



2024:DHC:654



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

% **Date of order : 23rd January, 2024**

+ **W.P.(C) 976/2024**

BAIRROT INDUSTRIES

..... Petitioner

Through: Mr.Sangram Singh, Mr.Vikash
Kumar, Ms.Ankita Mishra and
Mr.Brajesh Kumar, Advocates

versus

RAMESH KUMAR

..... Respondent

Through: *Nemo*

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 4050/2024 (Exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

W.P.(C) 976/2024 & CM APPL. 4051/2024 (Stay)

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

"i. Call for the records of the suit/case before Court of Mrs. Manisha Tripathy Ld. Presiding Officer Labour Court-III, Rouse Avenue Court Delhi in the matter titled as Ramesh



Kumar Vs M/s Bairrot Industries, bearing L.I.R. no. 2527/2017.

ii. Set aside the impugned judgment dated 14.09.2023 passed by the Court of Mrs. Manisha Tripathy Ld. Presiding Officer Labour Court-Ill, Rouse Avenue Court Delhi in the matter titled as Ramesh Kumar Vs M/s Bairrot Industries, bearing L.I.R. no. 2527/2017.

iii. Stay the impugned judgment dated 14.09.2023 passed by the Court of Mrs. Manisha Tripathy Ld. Presiding Officer Labour Court-Ill, Rouse Avenue Court Delhi in the matter titled as Ramesh Kumar Vs M/s Bairrot Industries, bearing L.I.R. no. 2527/2017.

iv. Allow the Writ petition with costs throughout.

v. Pass any other or further orders as this Hon'ble Court may deem fit and proper in the facts of the case and the interests of justice."

2. The petitioner is an entity doing small-scale business where the respondent workman was employed at the post of Turner since 2013. Before termination in the year 2017, the last drawn salary of the respondent was Rs.12,000 per month.

3. Upon termination, the respondent workman sent a demand notice dated 21st March, 2017, however, the petitioner entity did not reply to the same, leading to filing of the case and thereafter statement of claim before the Assistant labour commissioner.

4. Thereafter, the dispute was referred to the Labour Court for adjudication. While adjudicating the dispute, the learned labour Court heard both the parties and directed the petitioner entity to provide a lump sum compensation of Rs. 80,000 to the respondent workman along with 6% interest per annum from the due date till the payment of the amount.



2024 : DHC : 654



5. Aggrieved by the same, the petitioner entity has preferred the instant petition.
6. Learned counsel appearing on behalf of the petitioner submitted that the impugned order is erroneous as the same is based on surmises, conjectures and passed without application of the judicial mind.
7. It is submitted that the learned labour Court erred in not appreciating that the respondent workman had only filed carbon copies of the demand notice dated 21st March, 2017 and there is no proof of service to the petitioner entity on the Court's record.
8. It is submitted that the learned labour Court failed to appreciate that a settlement deed was signed between the parties at the time the respondent workman left the job on 31st January, 2017.
9. It is also submitted that the petitioner entity had paid the amount agreed between the parties and no other dues accrue against the respondent workman.
10. It is further submitted that the said agreement was also signed by the official appointed by the respondent workman for conciliation and therefore, no further liability arises against the termination of the respondent workman.
11. In view of the foregoing submissions, the learned counsel appearing for the petitioner entity submitted that the present petition may be allowed and reliefs be granted as prayed.
12. Heard the learned counsel for the petitioner and perused the records.
13. The petitioner entity has approached this Court against the impugned order dated 14th September, 2023 passed by the learned Labour Court



thereby directing the petitioner entity to pay a lump sum amount of Rs. 80,000 to the respondent workman for wrongful termination from the petitioner entity.

14. The extracts of statement adjudicated by the learned labor Court in the impugned order are reproduced herein:

"The workman Sh. Ramesh Kumar, raised an industrial dispute regarding termination of his services by the management M/s Bairrot Industries. The appropriate Government on being satisfied regarding the existence of Industrial Dispute between the parties, made a reference for adjudication.

The said reference is as under:- "Whether the services of workman Sh. Ramesh Kumar S/o Late Sh. Sarvan Ram 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?"

