



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

% Reserved on : 22nd November, 2023
Pronounced on : 11th December, 2023

+ **W.P.(C) 5369/2019**

SARITA TIWARI

..... Petitioner

Through: Ms. Ankita Patnaik, Adv.

versus

AASTHA GARMENTS

..... Respondent

Through: Mr. Anuj Gupta, Adv.:

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This petition assails award dated 14th November, 2018 passed by Presiding Officer, Labour Court, Dwarka in LIR No. 7886/2016 (“**the impugned award**”). The Ld. Labour Court *vide* the impugned award has rejected the petitioner’s claim against the respondent management for reinstatement with full back wages.

Factual Background

2. As per the claim of the petitioner, she was working with the respondent management since 10th December, 2011 at the post of a “*checker*” and her last drawn salary was Rs 7,000/- per month. She had been working with sincerity and diligence, however, no facilities such as bonus, minimum wages, ESI, PF were given to her and she was compelled to work for more than 12 hours per day without being paid



overtime. She alleges that on 18th January, 2013, when she went to the washroom, the nephew (*Rachit*) of the owner of the establishment pushed her inside the washroom and tried to outrage her modesty. But when the petitioner raised her voice, he fled away. She made a complaint to the owner (Mr. Praveen Jain) who, instead of taking any action against his nephew, terminated the services of the petitioner on the same day and withheld her salary from November 2012-January, 2013. The petitioner stopped going to work after 18th January, 2013.

3. On 19th January, 2013, she alleges that she received a call from Rachit, asking her to come to the office, but she refused to go. However, upon receiving a call from someone else, she went to the office. Upon reaching there, Rachit tried to misbehave with her again, and the petitioner had to run to her working place and wait for the owner. When she disclosed this to the owner, he asked her to go back home and the petitioner returned home.

4. On 24th January, 2013, the owner asked the petitioner to come to office and collect her dues as well as her gold ring which had apparently fallen off during her scuffle with Rachit. However, when she reached the office, Rachit abused the petitioner and forced her out of the premises. The petitioner made a PCR call and thereafter, she along with the petitioner and Rachit visited the police station, where efforts were made to reach a compromise, but to no avail. The petitioner was once again called to the office on 28th January, 2013, when Rachit again misbehaved, after which the petitioner lodged an FIR, being FIR No. 59/ 2013 (“**the FIR**”), on 28th January, 2013.

5. Though she hoped that her services will be reinstated, this was not done by the respondent management. Therefore, the petitioner was



compelled to file a complaint on 11th July, 2013 before Labour Office, Jhilmil, which was followed by another complaint dated 09th March, 2015 and a legal notice. As the petitioner did not receive any reply to the legal notice sent by her, the dispute was referred to the Ld. Labour Court for adjudication, and the impugned award was rendered by the Ld. Labour Court.

6. *Vide* the impugned award, the Ld. Labour Court decided the dispute in favour of the respondent management, and, *inter alia*, observed that there were major contradictions between the petitioner's stated case in the FIR when compared to the statement of claim. Moreover, the petitioner herself expressed her intention to abandon her service before the owner, Praveen Jain. Therefore, the Ld. Labour Court observed that the present case was one of abandonment of service, and not that of illegal termination by the management. Furthermore, the Ld. Labour Court held that the petitioner was unable to discharge the onus of proving that she had been in service for 240 days in the year preceding the date of termination, and therefore, she cannot avail the benefit of Section 25F of the Industrial Disputes Act, 1947 ("**the Act**").

Submissions on behalf of the Petitioner

7. The petitioner's counsel contended that the impugned award has erroneously rejected the petitioner's claim, on the basis that the documents placed on record by the petitioner tell an entirely different story. There were extreme inconsistencies between her statements before the Ld. Labour Court as part of her claim and that of the FIR which had been filed. The impugned award reached a conclusion, incorrectly so, as per the petitioner, that the management never terminated the claimant



from her service but she had abandoned her job. Further, on the issue of whether she had completed 240 days of service with the management in the preceding year, the Ld. labour Court found that she was not in possession of any document to prove her employment prior to 29th November, 2012 and had not examined any co-worker as well to buttress her claim that she was working since December, 2011.

