



2024:DHC:3779



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

% **Date of order: 16th April, 2024**

+ **W.P.(C) 7245/2008**

P.K. LAMPS SHADE Petitioner

Through: **Ms. Devika Agnihotri, Advocate.**

versus

SUDHANSHU Respondents

Through: **Mr. Mahesh Srivastava and Mr. Vijay
Kumar Sharma, Advocates**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

- “a) Issue a Writ of Certiorari and/or Mandamus or any other appropriate writ, order or direction thereby quashing the award dated 04.03.2008 in ID No. 829/2001 passed by the Ld. Presiding Officer, Labour Court-I, Room No. 50, Karkardooma Courts, Delhi, as being Illegal; and/or*
b) pass such other direction(s) and/or give order(s) as deemed fit and proper in the facts and circumstances of the case.”

2. The petitioner in the present case is a proprietorship firm engaged in the business of fancy electronic lamps. The respondent (‘respondent workman’ hereinafter) was employed with the petitioner as a helper since



1996.

3. It is stated in the petition that the respondent workman resigned from the services in the year 1999 and had received the final payment, however, he filed a claim before the appropriate Government on grounds of wrongful termination.

4. Thereafter, the dispute was referred to the learned Labour Court, whereby, the said dispute was adjudicated along with the claims filed by the other former employees of the petitioner.

5. Pursuant to completion of proceedings, the learned Court below passed a common award dated 4th March, 2008 ('impugned award' hereinafter), thereby, rejecting the claims of all the employees except the respondent herein.

6. Aggrieved by same, the petitioner has filed the instant petition.

7. The learned counsel appearing on behalf of the petitioner submitted that the learned Court below erred in awarding the monetary compensation to the respondent as the respondent workman voluntarily submitted his resignation and received full and final payment from the petitioner management on 24th April, 1999.

8. It is submitted that during his cross examination the respondent admitted his signatures to be present in appointment letter mark X, payment, voucher mark Y, receipt mark Z and final voucher mark Z1 and therefore, the said signatures are testament to the fact that the respondent voluntarily tendered his resignation after getting his full and final payment before leaving the petitioner management.



9. It is further submitted that in document marked as Z1, the petitioner had produced a detailed explanation upon which respondent's payment of Rs.10,972/- after his voluntary resignation was determined.

10. It is further submitted that the Ex- WW1/7 and Ex- 1/9 i.e. the alleged complaint copies against the petitioner management were wrongly relied upon by the learned Court below as the said complaints/document did not contain name or signature of the respondent with the other complainants.

11. It is further submitted that the perversity in the contentions made by the respondent workman is evident from the fact that the demand letter dated 17th November, 2000 was issued before the termination which allegedly happened on 19th November, 2000.

12. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner seeks that the instant petition may be allowed, and reliefs be granted, as prayed.

13. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the instant petition submitting to the effect that the impugned Award is well reasoned and has been passed after due consideration of the facts, circumstances and evidence.

14. It is submitted that despite working with the petitioner as helper for the past 16 years the petitioner management failed to provide workmen with facilities such as letter of appointment, attendance card, increments, minimum wages, ESI, PF, casual leave, earned leave etc. and the petitioner terminated the service of the workman without issuance of a notice when they raised a demand for such facilities.



15. It is submitted that the petitioner's claim that the respondent tendered a voluntary resignation after getting full and final payment was not accepted by the learned Labour Court as the same was held to be retrenchment in Section 25 (F) of the Industrial Disputes Act, 1947 ('ID Act' hereinafter).

16. It is submitted that in its findings, the learned Labour Court observed that the signatures were obtained by the petitioner from the respondent under duress and force pertaining to which complaints were lodged at a Police Station and Labour office.

17. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondent prayed that the present petition being devoid of any merit, may be dismissed.

18. Heard learned counsels appearing on behalf of the parties and perused the record.

19. It is the case of the petitioner that the present dispute is not a case of retrenchment under section 2(oo) of the Act wherein provisions of Section 25F of the Act were not complied with by the petitioner because the respondent tendered a voluntary resignation and received his full and final payment before leaving.

20. In the rival submission, it is claimed that the respondent workman was terminated without any notice as a reprisal to the demands made by him for his legal rights. It was further alleged that the respondent was forced by the petitioner management to sign on blank papers, vouchers, bills etc, and complaint marked as Ex. WW-1/7 and Ex. WW- 1/9 was lodged.

