



2024:DHC:3119



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

% **Date of order: 3rd April, 2024**

+ **W.P.(C) 5862/2020 & CM APPL. 21176/2020**

NANDINI MOHINDER Petitioner

Through: Mr. Maneesh Gumber, Mr. Tarun
Gumber and Mr. Rohit Khankriyal,
Advocates

versus

SH PRAKASH AND ANR Respondents

Through: Mr. Anubhav Gupta, Advocate for R-
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CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Articles 226 read with 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“(i) Quashing the impugned award dated 11.09.2019 passed by Sh. Atul Kumar Garg, the Learned Presiding Officer, Labour Court No. XVI, Rouse Avenue Courts, New Delhi in LID.NO 43/16 titled as Sh. Prakash Vs M/s Nandini.

(ii) To call trial court records of LID NO. 43/16 from the Labour Court- XVI, Rouse Avenue Courts, New Delhi.

(iii) Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

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2. The relevant facts necessary for the adjudication of the instant petition are as under:

- a. The petitioner's establishment, a proprietorship firm, is engaged in a business of home furnishing, women's accessories, scarfs, etc.
- b. It has been stated by the petitioner that the respondent no. 1 workman joined the petitioner entity on 1st January, 2009 on monthly wages of Rs. 5,440/- and stopped reporting to his duty w.e.f. 13th February, 2009.
- c. Thereafter, the petitioner sent a letter dated 16th February, 2009 and a reminder dated 25th February, 2009 to the respondent workman informing him of his unauthorized absence.
- d. Subsequently, the respondent no. 1 filed a claim petition bearing LID no. 43/2016 before the learned Labour Court alleging illegal termination and seeking reinstatement of his services with full back wages.
- e. In the above said claim petition, the learned Labour Court passed an award dated 11th September, 2019 wherein the workman's termination was held illegal and accordingly, the petitioner was directed to pay a sum of Rs.1,50,000/- to the respondent workman as compensation in lieu of his reinstatement.
- f. Being aggrieved by the impugned award dated 11th



September, 2019, the petitioner has filed the instant petition seeking setting aside of the same.

3. Learned counsel appearing on behalf of the petitioner submitted that the impugned award has been passed without taking into consideration the entire facts and circumstances which makes it liable to be set aside.

4. It is submitted that the learned Labour Court failed to appreciate that the petitioner wrote various letters to the respondent workman asking him the reason for his unauthorized absence and further directed him to join his duty, however, he failed to do so.

5. It is submitted that on 4th March, 2009, the workman visited the petitioner's establishment with a Labour Commissioner wherein the petitioner asked the workman to resume his services, however, the workman failed to do the same.

6. It is submitted that the learned Court below erred by not appreciating the factum that the petitioner in her written statement had categorically mentioned that the respondent workman joined the entity on 1st January, 2009 and stopped reporting to his duty on 13th February, 2009 and in order to prove the same, the petitioner filed the attendance and payment register for the period April, 2008 to March, 2009.

7. It is submitted that in order to get the reliefs under the Industrial Disputes Act, 1947 (hereinafter "the Act"), the respondent workman failed to prove that he had worked with the petitioner management for more than 240 days before the date of alleged illegal termination.

8. It is submitted that the learned Court below erred by not considering



that the respondent workman voluntarily left the service and is illegally making a claim against the petitioner management.

9. It is submitted that the learned Labour Court failed to appreciate that the petitioner had offered the respondent workman to join his duties, however, the respondent workman expressed his intention to not join his duties.

10. It is submitted that the impugned award is arbitrary, erroneous and has been passed without appreciating the settled position of law, therefore, the instant petition be allowed and same may be set aside.

11. *Per Contra*, the learned counsel appearing on behalf of the respondent no. 2 vehemently opposed the instant petition submitting to the effect that the same being devoid of any merits is liable to be dismissed.

12. It is submitted that the petitioner management terminated the workman's services illegally, without following the procedure enshrined under the Act and therefore, the impugned award has been passed in accordance with the law.

13. It is submitted that there is no illegality or infirmity in the impugned award and the same has been passed after taking into consideration the entire facts and circumstances.

14. In view of the aforesaid submissions, the learned counsel for the respondent submitted that the instant petition is without any merit and may be dismissed by this Court.

15. Heard the parties and perused the record.

16. It is the case of the petitioner that the learned Labour Court passed the



impugned award erroneously as it failed to consider that the respondent workman abandoned his services without any authorization and also did not join his duties despite petitioner's request. The petitioner further contends that the workman had not worked for 240 days before the alleged date of termination and therefore, in light of the said circumstances, the impugned award is liable to be set aside.