2. Notice of reference was issued to the workman, upon which statement of claim was filed by him. Brief facts of the case necessary for adjudication of the present dispute, as alleged by the workman in his statement of claim are as follows:-

Statement of Claim

2.1 The workman was working with the management since January 2011 at the post of Turner on last drawn wages of Rs.12,000/- per month. He performed his duties honestly and diligently and never gave any reason for complaint to the management in any manner.

2.2 The management used to mark his presence in its record and also used to pay him wages through wage register, however, it did not issue any appointment letter, attendance card, leave book, yearly increment, HRA, Pay Slip, CA etc. despite repeated demands by the workman and due to his persistent demands for these legal facilities, the management got annoyed and on 02.02.2017 illegally terminated his services without any rhyme and reason:, without giving any notice or



notice pay and without conducting any domestic inquiry against him, in violation of Section 25F and 250 of the Industrial Disputes Act, 1947 and also withheld earned wages for the month of January 2017.

2.3 Thereafter, the workman filed a complaint before the concerned Assistant Labour Commissioner, upon which Labour Inspector visited the establishment of management and advised the management to reinstate the workman on duty and to pay his unpaid wages, but to no avail. Accordingly, the workman sent a Demand Notice dated 21.03.2017 and despite service, the management neither sent any reply to the said notice nor reinstated him in service. Consequently, he filed his statement of claim before the Assistant Labour Commissioner, yet, the management failed to reinstate him in service. Resultantly, the Conciliation Officer referred the case to the Labour Court for adjudication.

2.4 The workman stated that he neither absented nor abandoned nor resigned from his service nor had taken any full and final payment from the management, rather, he was illegally terminated by the management. Further, despite his best efforts he could not get any job elsewhere and has remained unemployed since illegal termination of his services by the management and is dependent upon his family members for survival. Accordingly, he prayed for reinstatement with full back wages, earned wages for the month of January 2017, continuity of service and all consequential benefits alongwith interest.

3. Notice of statement of claim was sent to the management and it filed its Written Statement contesting claim of the workman.”

15. After referring to the statement of claims filed by the respondent workman, the learned Labour Court adjudicated the dispute on the following issues:

“Issues



6. From the pleadings of the parties, vide order dated 20.07.2019 the following issues were framed:-

- (i). Whether the claimant had worked with the management w.e.f. January 2011 till 02.02.2017 or workman worked with the management for 240 days continuously prior to the termination of his services on dt. 02.02.2017? OPW. (ii). Whether the services of the claimant were terminated illegally or unjustifiably by the management? OPW. (iii). Whether the claimant has abandoned the job on dated 31.01.2017? OPM. (iv). -Relief.”

16. Pursuant to the formulation of the aforesaid issues, the learned Labour Court adjudicated the dispute in the following manner:

“10. My issue wise findings are as under:-

11. -:ISSUE No.1:- (i). Whether the claimant had worked with the management w.e.f. January 2011 till 02.02.2017 or workman worked with the management for 240 days continuously prior to the termination of his services on dt. 02.02.2017? OPW.

11.1 On this issue, it was deposed by the workman that he was working with management as a Turner since January 2011 till the date of termination of his services on 02.02.2017. On the other hand, management witness deposed that the workman was working with it since 21.02.2013 as a Turner and had himself left his job on 31.01.2017. Thus, the date of joining of workman is disputed by the management. Onus to prove his date of joining was upon the workman. However, the workman did not file any document in support of his claim of having joined service of the management in January 2011 except his self serving affidavit. The Apex Court has commented on such affidavit of workman in the case entitled Range Forest Officer



v. S. T. Hadimani (2002) 2 SCC 25 wherein the Apex Court held as follows: -

"3 In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year proceeding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. "

11.2 Thus, it is well settled that a mere self serving affidavit is wholly insufficient to discharge the burden of proof. In the instant case, admittedly workman used to mark his attendance in attendance register and get paid wages against his signatures in wages register. The workman could have taken necessary steps for production of these registers, which could have shown whether he was working for the management since January 2011. However, no steps were taken by the workman for production of these registers which could have established the date of joining of workman in the establishment of management. No explanation was offered either as to why no steps were taken for production of these relevant registers. As such, the workman has failed to establish that he had joined the services of management in January 2011 and on the basis of admission of the management, it is held that the workman has been working with the management since 21.02.2013.

