



2024:DHC:1300



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 1st February, 2024**
+ **W.P.(C) 12841/2018**

RAJU PRADHAN Petitioner
Through: **Mr. Manish Shukla, Mr. Rishabh
Dubey and Mr. Aditya Shukla,**
Advocates

versus

M/S D.P. ELECTRICALS PVT. LTD. Respondents
Through: **Mr. Anil Kumar Hajelay, Advocate**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

*“Issue an appropriate writ or a writ of certiorari quashing the award dated 11.05.2018 passed by the Learned Labour court, Dwarka in Old ID No.354/06(New Id No.663/16);
b) Any other order which Hon'ble Court deems fit and proper in the facts and circumstances and in the interest of Justice.”*

2. The petitioner had been working as Salesman with the Management respondent since July, 2003 and lastly drew a salary of Rs.3500/- per month.



Thereafter, on 1st September 2006, the respondent management allegedly terminated the services of petitioner and did not pay him salary for the period of August, 2006.

3. The petitioner then sent a demand letter on 11th September 2006 through his union to the respondent management for reinstatement of his services and for payment of wages etc. The respondent management did not respond to the said demand letter, pursuant to which the petitioner made a written complaint against the respondent management before the Labour office.

4. Upon intervention of the Labour inspector, the petitioner joined duty on 17th November, 2006 and it is alleged by the petitioner that he was not assigned any work for two days.

5. The respondent management filed reply to the aforesaid written complaint of the petitioner refuting the averments of the petitioners.

6. The learned Labour Court passed an award order dated 11th May 2018 against the petitioner and in favour of the respondent management. Aggrieved by the same, the petitioner has filed the instant petition seeking quashing of the impugned award.

7. Learned counsel appearing on behalf of the petitioner submitted that the learned Labour Court erred in passing the impugned award as it has failed to consider the entire facts and circumstances of the dispute of the petitioner.

8. It is submitted that the impugned award's reasoning is illegal and there is non-application of mind by the learned Court below since it has



ignored the relevant material and the claim of the petitioner has been dismissed on perfunctory conclusions.

9. It is submitted that the learned Labour Court failed to appreciate that the workman/petitioner had worked for 240 days in the year preceding his termination and further that there was violation of Section 25F of the Industrial Disputes Act, 1947 (hereinafter “the Act”). In the instant case, there is no dispute that the petitioner workman had worked for 240 days in the year preceding his termination and hence, there was no compliance of Section 25F of the Act.

10. It is submitted that the learned Labour Court failed to appreciate that the issue pertained to illegal termination of petitioner and non-payment of salary of one month to the petitioner, and the same has come on record in deposition of MW-2, i.e., Sh. Sanjay Bagaria.

11. It is submitted that the learned Labour Court failed to appreciate that once the service of the workman/petitioner was illegally terminated and there was violation of Section 25F of the Act, then the petitioner was entitled to be reinstated with full back wages. The petitioner has relied upon the judgment of Hon'ble Supreme Court of India in *Jasmer Singh vs. State of Haryana and Anr.*, Civil Appeal No. 346/2015 dated 13th January 2015 to contend that non-payment of wages is in violation of the fundamental rights of the petitioner as per the settled principles of law.

12. It is further submitted that the learned Labour Court failed to appreciate that the petitioner had gone to the respondent management to join duties on 17th and 18th November, 2006 but neither any work was assigned



to him, nor his attendance was marked and it is denied that the petitioner himself did not report to his duty.

13. It is submitted that the learned Labour Court has erroneously concluded that the petitioner himself had stopped attending to his duties w.e.f 1st September 2006 and that the management had not illegally or unjustifiably terminated his services.

14. It is submitted that the learned Labour Court has wrongly inferred that the Ex. WW1/A sent by the respondent management to the contained a cheque as well as a letter to join back duty. It is further submitted that the aforesaid exhibit merely contained a blank paper.

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

16. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the instant petition and submitted that the instant petition being devoid of any merits is liable to be dismissed.

