



2024:DHC:4617



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

% **Date of order: 28th May, 2024**

+ **W.P.(C) 5578/2007**

J.B.BODA SURVEYORS LTD. Petitioner

Through: **Mr. Vinay Sabharwal and Mr.
Karunesh Shah, Advocates**

versus

SURESH KUMAR SHARMA & ANR Respondents

Through: **Mr. S. Kumar, Advocate**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner is a company engaged in the business of running surveyors. The respondent no. 1 ('respondent workman' hereinafter) was working in the petitioner entity since the year 1992 and worked with the petitioner till the year 1998.
2. In the year 1998, it is stated by the petitioner that the workman abandoned the services on his own and did not turn up for work after 30th April, 1998 and raised a dispute bearing no. 355/2000 regarding illegal termination which was referred to the learned Labour Court for adjudication.
3. Pursuant to completion of the proceedings, the learned Labour Court passed the award dated 8th September, 2006 ('impugned award' hereinafter),



thereby, allowing the claim of the respondent workman and directing the petitioner to reinstate the workman along with payment of 50% backwages.

4. Aggrieved by the same, the petitioner has preferred the instant petition.

5. Learned counsel appearing on behalf of the petitioner submitted that the learned Labour Court erred in appreciating the factum that the respondent workman had duly admitted that the petitioner had invited him to resume his duties, however, the respondent workman himself failed to report to his duties.

6. It is submitted that the learned Court below erred in observing that the burden to prove non-termination of the workman was on the petitioner whereas the said burden ought to have been on the workman.

7. It is submitted that the learned Labour Court erred in relying upon the report of the Labour Inspector as the said official was never examined by the Court, therefore, the reliance cannot be placed upon the said findings of the labour Inspector.

8. It is submitted that the petitioner never terminated the services of the respondent workman and the learned Court below failed to appreciate that he left the job voluntarily; therefore, the question of retrenchment does not occur.

9. In view of the foregoing submissions, the learned counsel for the petitioner submitted that the present petition may be allowed and reliefs be granted as prayed for.



10. *Per Contra*, learned counsel appearing on behalf of the respondents workman vehemently opposed the present petition submitting to the effect that the same is nothing but a gross abuse of the process of law and therefore, the same is liable to be dismissed.

11. It is submitted that the respondent-workman was working as a clerk in the petitioner entity and was getting the wages below the minimum wages as statutorily prescribed.

12. It is submitted that the respondent-workman had requested for payment of the adequate wages, however, the petitioner did not pay heed to any such request. Furthermore, during inspection, the said factum was duly noted by the Labour Inspector and directions to pay the minimum wages was given by the said official as well.

13. It is submitted that the petitioner repeatedly asked the respondent-workman to resign and upon refusal, his services were terminated without following the due procedure.

14. It is submitted that the respondent-workman tried to re-join the services several times, however, the petitioner did not accede to the said request, therefore, the respondent-workman sent a demand notice dated 1st July, 1998.

15. In view of the foregoing submissions, the learned counsel for the respondent-workman submitted that the present petition, being devoid of any merits, may be dismissed.

16. Heard the learned counsel for the parties and perused the records.



17. It is the case of the petitioner that the learned Labour Court wrongly directed the petitioner to reinstate the respondent-workman when the said workman had voluntarily relinquished his services. In support of their contention, the learned counsel for the petitioner has relied upon the alleged admission on part of the workman, whereby, it is claimed that the respondent himself admitted that he was provided a chance to rejoin the services of the petitioner entity.

18. In rival submissions, the above said contentions have been rebutted by the respondent-workman stating to the effect that the respondent did make attempts to join the petitioner entity, however, he was not allowed to do the same, therefore, the learned Labour Court rightly held the termination to be illegal and awarded reinstatement along with 50% backwages.

19. Therefore, the limited question for adjudication before this Court is whether the impugned award suffers from illegality which merits the interference of this Court.