11.3 Now, coming to question as to whether the workman had worked with the management till 02.02.2017, there is a dispute



regarding exact date when workman lastly worked for the management as workman claimed that he was terminated from service on 02.02.2017 whereas management claimed that the workman left its service on his own on 31.01.2017. However, on the basis of admission of the management it is established that the workman had in fact worked with the management at least till 31.01.2017.

11.4 Admittedly the workman has been working with the management since 21.02.2013 and had lastly worked for it till 31.01.2017. Now coming to the question as to whether the workman worked with the management for 240 days continuously prior to the termination of his services, MW-1 in his cross-examination specifically admitted that the workman had worked continuously with the management w.e.f. from 12.12.2015 till 31.01.2017. Thus, the fact that the workman had worked for more than 240 days in the year preceding his termination stands proved.

11.5 The management in its written statement had claimed that the workman was in the habit of leaving job without informing as he had left the job of management firstly on 14.02.2014 and then joined back on 02.06.2014, again left his job on 06.01.2015 and joined back on 02.04.2015 and yet again left his job on 24.10.2015 and then joined back on 12.12.2015 before finally leaving its service on 31.01.2017. Once the fact that the workman has been working with the management since 21.02.2013 and had lastly worked for it till 31.01.2017 was admitted by the management coupled with the fact that admittedly the workman had worked for more than 240 days in the year preceding his alleged termination, onus was upon the management to show that the workman had repeatedly left and then joined back its service. MW-1 in his deposition reiterated the same on oath. However, the management did not produce any document on record to substantiate its plea that the workman had worked for it intermittently leaving his service in between multiple times. The management was in possession of



the best evidence i.e., Attendance Register, Wages Register and Leave Register etc. to substantiate its plea, but the same were not produced for the reasons best known to it. In absence of any supporting evidence, the above said plea of the management that the workman had repeatedly left and rejoined its services or that the service of the workman with the management was not continuous, remains unsubstantiated. Even if, for the sake of the argument, it is presumed that the workman had infact repeatedly left without informing and then resumed his service, then also there is no clarity if the period of absence of workman was treated as leave without pay or break in service for the purposes of service benefits. Therefore, it was absolutely necessary for the management to produce relevant registers to clear the picture, which it miserably failed to do. As such, plea of the management that the workman was not in continuous service of management has remained unsubstantiated.

11.6 Accordingly, this issue is decided in favour of the workman and against the management.

12. As issues no. 2 and 3 are interrelated, both these issues are taken up for discussion together.

13. -:ISSUE No.2 and 3:-

(ii). Whether the services of the claimant were terminated illegally or unjustifiably by the management? OPW.

(iii). Whether the claimant has abandoned the job on dated 31.01.2017? OPM.

13 .1 On these issues, the workman deposed that due to his persistent demands for various legal facilities, the management got annoyed and terminated his services on 02.02.2017 without any rhyme and reason, without giving any notice or notice pay and without conducting any domestic inquiry against him. He further deposed that he neither absented nor abandoned nor resigned from his service nor had taken any full and final payment from the management, rather, his service was illegally terminated by the management in violation of Section 25F and 25G of the Industrial Disputes Act, 1947.



13.2 On the other hand MW-1 deposed that the workman had himself left service of the management after entering into written settlement agreement on 31.01.2017 whereby the workman was paid Rs.46,000/- and after receiving the settlement amount the workman filed this false case in order to extort money from the management. He produced Copy of settlement dated 31.01.2017 Ex.MW1/1 and Copy of cheque dated 01.02.2017 Ex.WW1/M1 in support of the same.