17. It is submitted that the impugned award passed by the learned Labour Court is based on the material available on its record and there is no illegality or infirmity therein.

18. It is submitted that the petitioner is not entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India to challenge the finding of fact given by the learned Labour Court.

19. It is further submitted that the learned Labour Court has correctly inferred that the Ex. WW1/A sent by the respondent management to the



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contained a cheque as well as a letter to join back duty.

20. It is submitted that Section 25F of the Act comes into picture only when it is held that a workman has been terminated illegally from services by the management. In the instant petition, the learned Labour Court after proper perusal of the facts and evidence has held that it was the petitioner who himself had stopped attending to his duties w.e.f 1st September, 2006 and accordingly, the management had not illegally or unjustifiably terminated his services as such there was no issue for him to be entitled for reinstatement or for back wages. Therefore, there was no question of applicability of Section 25F of the Act.

21. It is submitted that the learned Labour Court did not dismiss the petitioner's claim for want of proof of relationship of employer – employee but because of the proved fact that the petitioner himself had stopped attending to his duties w.e.f. 1st September 2006.

22. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed and the impugned award may be upheld.

23. The matter was heard at length with arguments advanced by the learned counsels on both sides. This Court has also perused the entire material on record. This Court has duly considered the factual scenario of the matter, judicial pronouncements relied on by the parties and pleadings presented by the learned counsel of the parties.

24. The contention of the petitioner workman is that he has been working with the management since July, 2003 and the management terminated him



from his services on 1st September 2006 and did not give him salary for the entire month of August 2006.

25. The contention of the management is that the workman himself had remained unauthorizedly absent w.e.f. 1st September 2006 and had resumed his duties only on 17th November 2006 upon the intervention of the Labour Officer but thereafter, the workman stopped coming to his duties on his own and so far as, the salary for month of August 2006 is concerned, the management had sent it to workman by way of cheque.

26. The position as to what must be observed by the High Court while exercising an issuance of writ in the form of certiorari can be fairly summed *via* two cardinal principles of law, *firstly*, the High Court does not exercise powers of an appellate authority and it does not review or peruse the evidence upon which the consideration of the inferior Court purports to have based. The writ of certiorari can be issued if an error of law is apparent on the face of the record. *Secondly*, in such cases, the Court has to take into account the circumstances and pass an order in equity and not as an appellate authority. Simply put certiorari is issued for correcting errors of jurisdiction exercised by inferior Courts, for Courts violating principles of natural justice and acting illegally and, the Court issuing such a writ shall act in supervision and not appeal.

27. Before advertng to the adjudication of the instant petition, this Court deems it fit to peruse the impugned award. The relevant extract of the same have been reproduced herein below:

“9. *It is pertinent to discuss that Issue Nos. 1 & 2 would be*



discussed together being interrelated which are as under:-

Issue no. 1

“Whether the claimant has himself stopped attending his duties w.e.f. 01.09.2006, if so, its effect?”

Issue no. 2

“Whether the services of the claimant have been terminated by the management illegally and unjustifiable?”

10. The claimant in support of his case has examined himself as WW1 and adduced his evidence by way of his affidavit Ex.WW1/A, wherein he has also proved on record various documents as EX.WW1/1 to Ex. WW1/8 and has further proved other documents as Ex.WW-1/X2 to EX.WW1/X3. The workman in his affidavit has reiterated whatever he has stated in his claim petition which is not repeated for the sake of brevity.

During his cross examination as conducted on behalf of the management, he has stated that he has no proof to show that he joined the management in July, 2003 and also stated that he has no proof to show that the management had 60-70 employees. The workman has further stated that no deduction of PF or ESI was deducted from his salary and also stated that he was not paid any bonus. He has also admitted that he never made any complaint with ESI / PF or Bonus Authorities against the management and never demanded the same from the management and thereafter, the workman has tried to clarify in the next breath that in the monthly meetings, he and other workers had taken up this issue with the management repeatedly but he could not tell their dates. He has further admitted that he did not mention of the said meetings or assurance of the management to pay PF, bonus and for ESI in his claim petition or in the demand notice or in his affidavit in evidence. He has stated that the management used to pay him conveyance charges while he worked as a 'Salesman'. He has



admitted that "It is correct that during my services, I never made any demand in writing for leave book, salary increase and HRA". He has also stated that the management used to treat different employees differently but he never ever made any complaint to Labour Department in this regard and never made any complaint to police or the management regarding maltreatment by the management. He has denied that the management did not have the minimum number of employees required for ESI, PF and Bonus.