20. The relevant parts of the impugned award reads as under:

“..4. On the above facts/pleadings, the following issues were framed on 13.08.2003 by my Id. Predecessor :-

1. Whether claimant absented from duty w.e.f. 30.05.1998 and never reported, if so, its effect?

2. As per terms of reference.

5. The claimant examined himself as WW1 and did not lead any other evidence. On the other hand, the management examined Aman Kumar Saxena. The workman WW1 filed his evidence by



way of affidavit duly attested by an Oath Commissioner appointed by the Hon'ble High Court of Delhi reiterating all the averments spelled out in the statement of claim. He also relied upon the carbon copy of the demand notice Ext. WW1/1 stating that it was sent by registered post, A.D card and duly signed by the management are Ext. WW1/2, WW1/3 and WW1/4. He also proved Ext. WW1/5 a report by the Labour Inspector and Ext. WW1/6 copy of the complaint submitted to the Assistant Labour Commissioner, Ext. WW1/7 copy of the statement of claim filed before the Conciliation Officer, Ext. WW1/8 copy of identity card issued to him by the management. He also proved Ext. WW1/9 to WW1/28 copies of management record and other documents. He reiterated that he never absented w.e.f. 30.05.1998 but his services were terminated. He further stated that the he is entitled to reinstatement with continuity of service along with full back wages and other intervening benefits.

6. On the other hand, M.W1, Aman Kumar Saxena, Senior Assistant of the management also tendered his evidence by way of an affidavit attested by Oath Commissioner appointed by Hon'ble High Court of Delhi reiterating all the averments as spelled out in the Written Statement. He also reiterated that the services of the claimant were not terminated by the management and in fact the claimant himself absconded from duty of his own w.e.f. 30.05.1998 and never reported for duty thereafter. He also stated that no demand notice dated 01.07.1998 was received by the management and that A.D card produced by the claimant does not bear signatures of anyone of the management. He further stated that the I. D cards were issued only for the security purpose. He further stated that report by the Labour Inspector is incorrect and fabricated.

7. I have gone through the written submissions filed by the management. Workman A.R did not address any arguments despite repeated opportunities given for that purpose. I have considered the written submissions filed by the management



and carefully perused the evidence brought on record by both the parties.

My findings on the issue are as under:

ISSUE NO. 1.

8. It is not in dispute that there existed relationship of employer and employee between the claimant and the management. It is also not in dispute that the claimant workman had been in the employment of the management for more than 240 days in the year preceding 30th May, 1998 till when he served the management. In the statement of claim, the claimant claimed to be employed as a Clerk with the management on regular basis. However, the management in its Written Statement disputed that stating that he was engaged on temporary casual basis as per the temporary needs and requirements of the management. However, in cross examination of the claimant WW1 Sh. Suresh Kumar Sharma, Senior Assistant of the management itself suggested that he was working as a Clerk (with the management). This goes to show that the claimant was employed as a Clerk with the management. According to the workman, the management terminated his services on 30.05.1998 without any notice, show cause or paying any service compensation and pending dues. The plea of the management is that workman himself absconded from the duty w.e.f. 30.05.1998 and he never reported duty thereafter. The onus is on the management to prove their plea that the workman absconded from w.e.f. 30.05.1998 and never reported for duty thereafter and thereby abandoned employment of management. WW1, Suresh Kumar Sharma has categorically stated that he had served demand notice Ext. WW1/1 on the management vide A.D cards Ext. WW1/2, WW1/3 and WW1/4.

9. In his cross-examination there is only a bare and bald suggestion that he did not serve any demand notice on the



management, therefore the statement of WW1 Suresh Kumar Sharma regarding service of said demand notice vide registered A.D. Cards Ext. WW1/2, WW1/3 and WW1/4 goes unrebutted and unchallenged. MW1, Aman Kumar Saxena in his cross examination admitted that the address of the management on the registered AD cards Ext. WW1/2, WW1/3 and WW1/4 is correct. Since the demand notice is proved to have been properly addressed and despatched, the said demand notice is deemed to have been served on the management. Even otherwise vide unrebutted and unchallenged statement of WW1, Suresh Kumar Sharma, service of the said demand notice is proved beyond any doubt. In the said demand notice the workman had categorically alleged that the management terminated his services w.e.f. 30.05.1998 without any notice, show cause and in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947. The management preferred to remain silent. The management did not rebut those assertions as it did not send any reply to the demand notice Ext. WW1/1. Thereby the management is deemed to have admitted those assertions to be correct. Had the workman absented from duty w.e.f. 30.05.1998 as being claimed by the management, it would have sent suitable reply to that demand notice dated 01.07.1998 rebutting those assertions and asserting that it is the workman who had absented from his duty from 30.05.1998 and not reported for duty thereafter and that in fact his services had not been terminated by the management at any point of time. The management did do so for the reasons best known to them. This goes to show that the plea of the management in that regard is an after thought and is not believable.

