(2014) 03 DEL CK 0001

Delhi High Court

Case No: W.P. (C) 4068/1999

Badshah Singh		APPELLANT
	Vs	
Delhi Water Supply and Others		RESPONDENT

Date of Decision: March 19, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 33(2)(b)

Citation: (2014) 141 FLR 824 : (2014) 2 LLJ 298 : (2014) LLR 461

Hon'ble Judges: V. Kameswar Rao, J

Bench: Single Bench

Advocate: Rajiv Aggarwal, Advocate for the Appellant; Sakshi Popli, Advocate for the Respondent

Judgement

V. Kameswar Rao, J.

The challenge in this writ petition is to the award dated April 30, 1999 of the Industrial Tribunal in I.D. No. 351/1990 whereby the Industrial Tribunal has held that the petitioner is not entitled to any relief. The award was given on an Industrial Dispute referred to the Industrial Tribunal by the appropriate Government with the following terms of reference:

Whether Sh. Badshah Singh has abandoned'' his services or his services have been terminated illegally and/or unjustifiably by the management and if so, to what relief he is entitled and what directions are necessary in this respect.

2. It was the case of the petitioner before the Industrial Tribunal that he was taken in the employment by the respondent with effect from January 01, 1982 as a ''Beldar'' as a daily-rated/casual/muster roll worker while his counterparts doing identical work were being treated as regular employees. His case was that his services were terminated with effect from June 15, 1989 without assigning any reason; that the cause of the termination of his service was that the workman had

declined to work at the residence of K.G. Ratwani, Assistant Engineer-II and S.K. Bhagat, Junior Engineer as a domestic servant. He had further stated that he has sent a demand notice vide communication dated June 30, 1989 and thereafter, dispute was raised before the Conciliation Officer, which was to no avail and the respondent, after terminating his services from muster roll on June 15, 1989 sent a memo dated June 29, 1989, that a departmental enquiry is to be initiated against him for the acts of misconduct and that he submitted his reply dated December 24, 1989 on January 23, 1990 and thereafter, no communication was received by him from the respondent and initiation of any disciplinary proceedings after termination of services was illegal and mala fide. The claim of the petitioner was for his reinstatement with continuity in service.

3. It was the case of the respondent that the reference has been mechanically made without application of mind. It was their case that the real Industrial Dispute has net been brought out as the Court had no jurisdiction to adjudicate upon the dispute. It was their case that the petitioner had stopped attending duties of his own after committing misconduct by snatching log sheets of the pump house and tampering the record. They also state that the petitioner did not file reply to the charge-sheet or memo served upon him and was ultimately removed from muster roll service vide order dated June 28, 1990, and it was also their case that he abandoned with effect from June 16, 1990. The Industrial Tribunal framed only one issue, that was in terms of the reference. The finding of the Industrial Tribunal is as under:

13. From the documents, copies of which are proved by workman himself on record as Ex. WW1/2, WW1/3 and WW1/4, it is clearly made out that the management had been issuing communications including Memo dated 29.6.89 on 4.7.89, and when it could be delivered to the workman, it was sent by registered AD post on 21.7.89 and 27.10.89. From the reply dated 24.12.89 (Ex. WW 1/5), the workman attempted to set up the plea that the management had no authority to serve him any memo or charge-sheet or to take any other action on the alleged charge of misconduct because they had already terminated his services w.e.f. 15.6.1989. As discussed above, since from the document Ex. WW1/1 proved by the workman, it is not established that his services were terminated, therefore, his resumption of his services having been terminated in this case, was not well-founded. It is admitted case of the workman that he did not attend to his duties after 15.6.1989, nor did he reply timely to any of the communication duly sent to him by the management, who ultimately stuck off his name from the rolls on 28.6.90, only vide Ex. WW1/M1:

14. Having thoughtfully considered the material on record, I feel satisfied mar is a case of wilful abandonment of services by the workman, and hence, his termination by the management after exhausting all the legal formalities, cannot be held as illegal or unjustified, in the facts and circumstances of the case. Issue, is decided accordingly against the workman and in favour of the management, and it is held that the workman is not entitled to any relief. Award is passed in terms of the above.

4. It is the submission of Mr. Rajiv Aggarwal, learned counsel appearing for the petitioner that the genesis of the dispute is the petitioner''s refusal to work as a domestic servant in the house of the Assistant Engineer and Junior Engineer. According to him, the services of the petitioner were terminated in terms of a note dated June 15, 1989, which reads thus:

Sh. Badshah Singh should not be allowed for duty at Masjid Moth, Ph-t till further orders. He should report in the office.