During his further cross examination as conducted on behalf of the management, the workman has admitted that he has no proof to show if he tried to find any job after the alleged termination by the management and did not have copy of any application filed by him for employment with any other concern. He has admitted that the document Ex. WW1/7 does not bear name of the management.

A bare perusal of the document Ex.WW1/7 shows that the same was sent by speed post by the workman to "AVR Enterprises Pvt. Ltd." and not to the management namely M/s D.P. Electricals Pvt. Ltd. It is not understandable as to why the workman had filed the document Ex.WW1/7 which has no concern with the management.

It may also discussed that the workman had filed one envelope Ex.WW1/B and alleged that the management sent him a blank paper in the said envelope and my Ld. Predecessor opened the same during proceedings wherein one blank paper which is Ex.WW1/X1 was found and though, the workman has denied that he himself had kept the blank paper Ex.WW1/X1 in said envelope Ex.WW1/8, however, as per record, the document Ex.WW1/8 is filed by the workman himself and the workman has fairly conceded that the said envelope was opened by him and it was containing a blank paper.



In considered opinion of the court, in the given fact and circumstances no reliance can be placed either of envelope Ex.WW/8 or on blank paper Ex.WW1/X1 as the same is filed by the workman himself after opening the said envelope when he received It and it cannot be said if the said envelope certainly contained a Blank paper.

During his further cross examination, the workman has denied that if the management sent him a cheque for sum of Rs.3,161.30/- towards wages for the month of August, 2006. The workman has stated that he had only received one letter bearing cheque number and the amount but no cheque was enclosed and proved copy of said letter Ex.WW1/X2. Here, it may be discussed that the workman has admitted that he received said letter, however, he admittedly never wrote to the management or made any complaint regarding receiving the said letter without any cheque and hence, adverse inference is to be drawn against the workman.

It may be mentioned here that the issue In hand is "Whether the claimant has himself stopped attending his duties w.e.f. 01.09.2006". As such, the workman has admittedly not shown anything on record that he himself stopped attending to his duties w.e.f. 01.09.2006. The contention of the workman is that he has been working with the management since July -2003 and the management terminated him from his services on 01.09.2006 and did not give him salary for the entire month of August, 2006 and on the other hand, the contention of the management is that the workman himself had remained unauthorizedly absent w.e.f. 01.09.2006 and had resumed his duties only on 17.11.2006 at the intervention of Labour Officer but thereafter the workman stopped coming to his duties on his own and so far as, the salary for month of August 2006 is concerned, the management had sent it to workman by way of cheque. Here it may be discussed that workman had received



the said letter but denied any cheque however, he never made any complaint to anyone which implies that contention of workman that he did not receive the cheque is baseless.

The workman in his further cross examination has admitted that he had gone to the management to join his duties on 17th and 18th September, 2006 but neither any work was assigned to him nor his attendance was marked and denied that he himself did not report for duty on 18.11.2006.

It may be discussed that as per record, the claimant had worked with the management w.e.f. July, 2003 till. 01.09.2006 and since 01.09.2006, he is not in employment of the management any further. It has also remained admitted by the parties that thereafter, on the Intervention of the Labour Officer, the claimant again Joined/ resumed his duties with the management but it was only for one day for 17.11.2006. it has to be seen whether the claimant himself stopped attending his duties w.e.f. 01.09.2006 or the management had terminated his services Illegally or unjustifiably, in which regard as already, the claimant has produced one envelope sent by the management to him as Ex.WW1/8, however, the claimant has stated that it was containing a blank paper but as already discussed earlier, the said envelope was filed by the claimant after he had already opened it when he received it and hence in the given facts and circumstances, it can not be stated if at all the envelope Ex.WW1/8 actually contained a blank paper or there was letter sent by management. It may also be discussed that on receiving the envelope Ex.WW1/8 the claimant has nowhere contended before any authority nor ever wrote to the management that envelope Ex. WW1/8 as sent by the management was containing a blank paper. From the same, it is clear that the management had sent the envelope Ex.WW1/8 to workman and it can not be stated if there was a blank paper or there was intimation by the management to the workman to join his duties again.