10. Besides, MW1, Aman Kumar Saxena in his cross examination admitted that no notice, show cause or charge sheet was served upon the workman. He also admitted that no domestic enquiry was held against the workman. However, told that verbal information were sent at the address of the claimant



through an employee, Satender Chaudhary but he did not remember the date of his visit for that purpose. The said Satender Chaudhary has not been examined by the management to prove their plea nor it was stated by way of any reply to the demand notice Ext. WW1/1. Therefore, the statement of MW1, Aman Kumar Saxena in that regard is not believable. It is not in dispute that for unauthorized absence from duty the management could have initiated the enquiry proceedings by following the provisions of Section 25-F of the Industrial Disputes Act, 1947. Despite that the management did not serve any notice, show cause and charge sheet on the workman nor held any domestic enquiry. Since the management did not follow the provisions of Section 25-F of the Industrial Disputes Act, 1947, it stands proved beyond any doubt that workman did not abscond from duty w.e.f. 30.05.1998 and that his services were terminated by the management illegally and unjustifiably in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 w.e.f. 30.05.1998. Evidence brought on record proves that his services were terminated otherwise than as punishment inflicted by way of disciplinary action and without notice or show-cause. It is also proved on record that he has served the management for more than 240 days in the preceding year when his services were terminated.

11. The termination of services as above has been defined as retrenchment. The case of the claimant is not covered under any exception of the definition of retrenchment u/s 2 (oo) of the LD. Act, 1947. It is settled law that retrenchment of the workman without compliance of provisions of Section 25-F of the I.D. Act, 1947, is ab-initio illegal besides being inoperative and ineffective. Further, it follows that the workman continued to be in service. Therefore, the management has failed to prove that the claimant had absented from duty w.e.f. 30.0.1998. The issue is accordingly decided against the management and in favour of the workman.



ISSUE No.-2 .

12. As held in findings on issue No. 1, the management has failed to prove that the workman had absented from duty w.e.f. 30.05.1998. On the other hand, as per the evidence on record, it is crystal clear that the management had terminated the services of the workman w.e.f. 30.05.1998. As admitted by MWI, Aman Kumar Saxena in his cross examination, no notice, show cause or charge sheet was given to the claimant nor any domestic enquiry was held which are the pre-requisite requirements as laid down under Section 25-F of the Industrial Disputes Act, 1947 before retrenchment of a workman. Since the management did not follow the provisions of Section 25-F of the Industrial Disputes Act, 1947 before terminating his services w.e.f. 30.05.1998, it is proved that the management has terminated services of the workman illegally and unjustifiably and, therefore, he is entitled to reinstatement with continuity of service.

13. As regards the back wages, WWI Suresh Kumar Sharma has deposed that ever since illegal termination of his employment, he could not secure any job despite his best efforts and, therefore, he is entitled to full back wages. The Hon'ble Apex Court in a recent case, namely, M.L. Binjolkar Vs. State of M.P (2005) 6 see 224 has held as under:-

"The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases referred to in this case (listed below) that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view. That being so, it would not be appropriate to interfere with the quantum of 50% fixed by the High Court."



In another case titled Kendriya Vidyalaya Sangathan Vs. S.C. Sharma (2005) 2 SCC 363 Their Lordships has held as under:-

"Initial burden is on the employee and he has to show that he was not gainfully employed. It is thereafter that the employer can bring on record materials to rebut the claim of the employee. In the present case, the employee had neither pleaded nor placed any material in that regard and, therefore, High Court erred in holding that he was entitled to full back wages."

