

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 5762 of 2017

**Sambhu Nath Das
Versus
The State of West Bengal & Ors.**

For the petitioner : Mr. Nayan Rakshit
Heard on : 9th January, 2024
Judgment on : **9th January, 2024.**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the award dated 30th November, 2016, passed by the Learned Second Labour Court, West Bengal.

2. Brief facts are that the petitioner was employed by the respondent no.3 as a driver in the year 2007. It is also the petitioner's case that on the basis of a verbal order, the service of the petitioner was suddenly terminated with effect from 4th July, 2009 without assigning any reasons whatsoever. No charge-sheet was issued. No enquiry was conducted. The petitioner was also not offered retrenchment compensation or any other monetary benefit. At

the time of his purported termination from service, he was receiving Rs.4750/- per month.

3. Challenging the aforesaid wrongful termination, the petitioner stated to have made a representation on 7th July, 2009 demanding reinstatement. Despite the aforesaid representation since, his case was not considered, he had applied before the Labour Directorate, West Bengal, by his communication dated 20th July, 2009. At the instance of the petitioner, a conciliation proceeding was initiated. Subsequently, on the basis of an application filed by the petitioner on 8th January, 2010, the Conciliation Officer was pleased to issue a certificate regarding pendency of the conciliation proceeding in "Form S". Being armed with such certificate, the petitioner had filed an application in "Form T" in terms of Rule 12A(4) of the West Bengal Industrial Disputes Rules, 1958, for the Labour Court to take cognizance of non-resolution of the disputes pending before the conciliatory authority for a period of sixty days and consequentially to take note of the written statement filed by the petitioner in respect of the Industrial Disputes initiated by him under Section 10(1B)(d) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "said Act").

4. Records reveal that the respondent no.3 had contested such proceeding by filing written statement and in such written statement it was categorically stated in paragraph 8 thereof that the petitioner had tendered his resignation on 4th July, 2009 which had since been

accepted by the said respondent. The parties indicated above not only contest the proceeding but also lead oral and documentary evidence before the learned Labour Court. Ultimately, by an Award dated 30th November, 2016, which is impugned in the present writ petition, the learned Labour Court was, *inter alia*, pleased to conclude that not only did the petitioner tender his resignation voluntarily but the same was accepted by the respondent no.3. The petitioner had never questioned or challenged such letter of resignation. In the aforesaid facts, the Labour Court held that the petitioner had failed to prove his case of being terminated from service and accordingly, dismissed the same.

5. Mr. Rakshit, learned advocate representing the petitioner, submits that the purported signature on the letter of resignation is not of the petitioner. The petitioner by leading oral evidence has specifically denied the same to be his signature. Notwithstanding the aforesaid, the learned Labour Court by incorrect appreciation of law and facts has decided that the petitioner has not challenged the said letter of resignation. By placing reliance on Section 67 of the Indian Evidence Act, 1872, it is submitted that the signature of a person signing the document must be proved by the person who had allegedly signed the same. In this case since, the petitioner having come forward and having stated that he had not signed the document, the learned Labour Court ought to have taken cognizance thereof and ought not to have disbelieved the petitioner. He submits

that the Award passed by the learned Labour Court is perverse and this is a fit case where this Court should grant appropriate relief to the petitioner.

6. Heard the learned advocate appearing for the petitioner. The respondents remain unrepresented. In this context, it would be relevant to note that on six previous occasions apart from today, the matter had been called on in the year 2023 i.e., on 4th January, 2023, 1st March, 2023, 8th May, 2023, 30th June, 2023, 20th November, 2023 and 30th November, 2023. In none of the above occasions, the respondent no.3 had appeared. Pursuant to the order dated 20th November, 2023, the records of the case were called for. The records have since arrived. Perused the records of the case and considered the materials on record.