8. Furthermore, the diary entries which were produced by her regarding payments made to her since December, 2011, could not be proved. The petitioner's counsel contended that the Ld. Labour Court had reached these conclusions on the basis of presumptions and assumptions, since there was actually no contradiction between the FIR and the statement of claim, it was just that the FIR contained a reasonable amount of detail, whereas the claim before the Ld. Labour Court was not well-drafted at best. The petitioner's counsel further contended that the question of abandonment did not arise since she was merely forced out of her service due to the extreme and objectionable behaviour of the owner's nephew.

Submissions on behalf of the Respondent

9. Before this Court, the respondent management asserted that the diary entries produced by the petitioner as proof of continuous employment are not reliable. The said diary entries are of diaries purportedly belonging to the petitioner and merely reflect the number of garments checked by the petitioner on particular dates.

10. Furthermore, there are discrepancies between the format used prior to November, 2012 and after November, 2012. For diary entries post November, 2012, the number of pieces checked by the petitioner is mentioned first, followed by the relevant date, and each entry is counter



signed by the management persons. On the other hand, the diary entries made prior to November, 2012 have the date first, followed by the number of pieces; but these entries are not countersigned by the management persons unlike the entries made post November, 2012. Therefore, the respondent's counsel submitted that, in light of major discrepancies in the diary entries produced by the petitioner, the same cannot be relied upon as evidence of her having worked for 240 days in the year preceding her date of termination.

11. Respondent's counsel also contended that the petitioner habitually filed complaints of molestation, and that *vide* judgement dated 11th March, 2016, the Ld. Mahila Court has acquitted the management owner's nephew.

12. Reliance was additionally placed on another complaint regarding eve teasing that was filed by the petitioner on 30th January, 2013. In the said complaint, the petitioner states that on 05th June, 2012 (Tuesday) at 10:00 am in the morning, she was going in auto to *Khajoori Chowk* to buy some fabric and was teased by certain co-occupants of the auto. Accordingly, it was contended that at least on that day, i.e. 05th June, 2012, she couldn't possibly have been working with the respondent management as she herself admits that she was out to get some fabric at 10:00 AM, that is during working hours.

13. The respondent's counsel further pointed to the various inconsistencies in the petitioner's deposition before the Ld. Labour Court wherein she first states that she received a monthly salary of Rs. 7000/-, and did not receive payment on a per piece basis. However, she later also states that she was paid on the basis of entries in the diary. The petitioner also admits to not being in possession of any document that could



establish that she was employed with the respondent management prior to 29th November, 2012.

14. Furthermore, the respondent's counsel submits that on one hand, in the FIR, the petitioner claimed to have been working the with respondent management for the past three years, i.e. since 2010. On the other hand, in her statement of claim, the petitioner states that she has been working with the respondent management since December 2011.

15. Therefore, the petitioner was unable to prove that she had been working for the respondent management for 240 days in the year preceding her date of termination.

16. Finally, the respondent's counsel submitted that the petitioner has levelled false molestation charges against the staff of the management with the sole intent to extort money, but both the criminal case and the claim before the Ld. Labour Court have been dismissed. No appeal against the acquittal in the criminal case filed pursuant to the FIR has been initiated by the State and those findings have attained finality.