13.3 The workman has admitted his signature on settlement dated 31.01.2017 Ex.MW1/1 and also admitted to have encashed cheque dated 01.02.2017 Ex.WW1/M1. However, from the perusal of Ex.MW1/1 it is clear that the said settlement was limited to payment of due wages upto 31.01.2017, leave allowance for the year 2015-2016 and medical claim of the workman, for which a total sum of Rs.46,000/- (Rs.44,000/- by way of cheque Ex.WW1/M1 and Rs. 2,000/- in cash) was paid to the workman by the management. It is also mentioned that after aforesaid payment, there is no dues left in relation to earned wages, leave allowance and medical claim until 31.01.2017 and all claims or disputes pending before any court or other authority 'in this regard' shall stand cancelled. Settlement dated 31.01.2017 Ex.MW1/1 nowhere mentions anything about leaving of employment by the workman or full and final settlement between the workman and the management and as such on the basis of settlement dated 31.01.2017 Ex.MW1/1, it can not be presumed that same was executed with understanding of a full and final settlement between the parties or that upon its execution, the workman was required or intended to leave his job with the management. Therefore, settlement dated 31.01.2017 Ex.MW1/1 is of no help to the case of the management.

13.4 Now coming to the question of abandonment or illegal termination, deposition of MW-1 in his cross- examination is quite telling in his cross-examination, MW-1 admitted that no appointment letter was issued by the management to the



workman and that apart from -earned leaves, casual leaves and festival leaves, no other legal facilities were provided by the management to the workman. It corroborates the version of the workman that he was not provided with various legal benefits for which he is stated to have been raising his demand to the management.

13.5 Even though MW-1 deposed that service of the workman was not terminated by the management and that the workman had left the service of management on his own on 31.01.2017, he admitted that no letter/ notice was given by the management to the workman to call him back on duty. He claimed that the workman was telephonically asked to join duty but he couldn't disclose the dates when he had called to workman to join duty telephonically. From this testimony of MW-1, it is clear that the workman was not issued any show cause notice or letter by the management calling upon him to rejoin his duty. MW-1 further admitted that in fact the management had removed the name of workman from its rolls after 31.01.2017 without giving any prior letter I information to the workman in this regard and that the management had not conducted any domestic inquiry against the workman. He also admitted that no service compensation amount was paid to the workman by the management.

13.6 Even though the management claimed that the workman had left its service on his own, fact that no letter I notice was issued to the workman or attempt was made by the management to call him back on duty, rather, after payment of outstanding dues of workman towards earned wages, leave allowance and medical claim upto 31.01.2017, the management unilaterally removed his name from its rolls without giving him any notice or notice pay and without paying him service/ retrenchment compensation in complete violation of provisions of the Industrial Disputes Act show that the workman had not abandoned from the service of the management, rather, his services were illegally terminated by the management.



13.7 Issue no.2 and 3 are accordingly decided in favour of the workman and against the management.”

17. Upon perusal of the above cited paragraphs, it is made out that the learned Labour Court relied upon the statement of claims and the cross examination during the course of proceedings to arrive at the conclusions as mentioned in the aforesaid paragraphs.

18. The bare perusal of paragraph 11.5 clarifies that even though the petitioner entity claimed to have maintained the registers of attendance of its employees, it failed to produce the same to substantiate their claim of negligence on part of the respondent workman.

19. In the said paragraph, the learned Labour Court also held that the absence of documents such as wages register, leave register etc tilt the case in favor of the respondent workman as the claim of intermittent leave by the workman was not substantiated by any proof, therefore leading to rejection of petitioner's claim of irregular period of services of the workman.

20. For issue II and III, the learned Labour Court referred to the material on record and the statements made by both the parties during cross examination whereby, the learned Labour Court held that the payment of Rs. 46,000 as made to the workman was restricted to payment of due wages for the work done by the respondent workman.

21. While adjudicating upon the said issues, the learned Labour Court further held that mere settlement of the wages accrued towards the workman does not lead to the presumption that the same is a full and final settlement



and therefore, the said settlement cannot be a basis for non-adjudication of the dispute between the parties.

22. At last, the learned Labour Court also held that the petitioner entity had failed to issue any show cause notice or letter calling upon him to join the services. Even though, the petitioner entity claimed to have telephonically informed the respondent workman, unavailability of any concrete proof regarding the same led to rejection of the said contention, thereby leading to conclusion that the workman was wrongly terminated by the petitioner entity.

23. After dealing with the all the issues, the learned labor decided the dispute in favor of the respondent workman and provided him followings reliefs:

“14.1 . The workman herein has sought the relief of reinstatement with full back wages, earned wages for the month of January 2017, continuity of service and all consequential benefits alongwith interest.

14.2 Admittedly, earned wages for the month of January 2017 was already paid to the workman vide settlement dated 31.01.2017 Ex.MW1/1.

