

\$~R-8

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

Judgment Reserved on: 12.12.2018
% *Judgment Pronounced on: 08.02.2019*

+ **W.P.(C) 2291/2006**

CHHAVI CHANDER JHA Petitioner
Through: Mr. Sanjoy Ghose, Advocate.

versus

VISHWA KARMA ENGINEERING WORKS Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J.

1. The present writ petition has been filed by the petitioner assailing the award dated 13.10.2005 passed by the Labour Court-XI, Karkardooma, Shahdara, Delhi in Industrial Dispute (ID) No. 215/2004 (new), 212/1991 (old).
2. The brief and relevant facts as stated in the writ petition are that the petitioner joined the services of the respondent as Turner in the year 1985. He claims that he worked continuously with the respondent but was not paid any wages from June 1990 to September 1990 on the plea that the respondent was facing shortage of funds. He further claims that when he demanded his wages' arrears, his

services were arbitrarily terminated w.e.f. 21.10.1990 without following the due process of law. According to the petitioner, the last drawn wages of the petitioner was Rs.1100/- per month.

3. The petitioner through his union i.e. Engineering Employees Union, sent a legal notice dated 10.11.1990 to the respondent, who replied to the same vide a letter dated 22.11.1990. The matter went before the Conciliation Officer and the petitioner filed his statement of claim on 18.12.1990. The conciliation, however, failed and the petitioner then raised an Industrial dispute (ID) which was referred for adjudication vide reference order dated 03.05.1991. The terms of reference are as under :

“Whether the services of Sh.Chhavi Chander Jha 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?”

4. The petitioner submitted a statement of claim on 22.04.1992 before the Labour Court. The respondent filed a written statement to which a rejoinder was filed on 08.11.1995. On 08.11.1995, the Labour Court framed the following issues :

*“1. Whether the workman is not in the employment of the management, on the date of alleged termination, if so, its effect ?
2. Whether the workman had left the services with the management in October, 1989, if so, its effect ?
3. As per the terms of reference.”*

5. The petitioner filed his evidence by way of an affidavit dated 08.11.1995. No further evidence was recorded.

6. On 11.01.1999, the Labour Court, reserved the matter for passing the award. On 12.01.1999 the Award was passed against the petitioner (workman).
7. The petitioner thereafter moved an application dated 02.02.1999 for setting aside the Award dated 12.01.1999.
8. The Award was set aside by the learned Labour Court vide its order dated 19.02.2001. The workman's evidence was recorded on 24.08.2004, wherein he examined himself as a witness WW-1. On the same date, the management also examined its witness MW-1 and cross-examined the workman. The case was deferred at the request of the petitioner for cross-examination of MW-1. On 30.09.2004, MW-1 was cross-examined by the petitioner (workman). The evidence was thereafter closed and the case was listed for final arguments for 24.01.2005. On the said date, arguments could not take place and final arguments were heard on 15.09.2005 and the case was listed for passing the award on 13.10.2005. On 13.10.2005, the learned Labour Court passed the award, whereby the reference was answered against the petitioner and the Labour Court held that the petitioner had failed to prove that he had been in the employment of the management on 21.10.1990, on which date his services were allegedly terminated, while the management proved that the petitioner had worked with the management only till October 1989 and had left the job on his own, after settling his accounts on 01.11.1989.

9. On 07.02.2006, the Award was published and became enforceable on 09.03.2006. This award has been challenged by the petitioner (workman) by filing the present writ petition on 16.02.2006.
10. The contention of the learned counsel for the petitioner is that the impugned award is arbitrary and illegal inasmuch as learned Adjudicator has failed to appreciate that the petitioner had, in fact, worked with the management till 21.10.1990, when his services were illegally terminated and the petitioner had no reason to leave the job. It is also his contention that when his services were illegally terminated, his last drawn wages were Rs.1100/- per month. It was submitted that the petitioner had placed on record documents exhibited as Ex.WW1/4 and Ex.WW1/5 which showed his attendance marked on 20.08.1990 and 12.09.1990 respectively at a Government Pump House, wherein he was deputed by the management. He, therefore, contends that if the petitioner had left the services in 1989, as alleged by the management, his attendance would not have been marked in the register for the month of August and September, 1990. In support of the said submission, the petitioner had also placed on record a letter of his father dated 07.08.1990, which according to him, was received at the address of the factory of the management. According to the petitioner, in case he was not working with the management, there was no way the said letter could have been received in the factory premises. Argument advanced is that the management never questioned the veracity of this letter and not even a suggestion was given in the evidence that the letter was fabricated or mischievously procured

by the petitioner. Learned counsel for the petitioner also vehemently argued that the Labour Court erred in holding that it could not place reliance on the documents filed by the petitioner since the same were only photocopies and were not put in evidence to the management witness and even the person who maintained the register Ex.WW1/4 and Ex.WW1/5 was not examined by the workman. He submits that while it is true that the petitioner should have filed an application under Section 11 (3) (b) of the Industrial Disputes Act, seeking direction to the management to produce the originals of the relevant documents, but its omission, cannot be fatal to his case, as the said documents were not rebutted by the management and moreover even the management had also produced only photocopies of documents relied upon by them and the Labour Court has relied on them to pass the award against the petitioner. He, thus, contends that the petitioner had, in fact, through his testimony and the documents on record proved that he had worked till 21.10.1990 at last drawn wage of Rs.1100/- per month and the Labour Court ought to have set aside his illegal termination with consequential benefits.