21. In order to adjudicate the present case, this Court deems it imperative



to analyze the findings of the impugned Award and ascertain the reasoning afforded by it. The relevant paragraphs of the impugned Award are reproduced below:

“...18. The next claimant who has adduced, evidence is Sudhanshu, the management has admitted that he was in its employment and had served the management for more than 240 days in a year, it is also admitted that he is no longer on rolls of the management, it is the plea of the management, that Sudhanshu had himself tendered his resignation and taken his full and final dues, AR for the management has pointed that WW-3 Sudhanshu has in his cross examination admitted his signatures on appointment letter Mark X, payment voucher Mark Y, receipt Mark Z and full and final voucher Mark Z1 to convass that the workman had voluntarily left the service of the management. On perusal of the statement of the claimant, it becomes apparent that he though admitted his signatures on the vouchers and receipt but clarified that they were taken forcibly by the management, He has categorically denied the suggestion that those signatures were put by him after accepting full and final settlement amount, He has also proved on record complaints made to the police and labour office as Ex, WW- 1/7 and Ex, WW-1/9 wherein it is mentioned that the management had forcibly obtained his sign on blank papers and vouchers on 15,11,2000. In light of this statement of the claimant, coupled with complaints, it was incumbent upon the management to prove the resignation letter and the payment voucher/receipt as per law. Nonetheless, MW-1 even in his own statement did not affirm on oath that these documents were executed in his presence or that any payment was released to the claimant Sudhanshu by him or in his presence. He, in fact did not even exhibit these documents in his Statement. No account' books or other payment register was produced to show that on the said date only such payment of Rs. 10972/- was released to the workmen, Neither the accountant who prepared these vouchers



nor only witness in whose presence payment was mode was tendered in evidence. No details have been given as to on what basis this figure of Rs. 10972/- was arrived at as full and final dues of the claimant. In these circumstances, I am constrained to hold that the management has not been able to prove that the claimant Sudhanshu had voluntarily resigned from his service and received his full and final dues, it is on established foot that Sudhanshu is no longer in service of the management. It is not the case of the management that before cessation of service of Sudhanshu, he was issued notice or that any enquiry was held against him or that his case falls in only of the exceptions of Sec. 2 of I.D. Act. Hence, I hold that the termination of the claimant Sudhanshu amounts to retrenchment U/s 2 (OO) of I.D. Act as it does not fall in only of the exceptions provided under, this section, it is undisputed that the provisions of sec. 25 F of I.D. Act 1947 were not complied with before retrenchment of the workmen. The retrenchment without compliance of Sec. 25 F of I.D. Act is ab initio illegal besides being inoperative and ineffective, it, therefore follows that the workman continued to be in service.

19. It is also settled by Superior Courts that in all cases of retrenchment in violation of sec. 25 F of I.D. Act reinstatement is not the sole answer. It has been held recently by Hon'ble Delhi High Court in M/s Lords Homeopathic Laboratories Vs. Ms. Lissy Unni, 2006 IV AD (Delhi) 739', citing number of other Judgments passed by Hon'ble Supreme Court and Delhi High Court that in suitable cases compensation may be awarded In lieu of reinstatement.

20. In another case reported as 'Haryana Urban Development Authority Vs. Om Pat, 2007 LLR 582', Hon'ble Supreme Court held that reinstatement with full back wages should not be granted automatically. In the Instant case, the workman Sudhanshu has pleaded that he remained in the service of the management for 16 years but in cross examination, he admitted his signatures on appointment letter and gave a categorical



reply that he had signed the appointment letter after reading the contents thereof. As per this letter, his date of joining is 01.07.96, hence his total service with the management comes out to be four years and he has been out of service for about 8 years. In view of the nature of the work, which the Claimant was doing with the management, possibility of his working intermittently cannot be ruled out, it is hard to believe that he has been unemployed for all these years, in view of the foregoing reasons and in view of the above detailed discussion, I am of the considered view that a compensation of Rs. 60,000/- (Rs, sixty thousand only) shall be sufficient and adequate in lieu of reinstatement and back wages, I, therefore, hereby award compensation of Rs, 60,000/- (Rs, Sixty thousand only) to the workman, namely, Sudhanshu in lieu of reinstatement, back wages, etc. The management is directed, to pay the said sum of Rs, 60,000/- (Rs, sixty thousand only) to claimant Sudhanshu within two months from the date of publication of award, failing which the workman shall be entitled to interest on that amount @ 8% per annum from the date of publication of award till payment/realization of that amount. The reference quo remaining workers namely Haider Mehto, Dinesh Singh, Asharfi Yadav, Uttam Mehto, Ram Samokhan Yadav, Gulam Ashraj, Manda Ram, Razak Ail, Swami Nath, and Rajender is closed. Hence, they are not entitled to any relief or direction in the present reference.”