14.3 Now coming to the relief of reinstatement, the law relating to grant of reinstatement and back wage is well settled. Even in cases where termination is held to be illegal, it is not always mandatory to grant reinstatement or full back wages. The Hon'ble Apex Court of India in Employers, Management of Central P & D Inst. Ltd. Vs Union of India & Another, AIR 2005 SC 633 held that it is not always mandatory to order reinstatement after holding the termination illegal and instead compensation-;;can be granted by the court. Similar views were expressed by Hon'ble Delhi High Court in cases titled as



Kishan Swaroop Vs. Project and Equipment Corporation of India Ltd. (2008) ILLJ 1052 Del and Indian Hydraulic Industries Pvt. Ltd V s Krishan Devi and Bhagwati Devi & Others, ILR (2007) I Delhi 219 wherein it was held that in each and every case of illegal and unjustified termination of services, the relief of reinstatement and full back wages is not to be granted automatically by the Labour Court and the relief can be moulded according to the facts and circumstances of each case and the Labour Court can allow compensation to the workman instead of reinstatement and back wages.

14.4 In the instant case, the workman has worked for management for a period of approximately 4 years. There is a long gap of more than. 5 years since his services were terminated by management.

14.5 The workman has pleaded that he has remained unemployed since termination of his services by the management but has neither pleaded nor has led any evidence to show what efforts, if any at all, were made by him to search for employment. Also, in these days of high cost of living, it cannot be presumed that workman would have remained idle for such a long period of more than 5 years. Also, during his cross examination the workman stated that he was not willing to join service of management unconditionally until all his previous dues were cleared. Therefore, it can be presumed that workman must have been working somewhere.

14.6 In totality of the facts and circumstances and in light of the case law cited above, I am of the view that in the present case reinstatement of workman would not be justifiable and ends of justice would be met by granting lump sum compensation to the workman instead of his reinstatement. Considering the length of service of the workman, nature of his duties and all other attendant facts and circumstances, I award a lump sum compensation of Rs.80,000/- (Rs. Eighty Thousand Only) in favour of the workman and against the management, which includes the cost of litigation expenses. The management is



directed to pay the said amount to the workman within a period of one month from the date of publication of the award, failing which the amount shall carry an interest @ 6% p.a. from the date it becomes due till the time it is realized. Ordered accordingly.

15. Reference stands answered in aforesaid terms. Requisite number of copies of this award be sent to the competent authority for necessary compliance, as per rules.”

24. Upon perusal of the aforesaid paragraphs, it is clear that the learned Labour Court had relied upon the settled position of law and then directed the petitioner to give compensation to the respondent workman for wrongful termination.

25. In the said reliefs, the learned Court had deemed it appropriate to not direct reinstatement of the workman, rather only awarded lump sum compensation of Rs. 80,000 to the respondent workman.

26. The relevant paragraphs of both reliefs provided and the issues adjudicated by the learned Labour Court satisfies this Court that the impugned order was passed after due consideration of the law and therefore, there is no illegality apparent in the same.

27. Furthermore, the scope of issuance of writ does not permit this Court to call for records for examination of the evidence in a writ jurisdiction.

28. As held by the Hon'ble Supreme Court and this Court time and again, the scope of the writ jurisdiction conferred to the High Court is well defined where the Courts are bound to issue the writs only if material illegality or irregularity is found in the impugned orders.

29. In the instant case, the perusal and analysis of the issues framed by the



2024:DHC:654



learned Court satisfies this Court that the learned Labour Court had examined the witnesses and evidence of record at length, and held the issues in favor of the respondent workman.

30. Furthermore, the relevant extracts as reproduced above makes is clear that the learned Labour Court had relied upon the settled position of law and applied the principles cited in those cases to the factual matrix of the case at hand.

31. Therefore, this Court is satisfied by the findings and conclusions of the Labour Court and does not deem it appropriate to exercise its jurisdiction conferred under the Article 226/227 of the Constitution of India.

32. In light of the same, the instant petition, being devoid of merits, is dismissed.

33. Pending applications, if any, also stands dismissed.

34. Order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JANUARY 23, 2024
dy/av/db

Click here to check corrigendum, if any