



2025:DHC:5638



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

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Date of Decision: 07.07.2025

+ **W.P.(C) 10066/2024, CM APPL. 41215/2024**

M/S SENTINELS SECURITY PVT. LTD.

.....Petitioner

Through: Mr. Amod Kumar Dalela and Mr.
Pradeep Pandey, Advocates
(M:8802520831).

versus

VINOD KUMAR

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner seeks setting aside of the order dated 31.01.2024 (hereinafter, '*impugned order*') passed by the Presiding Officer, Labour Court-VI, Rouse Avenue Court, New Delhi in LIR No. 1949/2018.

2. In the statement of claim, the workman/respondent claimed to be employed as a gunman with one *M/s Johnson Watch Co.* (management No.1 before the Labour Court), having been outsourced by the petitioner/management No.2 firm. It is pertinent to mention that while the management No.1 did not participate in the Labour Court proceedings and was proceeded ex-parte, the petitioner/management No.2 contested the claim of the respondent/workman before the Labour Court.

3. The workman claimed that he was working since 01.01.2014 with last drawn salary as Rs. 13,500/- per month. He further claimed that

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management No.1 was the true employer and the petitioner/management No.2 was merely a sham contractor and the workman was denied legal facilities like appointment letter, salary slip, attendance card, leave book, identity card, bonus, TA etc. It was stated that on 05.02.2017, the services of workman were illegally terminated without payment of wages for the period of 01.02.2017 to 04.02.2017. The workman sent a demand notice dated 24.05.2017. Moreover, the workman lodged a complaint with the Labour Commissioner who vide order dated 22.09.2017 directed the reinstatement of the workman. However, after attempting to re-join, he was again fired by Sh. *Ramesh Chand*, (MW1) the manager. It was further stated that he was not assigned any work despite showing up and he was also not able to arrange alternative employment. The matter was referred to Labour Court for adjudication vide order dated 20.03.2018. Vide the impugned award, the termination of the services of the workman was held to be illegal and the petitioner/management No.2 was directed to pay lump sum compensation of Rs. 1,00,000/- to the respondent/workman in lieu of his reinstatement.

4. This Court, while issuing notice, vide order dated 23.07.2024 stayed the operation of the impugned award subject to deposit of entire awarded amount. The same stands deposited. As recorded in order dated 07.01.2025, despite the respondent/workman being duly served, neither was there any appearance on his behalf, nor was any counter affidavit filed. At this stage, considering the above, the Court deems it fit to proceed *ex parte*.

5. At the outset, learned counsel for the petitioner states that the employer-employee relationship between the parties is not disputed. However, he contends that the services of workman were not terminated by the management and rather, he voluntarily absented himself from work,



without any notice, w.e.f. 10.03.2017. It is stated that upon the management refusing to employ the workman in the capacity of a Gun Wielding Security Guard instead of his usual role of a regular security guard, due to lack of any post available, the workman abandoned the job. Moreover, it is contended that despite repeated communications, the respondent did not join back his job and there is nothing to suggest that the respondent's services were terminated illegally. In support of his submissions, attention of this Court is drawn to letters dated 19.03.2017, 30.04.2017 and 19.05.2017, statedly sent by the management to the workman, exhorting him to join back on duty. It is lastly submitted that the workman had gainful employment after leaving the job and thus was not entitled to compensation.

6. I have heard learned counsel for the petitioner and gone through the records. The only contentions raised by the petitioner are, *firstly*, that the services of the workman were not terminated but he voluntarily abandoned his job, and *secondly*, that the workman failed to prove his lack of gainful employment after the said termination of his services.

7. Insofar as the question whether workman's services were terminated illegally is concerned, the petitioner, in order to build a case of abandonment, exhibited three letters dated 19.03.2017, 30.04.2017 and 19.05.2017 as Ex-MW-1/6, Ex MW-1/7 and Ex MW-1/8 respectively as proof that they had asked the workman to re-join service. However, the workman denied the receipt of these letters in his cross examination. No effort was made, nor evidence adduced by the management, to prove that the workman actually received these letters. The Labour Court has noted that these letters either don't carry postal receipts, or there is no verification of address of the workman as no question in this regard was put to him during



his examination. The petitioner failed to produce the attendance register to prove the workman's alleged absence from work. MW-1 admitted in his cross examination that no complaint was received against the workman regarding his work and conduct. It is in these circumstances that the Labour Court did not deem it fit to rely upon the said letters as proof of wilful abandonment of service on part of the workman, especially in the absence of any other affirmative evidence to that effect. Since it was the management's stand that the case was one of abandonment and not illegal termination, it ought to have established its case by leading cogent evidence before the Labour Court, which it failed to do.

8. As regards the management's contention that the workman failed to prove that he was unable to secure employment after the termination of his services, it is a settled position in law that once the workman pleads he was not gainfully employed post termination of his service, he cannot be expected to prove the said negative assertion by adducing positive evidence. Thus, in the absence of any contra-material on record, his version has to be accepted. Furthermore, following the principle of '*he who asserts must prove*', in case the management contests the factum of unemployment or asserts gainful employment post termination, it is for the management to specifically plead and prove the same by leading cogent evidence. [Ref: Maharashtra State Road Transport Corporation vs. Mahadeo Krishna Naik, reported as **(2025) 4 SCC 321** and Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya reported as **(2013) 10 SCC 324**]

9. While the Labour Court has observed in the impugned order that the workman could not prove the factum of being employed for such a long period, i.e., since the termination of his services up till the passing of the



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award, once the workman asserted the said fact in his claim and reiterated it during his testimony as well as in his rejoinder, the onus of proof shifted on the management to prove otherwise. However, the management failed to lead any positive evidence to that effect. Upon being confronted on this aspect during the cross-examination, the workman maintained his stand that he remained unemployed and only managed to get irregular work at daily wages. His testimony as to lack of alternative employment post termination of his services remained uncontroverted.

10. In view of the aforesaid facts and legal position, this Court finds no ground to interfere with the impugned award of the Labour Court. Consequently, the present petition is dismissed alongwith pending applications.

11. The amount deposited by the petitioner in pursuance to the order of this Court dated 23.07.2024, alongwith the interest accrued thereupon, be released to the respondent forthwith.

MANOJ KUMAR OHRI
(JUDGE)

JULY 7, 2025/rd