Sh. Sanjay Bagaria who is examined by the management has clearly stated that PF and ESI Act were not applicable on the management because number of workers were less and so, the claimant was also not provided PF/ESI facilities and claimant could not show anything to the contrary. He has also stated that no domestic enquiry was conducted by the management against the workman for his absence and the management also sent a letter to the workman to assume his duties vide envelope Ex. WW1/B which aspect has been discussed at length and it may be stated that the possibility that Ex.WW1/8 might have contained letter by management to claimant to Join his duties. Accordingly, In the given facts and circumstances and in view of the above the only reasonable conclusion that can be drawn is that the envelope Ex.WW1/8 contained the letter vide which the management had requested the workman to join his duties and to this effect the testimony of Sh. Sanjay Bagaria has not been rebutted by the claimant despite his lengthy cross examination. Accordingly, in the given facts and circumstances of the case and on the basis of material as placed on record, the only reasonable conclusion that can be drawn is that the claimant himself had stopped attending to his duties w.e.f. 01.09.2006 and accordingly, the management had not illegally, or unjustifiably terminated his services. The issue nos. 1 and 2 are accordingly decided against the Claimant/ Workman and in favour of the management.

11. Issue No. 3 Relief.

The claimant has stated that he remained unemployed after 01.09.2006 and during his cross examination on behalf of the management, he has admitted that he has not filed any document to show that he tried to find another job and also admitted that he does not have copy of any application filed by him for employment in any other concern. He has stated that his family comprises of himself, his wife and his children and



his wife is also not working anywhere and also stated that his monthly expenses are about Rs.3,000/- to Rs.3,500/- per month and he has not taken any loan from any bank.

On the other hand, the management has examined Sh. Taranjeet Singh as MW-3 who has proved the certified copy pertaining to CA No. 102159849 in the name of claimant which is installed at house No. 712, Block B-2, Phase II, Colony, Madanpur Khadar, New Delhi as Ex.MW3/1 and has also brought copy of the latest electricity bill of the said address which is Mark-A.

A bare perusal of document Ex.MW3/1 shows that the same was filed by the claimant mentioning his address & he applied for a new connection of electricity and as per electricity bill which is Mark-A, the electricity bill was also issued on the said address.

The management has also examined Sh. Hit Paul Sethi as MW-4 who has proved the copy of ration card of claimant, Copy of electricity bill. Statement of bank account, copy of invoice dt. 22.06.2016, Copy of sign board as Ex.MW-A to MW- 4/E. During his cross examination on behalf of the claimant, he has stated that he visited house of the claimant Sh. Raju Pradhan as a common man as a customer to confirm address of his shop and on verbal enquiry, the claimant told him that he is the owner of the house. It may be mentioned here that though, MW-4 himself has stated that he has no right to intrude upon the privacy of any person for the purpose of making Investigation and he run the Investigation agency/without authorization of the Government, however, his contention that the claimant met him at his house and told that the said house belonged to him has nowhere been rebutted by the claimant during cross examination of MW-4 and in the given facts and circumstances, it is clear that said house belonged to the claimant. Further, MW4 has also contended that he got some work done from the claimant and paid amount to him which claimant could not rebutt, Further, the contention of MW4 that the claimant runs



his own business under the name and style of M/s Pradhan PVC Doors from his premises at B-2, 853, Punarvas Colony, Madanpur Khadar, New Delhi and he manufactures PVC doors, partitions, windows, cabins etc. in his workshop and has two mobile phones have nowhere been rebutted or challenged or shown to be false by the claimant and the testimony of MW-4 has nowhere been rebutted during lengthy cross examination by the workman.

