filed by the respondent and has set aside the Award dated 13th November, 2014 in so far as it directed the payment of Rs. 1,44,677/- with interest in favour of the appellant.

2. The brief facts necessary to adjudicate the present appeal are that the appellant was employed with the respondent as a 'cutting master' at a last drawn salary of Rs. 4,750/- per month. While the appellant claims that he had been employed for over two years, the respondent had urged that the employment was only for a period of two and half months. It was the case of the appellant that he had worked with complete dedication and honesty and

never given a cause of complaint to the management. However, when the appellant raised a demand for certain benefits such as casual leave, bonus, overtime wages etc. they took a grudge against him and terminated the services, without payment of notice pay with effect from 17th June, 1997 and did not even pay his earned wages for the period 1st April, 1997 to 17th June, 1997.

3. The appellant filed a complaint on 4th August, 1997 before the Labour Inspector and thereafter sent a demand notice to the management on 27th August, 1997. Getting no response from the management, the appellant filed a claim before the Conciliation Officer, but the conciliation also failed.

4. A reference was made by the GNCTD vide Notification dated 1st July, 1998 with the following terms:-

“whether the services of Sh. Raghubir Singh 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?”

5. Notice of reference was issued to the appellant to file the statement of claim. The management did not appear despite service of notice and was proceeded ex-parte vide order dated 12th April, 1999 and subsequent thereto an ex-parte Award was passed by the Labour Court on 11th November, 1999, in favour of the appellant and against the management.

6. The respondent filed an application for setting aside the ex-parte award, which was dismissed vide order dated 2nd November, 2000. The said order was challenged by the respondent in a writ petition bearing no. W.P. (C) No. 1148 of 2001 before this Court and the Court vide order dated 29th August, 2013 remanded the matter back to the Labour Court for fresh adjudication.

7. The Labour Court vide its Award dated 13th November, 2014 allowed the claim of the appellant to the extent of payment of Rs. 1,44,677/- to the appellant. In so far as the grievance of the workman that he had not resigned but was terminated, was concerned, the Labour Court decided the issue against the appellant. Since the Labour Court had held that the appellant had tendered his resignation, it decided the issue of alleged illegal termination in favour of the respondent.

8. The Labour Court directed the respondent to make payment of the aforesaid amount to the workmen with interest @ 7% per annum with effect from 1st September, 2000 till the date on which the full and final settlement was signed by the parties. A period of one month from the date of publication of the Award was granted to the respondent to make payment, failing which the amount was to carry a simple interest @ 8% per annum from the date of the Award, till realization. The controversy of the number of days completed by the appellant in the service of the respondent was held by the Labour Court to be irrelevant to the other issues decided by it.

9. The said Award was challenged by the respondent before a learned Single Judge of this Court by way of W.P.(C) 1730/2015. The challenge of the respondent was to the extent the Labour Court had directed the payment of the amount of Rs. 1,44,677/- along with interest. The appellant also filed a writ petition bearing No. W.P.(C) 8680/2015 wherein he challenged the finding returned by the Labour Court that the appellant had resigned from service.

10. Both the abovementioned writ petitions were decided by the Learned Single Judge of this Court by a common judgement. Vide the Impugned Judgment dated 3rd December, 2018 the learned Single Judge dismissed the

writ petition of the appellant and allowed the writ petition of the respondent. The appellant has challenged the said judgment before us impugning the judgment to the extent it has set aside the Award of the Labour Court directing payment of an amount of Rs. 1,44,677/- to the appellant, as well as dismissing his petition.

11. Learned counsel for the appellant submits that the appellant had taken a consistent stand from the very beginning that a full and final settlement had been arrived at between the parties. The appellant had undoubtedly signed on a receipt dated 1st September, 2000 executed by the management in which the settlement was recorded. Rs. 10,000/- out of the total amount settled between the parties was to be paid by cheque and the remaining amount of Rs. 1,44,677/- was to be paid in cash. The appellant contends that while a cheque of Rs. 10,000/- was received by him from the management, but the remaining amount of cash was never paid. The appellant also contends that Ex. WW-1/M2 is in his hand writing but the same was written under threat and coercion by the management. He further submits that he had never resigned or left the job on his own accord. His services were terminated only because he raised certain demands of bonus etc. which were his legitimate dues.