11. After completion of the pleadings of writ petition, 'Rule' was issued by this court on 26.02.2007 and the matter was directed to be listed in due course. Thereafter the matter was taken up on 10.12.2018 when none appeared for the respondent. The matter was again taken up on 12.12.2018 and despite being passed over twice, none had appeared on behalf of respondent even on the said date. Learned counsel for the petitioner prayed that the impugned

award was of the year 2005 wherein the challenge was to the termination dating back to 1990 and, thus, delay in hearing was causing prejudice to him.

12. Since none had appeared for the respondent, this court did not have benefit of hearing oral arguments on behalf of the respondent. I have heard the learned counsel for the petitioner and gone through the documents and pleadings filed by the parties before the Labour Court, as well as in this court.
13. The stand of the respondent is that the petitioner has not been able to point out any procedural irregularity or any other illegality in the impugned award. It is not the case of the petitioner that the Labour Court had exceeded its jurisdiction or ignored any material evidence and, therefore, this court should not exercise its jurisdiction under Article 226 of the Constitution of India, to interfere with the award. The plea of the respondent is that the petitioner was not employed with the management from 1985 as alleged by the petitioner nor were his services illegally terminated. The categorical stand of the respondent is that the petitioner had joined services of the management only in June, 1987 and he voluntarily abandoned the job *w.e.f.* 01.11.1989. It is also denied that the last drawn wages of the petitioner were Rs.1100/- per month and according to the management, in fact, the salary of the petitioner for the month of October, 1989 was only Rs.900/-. The respondent had pleaded before the Labour Court that the document Ex.WW1/4 and Ex.WW1/5 which allegedly showed the attendance of the workman had not been put to the management witness nor

were their originals produced by the petitioner. Even the person who maintained the said register was not examined by the petitioner. There is nothing in the document which suggests that the petitioner had been working at the Pump House, on the direction of the management and even otherwise this does not prove the employment during the period November 1989 to July 1990 and October 1990. The respondent also denied the fact that the petitioner was living in the factory premises and contended that there was no occasion for him to have received the letter dated 07.08.1990 from his father at the address of the management. It was also contended that it is strange that there was no communication or letter from anywhere else at the address of the management other than this letter during his entire tenure of service and, thus, this sole letter was insufficient to prove his employment with the management during 1990.

14. The learned Labour Court after examining the evidence and the documents on record, came to a conclusion that the petitioner was not entitled to any relief as he was unable to prove that his services were illegally terminated, while the management proved that he had left the job on 01.11.1989 on his own, after settling the accounts. Learned Labour Court has observed that the petitioner had been making false statement inasmuch as while he had pleaded that his last drawn wages was Rs.1100/- per month but in the cross-examination, he had stated that it was Rs.700/- per month. The learned Labour Court also relied on the statement of the workman in his cross-examination that the management had been

maintaining attendance register and paying salary only after taking signatures on a revenue stamp. The management had placed on record photocopies of their attendance register to prove that his name did not figure after October, 1989, but the petitioner at no stage asked for production of the original register to prove his employment during November, 1989 to 21st October, 1990. The Labour Court has also placed emphasis on the fact that the documents produced by the petitioner in his support were only photocopies and no efforts were made to produce or summon the originals and photocopies could not be relied upon as evidence. The Labour Court has relied upon a document Ex.WW1/M-1 to come to a conclusion in favour of the management that the last drawn wage was, in fact, Rs.900/- per month and that the petitioner had left the job on 01.11.1989. This finding is on the basis that this document bears the signature of the petitioner, which were matching with his signatures on the pleadings before the Labour Court.

15. The grievance of the petitioner is thus two-fold *viz.* he was illegally terminated *w.e.f.* 21.10.1990 and he has been denied the last drawn wages @ Rs.1100/- per month. The petitioner had filed his evidence by way of affidavit in which he stated that he had joined the services of the respondent in 1985 and was illegally terminated. In support of his case, the petitioner had filed a reply dated 22.11.1990 sent by the respondent to his notice dated 10.11.1990 exhibited as Ex.WW1/1 as also photocopy of two pages purported to be part of the attendance register at the