17. In rival submissions, the respondent whilst refuting the petitioner's case denied all the averments made in the petition submitting to the effect that the petitioner has been unable to make out a case for the interference of this Court and hence, the petition may be dismissed.

18. Therefore, the question before this Court is to decide whether the learned Labour Court rightly decided that the workman was terminated illegally. The relevant extracts of the impugned award is as under:

“...13. Issue no. 1:- Whether the services of the workman have been terminated illegally by the management? & Issue no. 2.- Whether the I workman himself absented from his services w.e.f. 13.02.2009 and abandoned his services since that day? Both these issues are interlinked issues. In issue no. 1, workman is required to prove that his services have been terminated illegally by the management. While in issue no. 2, it is the management who has to prove that workman has abandoned his duty since 13.02.2009. Management admittedly has not sent any letter to workman to join the duty after the workman got joined the duty by the labour inspector on 04.03.2009. Instead of writing the letter to the workman, management has informed the labour department. Labour I department has nothing to do with the information sent by the management. It is only the method of creating of the evidence Ex. WW 1/1A has also nothing when the workman had joined



the duty. It was the workman's case that the management had not given the duty when he had visited the management on 05.03.2009 and instead they were got away by the guard. Moreover, it is a matter of fact that the management had taken the plea that the workman did the work only for two months while the workman relied the document Ex. MW 1/10 and Ex. MW 1/11 whereby the salary of the management on August, 2008 was shown Ex. WW1/11 pertains to the name of the employee who were provided incentives and workman's name is figured in the year 2006. In this regard, the testimony of the management's witness is totally evasive. He did not recollect as to what was the complaint made by Kuldeep Asthana. He did not remember whether it was local police PCR came there. He did not remember whether Kuldeep Asthana had gone to the police station. He did not remember if Shashi Prakash Sh. Umesh and Mar, Bhagat Singh, Prakash and Tarun had given the witness in favour of Kuldeep Asthana. This is the height of evasiveness because whole of the case revolves around the fact that a hot altercation was occurred between Kuldeep Asthana and the management and there was a police complaint and the workman had stated these facts in his claim also and management had terminated the services of the workman as alleged by the workman. Therefore, stating that the workman had left the job of his own from 13.02.2009 is nothing but is only thought. Management had not examined the person to whom with the altercation was occurred with Kuldeep Asthana nor he had produced e person who had signed the Ex. WW 1/10 and Ex. WW 1/11. Mere denial does not mean that the document is forged and fabricated which brought on record pertaining to those years. The plea that the record has been burnt in the fire and report in this regard complaint have been lodged also does not help to the management. Report Ex. WW 1/11 does not mention anything regarding burning of file of the workman. As per the report, it was a minor fire. Nothing has come on record which record has been destroyed. In order to



escape from producing the record, this plea has been taken by the management. Management has relied upon the judgment.W.P. (C) 1014/2012 titled as Kiran Bhandari Vs Dr. CD.P. Abrol Clinic, 2018 SCC Online Del 13068: 2019 LLR 173 which is different from the point herein. There, the workman was not got joined the duty after the intervention of the labour court. While in the present case, labour inspector had got joined he duty of the workman. therefore, workman's plea is more probable that his services have been terminated illegally. Hence, the workman is able to prove that his services have been teeminated illegally and unjustifiably by the management. Hence, the issue no. 1 and 2 stands proved in favour of the workman and against the management as the management has not followed any provision as prescribed under Section 25-F of the Industrial Disputes Act before retrenching the services of the workman.

16. In the instant case, the workman was terminated on 13.02.2009 and it is not believable that he might have remained idle. In such circumstances, I deem it appropriate to grant compensation to the workman instead of reinstatement. Considering the length of the service and the fact that the management has not paid his earned wages, back wages, retrenchment compensation and notice pay, this court has considered it fit to grant a lump sum amount of compensation of Rs. 1,50,000/-. The compensation shall be in lieu of above said benefit. The aforesaid amount shall be paid by the Respondent/Management within two months from the date this Award becomes enforceable, failing which the management shall also pay interest @ 9% per annum on the aforesaid amount from the date of Award till the date of realization....”

19. Perusal of the above extracted paragraphs of the impugned award makes it evident that on the basis of the deposition of witnesses and the



evidence adduced before it, the learned Labour Court concluded that the workman was terminated illegally and therefore, entitled to the compensation.