12. *Per contra* learned counsel for the respondent contends that the respondent had never terminated the services of the appellant and in fact he had on his own resigned. An ex-parte Award was passed against the management and a recovery certificate dated 24th August, 2000 was received by the respondent. To avoid any litigation and harassment, Shri Manish Gupta one of the partners of the respondent firm called the appellant for an amicable settlement and agreed to pay a sum of Rs. 1,54,677/- to the

appellant towards full and final settlement of all his dues. In lieu of the said payment the appellant had agreed to submit his resignation. The settlement dated 1st September, 2000 was entered into between Shri Manish Gupta and the appellant in presence of Shri Om Prakash, the then employer of the appellant, Shri R. Tiwari, employee of the respondent and Shri Anand, a Government servant employed with the provide Fund Department. The appellant was paid a sum of Rs. 1,54,677/- in the presence of all the three independent witnesses. The payment of Rs. 10,000/- was by way of a cheque and the rest by cash. A receipt was duly executed and was signed by the appellant and the cheque was encashed. A resignation letter was also given on the same day which was on record of the Labour Court.

13. Learned counsel submits that having settled the matter and taken the money, it was not open to the appellant to raise any claim for any amount due or even question his resignation. Learned counsel for the respondent has drawn the attention of the Court to the receipt/settlement executed between the parties.

14. The Labour Court framed issues and examined various witnesses. Issue No. 1 is as under:-

“whether the workman has settled the matter with the management after accepting Rs. 1,54,677/- and has submitted his resignation?”

15. The onus to prove this issue was upon management and it was required to prove that the workman had settled the matter, after accepting Rs. 1,54,677/- and submitted his resignation. The management examined Shri Manish Gupta as a MW1 who relied upon the settlement and the receipt dated 1st September, 2000, Ex. WW-1/M1 and the resignation letter Ex. WW-1/M2. Copies of the Bank accounts etc. were also exhibited. The

appellant examined himself as WW1 and Shri Om Prakash as WW2, along with Shiv Kumar as WW3.

16. Having perused the evidence led by the parties, the Labour Court observed that the principal document relied upon by the respondent was the receipt recording the full and final settlement, a photocopy of which was placed on record. The appellant had admitted his signature on the document but denied in his evidence that he had received a sum of Rs. 1,44,677/- in cash. WW2 deposed in its cross-examination that the receipt was filled by Mr. Tiwari in his presence but the amount in cash was never given to the appellant in his presence and only the cheque was handed over. WW2 admitted that the writing at the encircled portions was in his presence but it was written by Mr. Tiwari and no suggestion was put to WW2 during his cross-examination to the contrary. The Labour Court thus concluded that the receipt was filled up by Mr. Tiwari. It also observed that the management had not brought Mr. Tiwari in its evidence as perhaps that would have gone against the management.

17. Labour Court arrived at a finding that the perusal of the receipt revealed that neither the receipt bears any stamp or seal of the management nor any signatures of the authorized person or its office bearer. Categorical finding was returned that the receipt seemed to be a false and fabricated document. Since the management could not discharge its onus that the amount of Rs. 1,44,677/- was given to the appellant in cash and also failed to prove the genuineness of the receipt, the Labour Court decided the issue in favour of the appellant and rendered a finding that the amount had not been received by the appellant. It thus directed the respondent to pay the said amount to the appellant along with interest.

18. The learned Single Judge in the Impugned Judgment has held that the appellant had admitted in his evidence that he had received an amount of Rs. 10,000/- by way of a cheque and its part settlement. Regarding the remaining amount he was unable to recollect as to when it was given to him. In our view the finding of the learned Single Judge is not borne out from the evidence and the record of the Labour Court. The consistent stand of the appellant was that he had never received the balance amount of 1,44,677/-. He had made this submission right from his complaint before the Conciliation Officer and subsequently in his pleadings and in the evidence by way of an affidavit. WW2 had also deposed in favour of the appellant to this extent. The Labour Court based on the evidence recorded a finding that the management was unable to prove that the balance amount was ever paid to the appellant. In so far as signing of the receipt is concerned the Labour Court has held that the receipt was filled by Mr. Tiwari and while the appellant never denied his signature on the receipt, his stand clearly was that the settlement was never given effect to completely. In our view, therefore, this part of the judgment of the learned Single Judge deserves to be set aside.

19. In view of the above, the judgment of the learned Single Judge is set aside to the extent it has allowed the writ petition of the respondent and set aside the Award directing payment to the appellant along with interest.

20. By an order dated 9th April, 2019 this Court had directed that the amount of Rs. 1,44,607/- (as mentioned in the order) which was already lying in the Fixed Deposit with the Registrar General of this Court would be retained during the pendency of the appeal. Since we are allowing the appeal and upholding the Award towards the payment of this amount, we direct that the said amount of Rs. 1,44,607/- along with the interest accrued thereon be

released to the appellant by the Registrar General of this Court within a period of two weeks from today without any further notice to the respondent.

21. The appeal is allowed.

JYOTI SINGH, J

G.S. SISTANI, J.

DECEMBER 9th, 2019

yo/

HIGH COURT OF DELHI



नित्यमेव जयते