Analysis and Conclusion

17. Heard the learned counsel for the parties, and examined the evidence placed on record.

18. The petitioner has initiated the present industrial dispute alleging violation of Section 25F of the Act, which provides for conditions precedent to retrenchment of workmen. The said provision is extracted below for reference:

“25F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less



than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]”

19. A perusal of Section 25-F of the Act reveals that in order to claim the benefit of Section 25-F, the workman needs to prove that she has been in continuous service for not less than one year from the date of her termination. Section 25B of the Act stipulates that a person who has worked for a period of 240 days in the preceding year is deemed to be in continuous service for a period of one year. The relevant extract from Section 25B is produced below for reference:

***“25B. Definition of continuous service.
For the purposes of this Chapter:***

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of



sickness or authorised leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(3) or a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
- (ii) two hundred and forty days, in any other case;*

(emphasis supplied)

20. It is well-settled that the burden to prove that the workman was in continuous employment of 240 days with the management is on the workman herself. This principle was reiterated by the Hon'ble Supreme Court in the landmark judgement of ***R.M. Yellatti v. Asstt. Executive Engineer***, (2006) 1 SCC 106; the relevant paragraph is extracted below:

“17. Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this



Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case.”

(emphasis supplied)



21. These principles were reiterated by the Hon'ble Supreme Court in *Krishna Bhagya Jala Nigam Ltd. v. Mohd. Rafi*, (2009) 11 SCC 522, and the law on this subject was traced as under in paragraphs 8 to 10:

“8. In *Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan* [(2004) 8 SCC 161] the position was again reiterated in para 6 as follows : (SCC p. 163)

*‘6. It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked up to 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in *Range Forest Officer v. S.T. Hadimani* [(2002) 3 SCC 25]. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed.’*

9. In *Municipal Corpn., Faridabad v. Siri Niwas* [(2004) 8 SCC 195] it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment. In *M.P. Electricity Board v. Hariram* [(2004) 8 SCC 246] the position



was again reiterated in para 11 as follows : (SCC p. 250)

'11. The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in Municipal Corpn., Faridabad v. Siri Niwas [(2004) 8 SCC 195] wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the non-production of certain relevant documents. This is what this Court had to say in that regard : (SCC p. 198, para 15)

"15. A court of law even in a case where provisions of the Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may



be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent.”

*10. In **RBI v. S. Mani** [(2005) 5 SCC 100] a three-Judge Bench of this Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. The Tribunal's view that the burden was on the employer was held to be erroneous. [...]*

(emphasis supplied)

22. In light of the law laid down by the Hon'ble Supreme Court, the initial question to be examined is whether the petitioner discharged her burden of proving that she was in continuous employment for at least 240 days in the year preceding her date of termination.

23. The Ld. Labour Court observed that the petitioner had categorically stated during her cross examination that she was not in possession of any document to show that she was employed with the management prior to 29th November, 2012 (which is the date on which she commenced her service with the respondent management according to the respondent). Ld. Labour Court noted that the petitioner had failed to examine any of her co-workers in support of her claim that she was been working with the respondent management from 10, December, 2011 and not from 29th November, 2012. Furthermore, the petitioner in her cross examination before the Ld. Labour Court as well as in the FIR has admitted the factum of being paid according to entries made in her



diary which reveal that she was being paid wages on a per piece basis and was not being paid a monthly salary.

24. The petitioner in her cross-examination admitted that she was not in possession of any document to reflect that was working with the respondent management prior to 29th November, 2011 (the date of which the respondent management submits that the petitioner's service commenced). To discharge the onus placed on her, the petitioner filed diary entries maintained by her bearing Ex. WW-1/10 revealing that she worked on some dates between 22nd April, 2012 to 18th January, 2013 before the Ld. Labour Court. Respondent's counsel drew this Court's attention to Ex. WW1/MX2, that is, three pages from the petitioner's diary entry for the period between 29th November, 2012 and 18th January, 2013. These pages also form part of Ex. WW-1/10 referred to above filed by the petitioner.

25. While petitioner's counsel submits that diary entries for particular dates from 22nd April, 2012 to 18th January, 2013 reflect that the petitioner worked for more than 240 days, counsel for the respondent points towards major discrepancies in the format of entries before and after November, 2012. In particular, respondent's counsel submits that only entries made post November, 2012 are countersigned by management persons, and that entries made prior to November, 2012 appear to be fabricated.