7. Admittedly, the petitioner was an employee of the respondent no.3. It is the petitioner's contention that in course of employment by a verbal order, the respondent no.3, without holding any enquiry had terminated the petitioner with effect from 4th July, 2009. The petitioner claims to have made a representation on 7th July, 2009, *inter alia*, praying for reinstatement. Since his case was not considered, he had initially applied before the Conciliation Officer and subsequently on the basis of a certificate issued by the Conciliation Officer as regards the pendency of the proceedings had filed a case under Section 10(1B)(d) of the said Act, before the learned Second Labour Court, *inter alia*, challenging the order of

termination. The respondent no.3 had contested the proceeding by filing written statement, *inter alia*, contending that the petitioner had tendered his resignation on 4th July, 2009 which was accepted by them on 8th July, 2009.

8. On the basis of the pleadings of the parties, the learned Labour Court was, *inter alia*, pleased to frame the following issues:-

“ I s s u e (s)

1. *Is the written statement filed by the applicant U/s 10(1B)(d) of the Industrial Disputes Act, 1947 (West Bengal State Amendment) maintainable in facts and law?*
2. *Whether the applicant was verbally terminated with effect from 04.07.2009 or is it a case of voluntary resignation?*
3. *To what other relief/reliefs if any is the applicant entitled to as per law and equity? ”*

9. As would appear from the above, there is no whisper in the pleadings filed by the petitioner before the learned Labour Court that he had not tendered his resignation. There is also no challenge to the purported resignation letter dated 4th July, 2009. In course of hearing of the application before the learned Labour Court, the petitioner has, however, led oral evidence and had also disclosed the letter dated 13th July, 2009 written by him, which has been exhibited as Exhibit-A. In course of examination he has, however, claimed on the basis of photocopy of the letter dated 4th July, 2009 being shown to him that the signature appearing thereon does not belong to him.

From the content of the letter dated 13th July, 2009, it would appear that the petitioner had purportedly claimed that he had never submitted any resignation to the personnel officer of the respondent no.3 at any time during his service tenure. Apart from the aforesaid, there is nothing on record to support the challenge to his resignation. The letter dated 13th July, 2009 also has not been referred to in the pleadings. Record further reveals that the learned Labour Court by taking into consideration the case made out by the petitioner while accepting the contention of the respondent no.3 that the petitioner had tendered his resignation had disbelieved the case of the petitioner that the signature appearing thereon was not his. It is pertinent to note that the learned Labour Court had proceeded on the basis that there is no challenge to the letter of resignation, notwithstanding the petitioner being aware with regard to the same. In this context it must be noted that when the letter dated 13th July, 2009 was produced by the petitioner marked as Exhibit-A, it was elementary for the petitioner to challenge the resignation letter. Admittedly, in this case, no challenge has been made by the petitioner as regards the letter of resignation purportedly signed by him. On the contrary, the petitioner's case all along proceeded on the premise that he has been verbally terminated from service. The learned Labour Court had also taken note of the fact that the petitioner had not challenged or denied in the pleadings the said resignation letter. In this context I must note that it was elementary

for the petitioner in case of this nature to challenge the letter of resignation. It is well settled that a fact may be proved through evidence, however, the foundation thereof, must be laid in the pleadings. Admittedly in this case, there is no foundation to challenge the letter of resignation. In the absence of such foundation being laid by the petitioner in the pleadings, a denial by the petitioner during oral testimony as regards his signature appearing on the resignation letter which appears to have been disbelieved by the learned Labour Court cannot be interfered with by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The learned Labour Court on the basis of the materials on record had come to a finding by disbelieving the case made out by the petitioner. This Court cannot substitute its own view with that of the learned Labour Court especially when there is no basis therefor in the pleadings. Further, the findings based on which the conclusion has been arrived at by the learned Labour Court, does not appear to be so unreasonable that no man of ordinary prudence would accept the same.

10. Having regard to the aforesaid, I am of the view that no interference is called for. The petitioner has also not been able to identify any gross illegality or jurisdictional error committed by the learned Labour Court. The writ petition fails and is accordingly dismissed without any order as to costs.

11. Let the original records of this case be returned to the Learned Second Labour Court, West Bengal, forthwith.

12. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

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