14. In view of the said proposition of law laid down by the Hon'ble High Court onus is on the workman to prove that he is entitled to full back wages. He has not brought on record any cogent evidence to prove that he was not gainfully employed during the relevant period after termination of his services. Therefore, he is not entitled to full back wages. Besides, perusal of the record shows that the matter has been delayed to the extent due to acts or omissions on the part of the workman. The statement of claim was filed on 29.11.2000 although the reference is dated 20.10.2000 with mandate of law as per rule 10 B (1) of the ID. Central Rules 1957 to file the same within 15 days of receipt of the order of reference. Thereafter the workman sought number of adjournments and did not take appropriate steps for service of the management. After taking into account the evidence that has been brought on record by the workman and the fact that the matter got delayed due to omissions on the part of the workman, he is held to be entitled to back wages only @ 50% lastly drawn by him from the date of termination of his services till the date of publication of the award..."

21. Upon perusal of the above reproduced extracts, it is made out that the learned Court below had framed two issues, whereby, in the first issue, the learned Labour Court determined if the respondent-workman voluntarily



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relinquished his services or not, and subsequently, in the second issue, the learned Labour Court adjudicated the terms of reference, i.e., if the services of the workman were terminated illegally or unjustifiably.

22. While adjudicating the first issue, the learned Labour Court first ascertained whether the respondent-workman was employed as a clerk or not, and after answering the same in affirmative, the learned Court held that the respondent-workman had duly served the demand notices for the alleged wrongful termination and the same were not replied by the petitioner.

23. Apart from the said fact, the learned Court also relied upon the testimony of management witness, i.e., MW1 where the petitioner's official admitted to non-issuance of notice, show cause or charge sheet against the respondent-workman.

24. Therefore, the learned Labour Court held that the respondent-workman did not relinquish his services rather he was terminated by the petitioner.

25. Thereafter, the learned Labour Court determined the quantum of compensation and reliefs to be provided to the respondent-workman in light of clear establishment of retrenchment.

26. During the said determination, the learned Labour Court held that the respondent-workman failed to establish that he was not gainfully employed somewhere else, therefore, leading to dismissal of claim of full backwages and the learned Labour Court deemed it appropriate to reinstate the workman along with 50% of the backwages.



27. As per the material on record, the claim of the petitioner regarding voluntary abandonment of the services by the respondent workman cannot be accepted as the testimony of the workman as alleged to be an acceptance of voluntary non-joining of the services has been misconstrued by the petitioner.

28. A plain reading of the said testimony makes it crystal clear that even though the respondent-workman had admitted the factum of him being granted a chance to re-join the services, however, in actuality, he was not allowed to join the services when he actually went to the premises of the petitioner entity.

29. Furthermore, the testimony of the petitioner's own witness, namely Sh. Aman Kumar Saxena depicts that the petitioner entity failed to issue any notice, show cause or chargesheet to the respondent-workman, therefore, establishing the fact that he was wrongly terminated by the petitioner entity.

30. At last, this Court deems it appropriate to reiterate that the jurisdiction of the High Court in matters where Article 226 has been invoked is limited. It is a well settled proposition of law that it is not for the High Courts to constitute itself into an Appellate Court over the decisions passed by the Tribunals/Courts/Authorities below, since, the concerned authority is constituted under special legislations to resolve the disputes of a particular kind.

31. A writ is issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals and such errors would mean where orders are passed by inferior Courts or Tribunals without jurisdiction, or in excess of it,



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or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to the principles of natural justice.

32. Therefore, this Court is of the view that the learned Labour Court rightly adjudicated the dispute and allowed the claim of the respondent workman only after giving due consideration to the settled position of law and thus, the impugned award does not suffer with any illegality.

33. In view of the foregoing discussions on facts as well as the law, this Court does not find any cogent reasons to interfere with the impugned award dated 8th September, 2006 passed by the learned Labour Court, Karkardooma, Delhi in I.D. no. 355/2000, and therefore, the present petition, being devoid of any merit, is dismissed.

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

35. Order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 28, 2024
RK/AV/RYP/GS