22. Upon perusal of the extracts from the impugned Award, it is made out that the learned Court below had allowed the claim of the respondent workman leading to awarding a compensation of Rs.60,000/- to him on the basis of the findings arrived at by the learned Court below.

23. While reaching the said conclusion in case of the respondent workman, the learned Court below recorded that even though the respondent



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workman had signed the voucher and receipts (marked as annexure X, Y, Z), the same were taken forcibly by the petitioner and the same is evident from the copies of the complaint marked as Ex. WW-1/7 and Ex. WW- 1/9.

24. It was observed by the learned Labour Court that onus to prove a view contrary to the one raised by the respondent falls upon the petitioner since Ex. WW-1/7 and Ex. WW- 1/9 proves that the respondent filed complaints with the concerned authorities with respect to getting his signatures on blank papers and voucher forcefully by the petitioner management.

25. Therefore, it becomes imperative for this Court to determine if the said annexures were erroneously not relied upon by the learned Court below. The said documents marked as annexure X, Z and Z1 reads as under:

P. K. LAMP SHADE	
457/53, National Market, Peera Gohi, Delhi-110067	
Voucher No.	Dated 24/8/99
DEBIT	Sl. No. Sudhanshu
	on a/c of full f. final
	settlement
	AMOUNT
	Rs. 10,972/-
	P. 00
	10,972/-
Rupess Ten Thousand Nine Hundred Seventy two Total Rs.	10,972/-
CREDIT	To Cash
	10,972/-
Rupess Ten Thousand Nine Hundred Seventy two Total Rs.	10,972/-
	Manager

RECEIVED with cheques from M/s. P. K. LAMP SHADE
The sum of Rupees Ten Thousand Nine Hundred Seventy two
only paid cash full & final settlement
by Cashier M/s. P. K. LAMP SHADE
Rs. 10,972/-
24/8/99

Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
Signing Date: 10.05.2024
19:49:15

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सूचक क्र. ३३
को. माल. पी. ३ ले. ५ ३०५, ५८७/५३ नै. ३३३, पी. ३ ३३३ दि. ३३-३३
में काम करता हूँ। घण्टे/घण्टा नोटिस दिनांक ३५-०५-६५
विषय में नीचे लिखे अनुसार हिसाब से रहा हूँ।

(क) प्रायः लक का सजित वेलन	र०.....	1600/-
पंदा ई = एस = घाई	र०.....	28.200
फण्ड	र०.....	1572/-
एकवांस	र०.....	
पॉजल छुटियों के बदले वेलन	र०.....	1400/-
नोटिस वेलन	र०.....	2000/-
नौकरी मुआवजा	र०.....	3500/-
ब्रेक्फुटी	र०.....	
बोनस	र०.....	
ग्रान्ट	र०.....	3000/-
	र०.....	10972/-

(कुल हप्ते) दस हप्ते को बहाल रूप में ग्राह्य (बमूल पाये)

यह मेरा बैग है पीकू के लिये है। - ये किसी प्रकार का बैग
नहीं है और ना ही कोई विवाद या पाप है। एवं मेरी प्रविष्टि में पुनः इस क्षण में लोकरों की कोई माँग नहीं होगी।

दिनांक : 24/04/99

मन्त्रालय नं० : कृ.प्र.पञ्च-१२३४५६७८९०१२३४५६७८९०१२३४५६७८९०१२३४५६७८९०

पृष्ठ सं० २

नाम सुधीश
हस्ताक्षर
पूरा स्वामी पता गौरी राजमल्ल
जन्म दिनांक



मार्क/2

रसीद / समझौता

मैं/मैंने सुदीप पुत्र श्री सुदीप निवासी
 रोहतास जिला, हरियाणा ने आज दिनांक
 24/4/99 को उपरोक्त प्रबन्धक दिल्ली से अपने चुकता एवं अन्तिम हिसाब
 में रुपये 10972/- (दस हजार आठ सौ अठ्ठावन रुपये केवल) से नकद वसूल पा लिये हैं। उक्त धनराशि में मेरा आज तक
 का कमाया हुआ अर्जित वेतन नोटिस पे, सर्विस मुआवजा, बेकारी मुआवजा, ओवर टाईम
 मुआवजा, ग्रेज्युटी, आज तक का बोनस का आदि आदि जो भी लागू है, सभी
 सम्मिलित है।