Sd/-

A.E.

5.6.89

5. Immediately thereafter, the petitioner had sent a demand notice on June 30, 1989. According to Mr. Rajiv Aggarwal, learned counsel for the petitioner, it was the first communication after his termination which details the reason of his termination La. refusal of work at the residence of A.E.J.E. Since no reply was received to the demand notice, a claim was filed before the Conciliation Officer on July 20, 1989 wherein it was highlighted that he is unemployed since June 15, 1989. He draws my attention to the reply filed by the respondent to the claim before the Conciliation Officer.

6. Mr. Rajiv Aggarwal, learned counsel for the petitioner would further submit that pursuant to the failure of the conciliation proceedings, the matter was referred to the Industrial Tribunal. He would state that the allegation that the petitioner has abandoned his service is totally perverse. He states that the termination dated June 28, 1990 recording that the petitioner has failed to submit any reply within ten days, is baseless inasmuch as the petitioner had received the memo only on 16/19th December, 1989 and submitted the reply on December 24, 1989, which was within the ten days of the receipt of the memo. According to him, the termination effected on June 28, 1990 is illegal on account of the fact that during the pendency of the Industrial Dispute, his services could not have been terminated as by that date, reference has already been made by the appropriate Government to the Industrial Tribunal for adjudication of the dispute, whether the petitioner has abandoned the services or his services have been terminated. He relied upon the Judgment of the Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, in support of his contention, more specially, Paras 13, 14 and 15 of the Judgment to contend that during the pendency of the Industrial Dispute, the service conditions of the petitioner could not have been changed. He would also rely upon the judgment of this Court reported as Anil Kumar Vs. The Presiding Officer, Labour Court No. II and Another, to contend that when the workman has not abandoned his services-and management has not terminated his services, the only consequence is the reinstatement of the workman.

7. Ms. Sakshi Popli, learned counsel appearing for the respondents would submit that the termination order dated June 28, 1990 has never been challenged by the petitioner in any proceedings. According to her, the petitioner himself stopped coming to duty with effect from June 16, 1989 after committing an act of misconduct whereby he snatched the sheets of the log book of the pump house, which is a serious act of misconduct against which, the claimant-petitioner was issued a memo and he had not replied to the same. According to her, it is not the case of the respondent that the services of the petitioner have been terminated in terms of the note dated 15th June, 1989. She would submit that the note which according to the petitioner is a termination letter, is not so and it is an intra-office note, not directed to the petitioner. It is not known as to how, he has come in possession of the note. The note being a termination order is an imagination of the petitioner. She would support the award of the Industrial Tribunal and state that the petitioner is not entitled to any relief.

8. Having considered the rival submissions of the parties, the first and foremost issue that is to be decided is whether the services of the petitioner were actually terminated in terms of the note dated June 15, 1989, it is seen that the note dated June 15, 1989 was only an office note whereby it was directed that the petitioner should not be allowed to report his duties at Masjid Moth till further orders. He was asked to report in the office. A reading of the said note would not show that the services of the petitioner were terminated. In substance, the note only asked him to report to office, which does not mean nor it suggests, that the relationship between the employer-employee has been terminated. The contention of Mr. Rajiv Aggarwal, learned counsel for the petitioner that the reason for termination of the services of the petitioner was that the petitioner was asked to work as a domestic servant, would be of no relevance as it is not a case of the respondent that the services of the petitioner were terminated on 15th June, 1989. I note that the respondent had issued a memo on 29th June, 1989 and called upon the petitioner to reply to the said memo. It appears that the issuance of the said memo has triggered a chain of events inasmuch as the petitioner got issued a demand notice on June 30, 1989 alleging his illegal termination. A letter dated July 21, 1989 was issued to the petitioner, by which, he was served with the memo dated June 29, 1989. Suffice would it be state, this document was filed by the petitioner himself before the Industrial Tribunal. Vide the memo dated June 29, 1989, the petitioner was asked to submit the reply within ten days. Since the petitioner did not reply to the said memo, the reminder dated October 27, 1989 was sent to the petitioner, informing him, no reply to the letter dated July 21, 1989 has been sent by him. The stand of the petitioner that he received the memo only on 16/19th December, 1989, is not correct. Further, I find the reply to the memo said to have been given on December 24, 1989 has been denied by the respondent. In any case, the fact that the petitioner having received the memo much earlier to December 1989 and he failed to file a reply to the said memo, cannot be denied. The reasoning given in the termination

order dated June 28,''1990 is correct that the petitioner had failed to give any reply to the said memo within time. Rather, I find, as per the stand of the petitioner, the reply dated December 24, 1989 was received in the respondent''s office only on January 23, 1990, which is also beyond a period of ten days.