20. Adverting to the facts of the instant case, the petitioner before this Court has challenged the impugned award on the grounds that are multifold. *First* ground being that the respondent workman did not work for 240 days or more before the date of his termination. *Second* ground being that the respondent workman failed to join his duties despite the petitioner sending a letter to him and the *last* ground being that the respondent abandoned his services.

21. With regard to the first ground, the petitioner's stance is that the workman worked merely for a period of two months and hence, the mandate of working for 240 days or more is not fulfilled.

22. It is observed by this Court that the learned Labour Court relied upon the workman's evidence, *namely*, Ex. WW1/10 and Ex. WW1/11, i.e., the wage registers, pertaining to the names of the petitioner's employees who were provided with salary and other incentives. Whilst relying upon the same, the learned Court held that the respondent workman's name can be ascertained for the year 2007-2008.

23. With regard to the second and last ground raised by the petitioner that the respondent did not join duties despite management's request and that the workman abandoned his job, it is observed that as per the learned Labour Court; admittedly, the management did not send any letter to the workman to join the duty.



24. The petitioner had contended that on 4th March, 2009, the workman visited the petitioner's establishment with a Labour Commissioner when the workman joined his duty and thereafter, as soon as the Labour Commissioner left the premises, the workman also left and never came back. Pursuant to which the petitioner states that several letters were written on its behalf, however, the workman failed to report to his duty.

25. With respect to the above, the learned Labour Court held that instead of writing the letters to the workman, the petitioner informed the Labour Department which is merely a means to create evidence. The learned Court below also observed that the petitioner management has merely denied the above stated exhibits as per which it is evident that the workman had worked for more than 240 days before the termination, and the petitioner management could not produce the person who had signed the said exhibits, therefore, mere denial and stating the said documents as forged and fabricated cannot be taken as a relevant ground against the workman's claim.

26. The law with regard to illegal termination is already settled and as per the same, an employer must provide adequate notice or payment in lieu of notice to employees being terminated. If an employee is terminated without appropriate notice, he is entitled to compensation/reinstatement in accordance with the law. Taking the same into account, the learned Court below was of the view that the management's stance, being evasive, could not be relied upon as the workman's plea that he was terminated illegally was found to be more probable.



27. Further, with regard to the contention of the petitioner that the workman abandoned his services, this Court is of the view that as per the settled legal proposition pertaining to ‘abandonment or relinquishment of service’, the abandonment or relinquishment of service is always a question of intention of the said employee which is usually deduced from the facts and circumstances of the case.

28. The same is a question of fact which is to be determined in the light of peculiar facts of each case. Moreover, it is a well settled position of law that unless the service conditions make special provisions to the contrary, in the case of abandonment of service, an employer has to give notice to the workman calling upon him to resume duties and where he fails to resume duties, the employer must hold an enquiry before terminating services on such ground. In the absence of any such evidence produced by the petitioner, this Court does not find any force in his arguments and therefore, is of the considered view that reasoning given by the learned Labour Court is sufficient, and in accordance with the settled law.

29. The learned Labour Court held that it is hard to believe that having been terminated on 13th February, 2009, the workman is not employed somewhere else and in the absence of any contrary evidence, the learned Court was of the view that reinstatement could not be granted and hence, in light of the judgments of the Hon’ble Supreme Court, it deemed it appropriate to grant compensation in lieu of reinstatement.

30. At this stage, this Court deems it imperative to set out the law with regard to Article 226 of the Constitution of India under which the instant



petition has been filed. It is a settled position of law that in order to invoke the writ jurisdiction of this Court, it has to be proved that the Court below has exceeded or usurped its jurisdiction, or acted illegally; or in contravention to any law, or there is an error on the face of the record.

31. Therefore, taking into account the limited scope of this Court's power under Article 226 of the Constitution of India, this Court is of the considered view that there is no error apparent on the face of the impugned award. There is nothing on record to show that the learned Labour Court has exceeded its jurisdiction, has usurped its jurisdiction, or acted illegally; in contravention to any law.

32. The petitioner has failed to make out a case to show that the learned Court below has acted in an arbitrary manner. The petitioner had sufficient opportunity to lead evidence and the same is apparent from the impugned award. Taking note of the same, the learned Court has rightly held that the services of the workman were terminated illegally and that the petitioner has contravened the provisions of Section 25F of the Act.

33. In light of the above discussions of facts and law, this Court does not find any merit to interfere with the impugned award dated 11th September, 2019 passed in LID No. 43/2016 by the learned Labour Court – XVI/Rouse Avenue Courts, New Delhi and the same is, hereby, upheld.

34. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stand dismissed.



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35. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 3, 2024
gs/ryp/av

Click here to check corrigendum, if any

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