

\$~34

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

%

*Decided on: 18.02.2020*

+ W.P.(C) 8202/2015

**RAM BAHADUR CHAUBEY**

..... Petitioner

Through: Mr. R.P. Sharma, Adv.

versus

**M/S NATHUS SWEETS**

..... Respondent

Through: Mr. Suryakant Singla and Ms.  
Rimjhim Naudiyal, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**NAJMI WAZIRI, J. (Oral)**

1. This petition impugns the order dated 06.06.2015 passed by the learned Labour Court in ID No. 28/08, dismissing the petitioner's claim for payment of statutory dues.

2. It is the petitioner's case that he was working with the respondent M/S Nathu's Sweets at Bengali Market, New Delhi for the last 27 years i.e. from 1980 to 1994 as a waiter and on same conditions and with continuity of service with M/S Nathu's Sweets at New Friends Colony, New Delhi from 1995 to 2007. He worked without break in service most sincerely and diligently and his last drawn salary was Rs.3,000/- per month, whereas the rate of minimum wages for the category of workman like the petitioner was Rs.3,682/- per month in 2007. The learned counsel for the petitioner contends that the respondent had not been keeping records of duty hours,

leaves, weekly-off days, appointment letter, pay slip and it was paying the petitioner wages below the applicable rates of minimum wages. Furthermore, it was making the workmen work for 12 hours a day without paying him any overtime wages. The petitioner was working against the need and regular vacancy of a waiter. He further contends that it was mandatory for the respondent to maintain records of appointment letters, wages, over time, bonus, leaves & holidays etc. under the Delhi Shops & Establishment Act, 1954 and under the provisions of Minimum Wages Act, 1948 for workers like the petitioner but the respondent had consistently defaulted in its statutory obligations. Thus, by flouting statutory provisions it was indulging in unfair labour practice.

3. The impugned order has found that two issues were raised in the case: (i) whether the claimant left the management on his own in full and final settlement of all his claims; and (ii) whether his services were illegally terminated. The onus of proving that the workman had walked away with full and final settlement, as allegedly entered into between the parties on 12.10.2007, lay with the management. The workman had acknowledged that the signature on the document was his. However, in the same breath, the learned counsel for the workman also submits that the signature was obtained under duress because of the police complaint; that he was intimidated by the management as well as by the police officials. There was a quarrel between other workmen, about which the petitioner took a fair stand apropos the assault of the management on the workman, but he was without basis sought to be embroiled in the affair. He felt cheated and aggrieved by the actions of the management, especially after having

rendered services for more than 27 years and then being sought to be dismissed by the alleged, full and final settlement with a meager amount of Rs. 10,500/-. The impugned order noted that apart from simply telling that the said settlement was forceful, the workman has not complained to any authority after such coercion being applied to him. The Court would note that in their reply to the petitioner's claim, the respondent has admitted *inter alia* "...It is also submitted that the claimant was working as daily wager intermittently with the management and his wages were paid in cash."

4. The workman had claimed that he was working with the management at Bengali Market from the year 1980 to 1994 and thereafter, was transferred to the New Friends Colony outlet and worked there from 1995 to 2007; his last drawn salary was Rs. 3,000 per month and that he would also get Rs.200 per day as tips from customers. The workman claims that his services were terminated on 11.10.2007. The respondent's reply is silent apropos the specific dates mentioned in the claim petition. It merely denies the claim that he was working with the said management from 1980 to 1994. It also denies the illegal termination from service on 11.10.2007. If the workman was not so employed, the management should have categorically so stated and contended or it should have brought its records to prove the dates when he was intermittently employed till 11.10.2007, but it has chosen not to do so. Therefore, adverse inference was drawn that the workman was employed for atleast 240 days in a year, prior to his termination so as to avail the benefit of the Industrial Dispute Act, 1947. Furthermore, the fact that the management paid the workman wages of Rs. 3,000/- per month which was lesser than the applicable minimum wages of Rs. 3,470/-, there would be no

occasion for the workman to settle the *lis* with the management for a meager Rs. 10,000/-, especially since his claim was for legitimate dues of years of service. Also there was no occasion for the management to pay the workman a salary which is roughly 3½ times extra if no such services were rendered by him. This goes to prove that the workman had a claim against the management. Therefore, the worker shall be deemed to be the workman of the management and shall be entitled to all consequential relief. His termination of services being illegal, he would be entitled to reinstatement in service. However, him having reached the age of superannuation this year itself, the aforesaid relief is redundant.

5. The learned counsel for the petitioner submits that if the computation is done on the basis of minimum wages applicable from October, 2007 till the age of superannuation of the petitioner, he would be entitled to Rs. 12,67,215/-. However, it is not in dispute that the workman did not actually work for the respondent for the said period. Therefore, the grant of payment of the full back wages would be on the higher side. In the circumstance, the Court is of the view that a lump sum amount of Rs. 3,75,000/- alongwith Rs. 25,000/- as costs be paid to the workman, within a period of one week from the date of receipt of a copy of this order.

6. The petition stands disposed-off in the above terms.

**NAJMI WAZIRI, J**

**FEBRUARY 18, 2020**

RW