उक्त धनराशि प्राप्त कर लेने के पश्चात् अब मेरा उक्त प्रबन्धकों से किसी भी प्रकार का लेना
 देना अथवा विवाद शेष नहीं रहा है और न ही मैं भविष्य में पुनः स्थापना अथवा नौकरी पर वापिस
 जाने की मांग को उठाऊंगा और मैंने यह रसीद प्रबन्धकों के हक में बिना किसी बहकावे के स्वयं
 अपनी इच्छा से लिख दी है ताकि प्रबन्धकों के पास सनद रहे और समय पर काम आ सकें। इस
 समझौते के द्वारा श्रम कार्यालय अथवा न्यायालय में लम्बित सभी विवाद निरस्त समझे जायेंगे।
 मैं नौकरी अपनी मर्जी से छोड़ रहा हूँ तथा आगे नौकरी करने का इच्छुक नहीं हूँ।

दिल्ली,

दिनांक 24/4/99

ह0 कर्मचारी

1. साक्षी.....

2. साक्षी.....

26. Upon perusal of the said documents, it is made out that the vouchers and other payment documents bear signatures of the respondent, and the documents are dated 24th April, 1999. On the other hand, the impugned order



as well as the counter affidavit of the respondent workman claims that the workman was allegedly terminated in the year 2000.

27. Now coming to the validity of the above said documents, upon perusal of the said documents, it is made out that the contention of the petitioner stands correct and the reliance on the said evidence by the learned Court below is contrary in law as the exhibits attached by the claimant i.e. the respondent herein cannot be relied upon to hold that the signatures on the payment vouchers were obtained forcefully as the complaint does not have any bearing of the respondent workman.

28. Therefore, in the absence of any other document to supplement the contention of forced signatures, the grant of claim in favor of the respondent workman solely on the basis of his deposition cannot be held to be legally tenable as the evidence supplemented to prove the same does not establish the fact that the signatures on the vouchers/receipts were obtained under duress by the petitioner management.

29. Furthermore, as per material on record, the perversity in the impugned award is also evident from the fact that respondent had sent the demand notice even before his alleged termination. Therefore, the findings regarding the alleged termination does not hold water, as records depict a situation contrary to the findings of the Court below.

30. At last, this Court deems it imperative to deal with the last finding of the learned Court below, i.e. failure on part of the petitioner to provide details about how the amount of Rs.10,972/- was arrived as the full and final settlement amount.



31. In this regard, the learned counsel for the petitioner has referred to the Annexure Z1, whereby, the computation and methodology for arriving at the said amount was provided before the learned Court below. The validity of the said contention is proved from the perusal of the annexure Z1 which is reproduced by this Court in the foregoing paragraphs.

32. Therefore, it is clearly established that the said finding of the learned Court below suffers from the perversity, as the material on record clearly provided the details of the breakup of amount termed as the full and final payment.

33. In view of the same, this Court is of the considered opinion that the learned Court below wrongly allowed the claim of the respondent workman and reasons for the same are multifold. *Firstly*, the documents produced as the full and final payment towards the respondent workman are dated 24th April, 1999, whereas the workman has claimed that the alleged termination happened in the year 2000, therefore, the said documents cannot be considered as an afterthought. *Secondly*, the argument of forceful signature as accepted by the learned Court below on the basis of the alleged complaint filed on the same is frivolous as the complaint does not mention the name and signature of the respondent herein. *Thirdly*, the contention regarding non-providing of the breakup of the alleged final payment cannot be accepted as the annexure Z1 as reproduced earlier clearly depicts a contradictory fact.

34. In light of the same, this Court is of the view that the impugned award dated 4th March, 2008, with regard to the relief granted to the respondent



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workman is liable to be set aside.

35. Therefore, the instant petition is allowed and the impugned award is set aside.

36. Pending applications, if any, also stands disposed of.

37. Order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

(Judge)

APRIL 16, 2024

rk/av/db

Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
Signing Date: 10.05.2024
19:49:15

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