Government Pump House showing his attendance on 20.08.1990 and 12.09.1990 exhibited as Ex.WW1/4 and Ex.WW1/5 respectively. However, none of the documents filed by the petitioner prove that he had been employed with the respondent prior to June, 1987. The documents exhibited as Ex.WW1/4 and Ex.WW1/5 do show the name of the petitioner appearing against two dates viz. 20.08.1990 and 12.09.1990 respectively. The originals of these photocopies were never summoned by the petitioner. The respondent had seriously disputed the factum of his having worked after October, 1989 and had also denied having deputed him at the Government Pump House or any other place. In the teeth of this categorical stand of the respondent, the petitioner should have called for the original record to prove these documents. The learned Labour Court is right in its observation that neither was the original summoned, nor was this register put to the management witness. Even the person in-charge who was maintaining the register was not summoned as a witness. Even assuming that photocopies could be relied upon, the photocopies do not indicate that these could be a part of any register since there are no running or internal page numbers nor is the document dated. An attendance register has to be in continuity and every leaf of the said register will have either internal paging or a running page number. There is nothing on these documents which could connect the attendance of the petitioner with deployment by the respondent. In fact the Ex.WW1/5 does not even reflect site of work as a "Pump House". The petitioner was required to prove

that he had been deputed at the Pump House or any other site by the respondent, which in my opinion he has failed to do.

16. Per contra, the respondent had produced the photocopy of the complete register from 1985 upto 1990 to prove that the name of the petitioner did not figure in the attendance register after October, 1989. The petitioner was well within his right to have questioned the authenticity of the said register, but no steps were taken by the petitioner to rebut the documents filed by the respondent. Moreover, the respondent had also filed an attendance-cum-salary register for the month of October, 1989 exhibited as Ex.WW1/M-1. This document bears an endorsement made by the petitioner on 01.11.1989 that he was being paid Rs.900/- as monthly wages and that he was leaving service of his own accord after settling accounts. The signatures of the petitioner also appear over the revenue stamp affixed on the document. No attempt, however, was made by the petitioner to prove that the document was fabricated. In fact, as the learned Labour Court rightly observed that he had admitted the signature to be his, though as an afterthought a stand was taken that these signatures were taken on a blank paper as some identity card was to be issued to him. In fact, the cross-examination of the petitioner by the management witness shows that the original of this exhibit was produced and was shown to the petitioner and returned. The Labour Court had rightly relied on the submission made by the petitioner in the cross-examination that salaries were paid after receiving signatures on the attendance register bearing the revenue

stamp. Thus, the petitioner should have produced a document bearing a Revenue Stamp and having his signatures for the period November, 1989 to 21.10.1990, which he has failed to do. The learned Labour Court has also rightly held that a mere receipt of one letter dated 07.08.1990 by the petitioner from his father, at the factory address of the management was not enough to prove his employment till October, 1990. If the petitioner had been working for the management from November, 1989 to October, 1990 as alleged by him, surely there would have been more letters or correspondences on this address during this period.

17. The petitioner has also failed to prove that his last drawn wages was Rs.1100/- per month. The petitioner has failed to place on record any salary voucher or any attendance-cum-salary register evidencing that he was drawing Rs.1100/- per month towards last drawn wages. The Labour Court has, therefore, rightly come to a conclusion that the last drawn wages of the petitioner was not Rs.1100/- per month. In any case, once the petitioner has failed to prove his employment from the period June, 1990 to September, 1990, for which he had claimed wages @ Rs.1100/- per month, the question of quantum of the last drawn wages for this period becomes irrelevant.
18. There is force in the submission of the petitioner that if the Labour Court did not accept photocopies of the documents filed by him as evidence, there was no justification to rely on the photocopies filed by the management and passing an award. However, this argument cannot enure to the advantage of the petitioner for three

reasons. Firstly, the petitioner has not been able to prove that he worked with the management after October, 1989 nor has been able to prove his last drawn wages to be Rs.1100/- per month even on the basis of photocopies and has failed to discharge his burden. Secondly, if the management had produced the photocopies which in the petitioner's view were false or fabricated, he should have made efforts to summon the originals, and demolish the evidence of the respondent. Thirdly, the main document against the petitioner was Ex.WW1/M-1 and the original of this was produced, as mentioned above.

19. Moreover, the petitioner could have examined any of his co-employees to prove his claims. The argument of the learned counsel for the petitioner that none of the co-employees would be willing to depose against the respondent, though is appealing but cannot be accepted. It is not uncommon in service matters that co-workers do come and depose. The petitioner, however, failed to adopt even this route to prove his continuance in service from November, 1989.
20. The evidence placed on record indicates that the petitioner had actually left the services of the respondent of his own accord on 01.11.1989, after settling the dues and signing on the register and his services were not terminated by the respondent, as he was not in service on the date of alleged termination.
21. In my view, the Labour Court has rightly answered the reference against the petitioner based on the documents and evidence on

record and this court finds no infirmity in the award dated 13.10.2005.

22. There is no merit in the petition and the same is, accordingly, dismissed with no order as to cost and the award dated 13.10.2005 passed by the Labour Court in ID No.215/2004 is hereby upheld.

FEBRUARY 08, 2019

SSC

**JYOTI SINGH
(JUDGE)**



न्यायमेव जयते