26. This Court has perused the evidence on record. There are substantial discrepancies in the format of the diary entries made pre and post November, 2012, in that, only the latter entries are countersigned by the management persons. Furthermore, even assuming that the entries made prior to November, 2012 are genuine, they do not reflect that the



petitioner was in continuous service with the respondent management for 240 days in the calendar year preceding the date of termination. At best, the diary entries reflect that the petitioner only worked for particular dates between 22nd April, 2012 and 18th January, 2013, which amount to approximately 70-80 days of intermittent service and on those particular dates she was paid according to the number of garment pieces checked by her.

27. Furthermore, although the petitioner in her statement of claim submits that she was paid a monthly salary of Rs. 7, 000/- by the respondent management, in her cross examination before the Ld. Labour Court, as well as in her cross examination in the FIR, she admitted that she was paid according to entries being made in the diary. Therefore, it appears that the petitioner was being paid on a per piece basis, and was working for the respondent management as and when she was called upon to so. The petitioner failed to lead any evidence, such as a salary slip, to show that she was paid a monthly salary.

28. This Court is cognizant of the fact that in cases involving daily wage workers, the workers are often not in possession of any documentation reflecting the nature and duration of duties performed by them. However, no attempt was made by the petitioner to summon the wage register/muster roll etc. that may be in possession of the respondent management before the Ld. Labour Court. Additionally, as observed by the Ld. Labour Court, none of the petitioner's co-workers have been examined by the petitioner. This Court is constrained to hold that a self-serving statement is inadequate to discharge the onus of proving that the worker was in continuous service of 240 days in the year preceding the date of termination.



29. In light of the aforesaid, I am of the considered opinion that, as the petitioner is unable to prove that she was in continuous service of 240 days in the year preceding her date of termination, she cannot invoke the benefit of Section 25F of the Act. Therefore, no further discussion on the issue of whether the petitioner was illegally terminated is necessary in the present case.

30. Notwithstanding the above, it is relevant to add, on the issue of abandonment of services/illegal termination, that the petitioner has made several self-contradicting statements in this regard as well. In her petition before this Court, as well as the FIR, she states that she visited the respondent management on multiple occasions after her alleged termination on 18th January, 2013 for collecting her dues. However, these assertions are conspicuously absent from the statement of claim filed before the Ld. Labour Court, wherein the petitioner has only made a bald assertion of having visited the respondent management 'regularly' for reinstatement. What drew the attention of this Court was the statement made by the petitioner during her cross examination before the Ld. Labour Court. On being pointedly asked whether she visited the respondent management after 18th January, 2013, the petitioner admitted to never having visited the respondent management after 18th January, 2013. Furthermore, as observed by the Ld. Labour Court, a perusal of the FIR reflects that the petitioner herself communicated her desire to abandon service to the owner, Praveen Jain, on 18th January, 2013. Therefore, it appears that the petitioner, intended to, and did in fact, abandon the services of the respondent management.

31. Notably, respondent's counsel has also directed our attention towards judgment dated 11th March, 2016 passed by the Ld. Mahila



Court, East District, Karkardoma Courts, Delhi in the FIR, whereby Rachit, the nephew of the management owner, has been acquitted. As regards her allegation of sexual harassment, needless to say she can exercise her rights and remedies in accordance with law.

32. In view of the above discussion, it cannot be said that the findings of the Ld. Labour Court suffer from any inherent illegality, jurisdictional error, or perversity, so as to justify interference by this Court, in exercise of the limited jurisdiction conferred under Article 226 of the Constitution of India, 1950 in labour matters. I find no reason to differ with the finding of the Ld. Labour Court, insofar as it held that the petitioner was unable to discharge the initial burden of proving that she was in continuous service for 240 days in the year preceding the date of her alleged termination. The impugned award is, therefore, upheld.

33. Accordingly, the present Writ Petition is dismissed, along with applications, if any.

(ANISH DAYAL)
JUDGE

DECEMBER 11, 2023/RK