It may also be discussed that Sh. Vimal Goel, who is examined as MW-5 has testified that the claimant had, Joined M/s Amitex Polymer Pvt. Ltd. On 01.09.2010 and worked till 23.03.2012 has nowhere been shown to be false fabricated by or on behalf of claimant and contention of MW-5 that claimant was paid salary of Rs.15,100/- by the said management has nowhere shown to be false which was paid to him by way of cheque and MW-5 has also proved the attendance and wage register of the claimant Ex.WW5/2 and workman could not show anything to be contrary from which it is revealed that claimant had been working for the aforesaid period..

In view of the totality of the facts and circumstances of case, on the basis of material as placed on record and in view of aforesaid discussion, the claimant is not entitled to any relief and claim petition filed by the claimant is hereby dismissed.

12. A copy of this award be also sent to the Deputy Labour Commissioner, Government of NCT of Delhi of Distt./Area concerned for publication as per rules and judicial file be consigned to Record Room as per rules after compliance of necessary legal formalities.”

28. The learned Labour Court vide the impugned award held that the workman has denied that he was sent a cheque amounting to Rs. 31631.30/-



and further stated that Ex. WW1/8 contained only a blank paper. In this regard, the management, on the contrary, contended that the aforesaid annexure contained a cheque along with the letter written by the management asking the petitioner to join back his duty. It was further held by the learned Labour Court that the petitioner workman never complained regarding receiving a blank paper without any cheque as letter from the respondent management.

29. Hence, an adverse inference is to be drawn against the workman by the learned Labour Court regarding the fact petitioner's contention that that the respondent management merely sent a blank paper to the petitioner and this issue was not raised by the petitioner before any authority or the respondent management.

30. Accordingly, the learned Labour Court held that the aforesaid exhibit contained a cheque amounting to Rs.3161.30/- as well a letter addressed to the petitioner workman to join back his duty.

31. In view of the aforesaid discussion, the learned Labour Court held that the management did not terminate the petitioner illegally. Hence, the issues were decided against the petitioner and in favour of the respondent. Moreover, various evidences were placed on record of the learned Court below which highlights the fact that the petitioner was gainfully employed at other places. Accordingly, the learned Labour Court held that the petitioner is not entitled to any relief.

32. In the instant petition, the burden of proof lies on the petitioner to prove as to why he did not object/take any action against the blank paper



sent by the respondent. Since, the petitioner was not able to discharge the burden of proof hence, the learned Labour Court has correctly drawn adverse inference against the petitioner.

33. Furthermore, the learned Labour Court has perused the various evidence placed on record which highlights the fact that the petitioner was gainfully employed. Hence, the learned Labour Court correctly held that in view of the aforesaid circumstances, the petitioner is not entitled to any relief from the Court.

34. In view of the aforesaid discussions, this Court is of the view that the learned Labour Court has examined the various documents on record as well as heard the various contentions advanced by both the parties and has accordingly, passed a well- reasoned award.

35. The writ of certiorari cannot be issued in the present matter since for the issuance of such a writ, there should be an error apparent on the face of it or goes to the root of the matter. However, no such circumstances are present in the instant petition.

36. The writ jurisdiction is supervisory and the Court exercising it is not to act as an appellate Court. It is well settled that the writ court would not re-appreciate the evidence and substitute its own conclusion of fact for that recorded by the adjudicating body, be it a Court or a Tribunal. A finding of fact, howsoever erroneous, recorded by a Court or a Tribunal cannot be challenged in proceedings for certiorari on the ground that the relevant and material evidence adduced before the Court or the Tribunal was insufficient or inadequate to sustain the impugned finding.



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37. In view of the discussion in the foregoing paragraphs, I do not find any merit in the instant petition and is liable to be dismissed.

38. Accordingly, the instant petition stands dismissed along-with pending applications, if any.

39. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 1, 2024
sv/db/ryp

Click here to check corrigendum, if any