9. Insofar as the contention of Mr. Rajiv Aggarwal that in view of the pendency of the Industrial Dispute, the services of the petitioner could not have been terminated on June 28, 1990 is concerned, I find that the alleged Industrial Dispute raised by the petitioner and referred to by the appropriate Government was no Industrial Dispute in view of the stand taken by the respondent herein. To appreciate the said position, it would be important to highlight the case of the petitioner in raising the alleged Industrial Dispute inasmuch as according to him, his services were terminated on June 15, 1989, without affording him an opportunity. He relied upon the note dated June 15, 1989 which is an intra-office communication meant only for the consumption of the officers whereby direction was given by the Assistant Engineer to his lower functionaries that the petitioner should not be allowed to do duty at Masjid Moth till further orders and he should report to the office. This note even though, not meant for the petitioner, does not suggest that it is an order of termination. Rather, I find, a memo dated June 29, 1989 was issued by the respondent to the petitioner, calling upon him to give his reply. The petitioner did not reply to the same despite reminders on July 21, 1989 and October 27, 1989. The very fact that such a memo was issued, goes on to-suggest the relationship of employee-employer existed between the petitioner and the respondent. Further, I find that even in the reply to the show cause notice given by the petitioner vide his letter dated December 24, 1989, it was his case that the respondent has no authority to serve any memo or charge-sheet. Rather, I find that the petitioner should have said that that if his services have not been terminated, he should be allowed to work and paid wages for the said period. I note, the Industrial Tribunal in paras 11, 12 and 13, which are reproduced hereunder, has concluded that it is not established that the services of the petitioner were terminated and therefore, the assumption of the petitioner that his services have been terminated, was not well-founded.

11. Ld. AR of the workman has placed reliance on the sole document Ex. WW1/1 out of a host of documents'' proved by the workman in his testimony. According to Ex. WW1/1, workman was told not to be allowed to take up duty at Masjid Moth-I. Ld. AR of the workman submitted that this amounted to termination of his services, and Workman did not abandon services as alleged because his service stood terminated by virtue of this order. I have carefully examined this order, which reads as follows:

Shri Badshah Singh should not be allowed for duty at Masjid Moth Pt. I till further orders. He should report in the office.

Sd/-Illegible

15.6.89 AE

12. It is unexplained by the workman how this slip Ex. WW1/1 came into his hands, and to whom it was addressed. He admitted in his cross examination, that it did not bear any despatch number. From this, it is clearly implied that slip Ex. WW1/1 was not meant for the workman as it was not addressed to him. It was sent perhaps to the official Incharge at Masjid Moth Plant I, with further orders that Badshah. Singh, the workman, should be asked to report in the office. By no stretch of reasoning, this letter can be interpreted to mean termination of services of the workman. Without going into the veracity of imputation and charges as made by the management in their written-statement and as are made out from the documents proved by them on record, I feel satisfied that Ex. WW1/1 does not amount to termination of service of the workman in any manner. He took up the plea that since by virtue of this order dated 15.6.89 his service stood terminated, therefore, he was not liable to submit any reply to any of the communications being sent to him by the management, as is made out from Ex. WW1/5 purported to have been made by the workman in response to letter dated 29-6-89 proved on record by the management as Ex. MW1/1. It is dated 29.6.89, and according to workman, it was served upon-him on 19.12.89, and he replied to the same on 24.12.89, vide Ex. WW1/5. The workman has not placed any postal receipt on record, nor has he stated as to how it was sent to the management.

13. From the documents, copies of which are proved by workman himself on record as Ex. WW1/2, WW1/3 and WW1/4, it is clearly made out that the management had been issuing communications including Memo dated 29.6.89 on 4.7.89, and when it could be delivered to the workman, it was sent by registered AD post on 21.7.89 and 27.10.89. From the reply dated 24.12.89 (Ex. WW 1/5), the workman attempted to set up the plea that the management had no authority to serve him any memo or charge-sheet or to take any other action on the alleged charge of mis-conduct because they had already terminated his services w.e.f. 15.6.1989. As discussed above, since from the document Ex. WW1/1 proved by the workman, it is not established that his services were terminated, '' therefore, his resumption of his services having been terminated in this case, was not well-founded. It is admitted case of the workman that he did not attend to his duties after 15.6.1989, nor did he reply timely to any of the communication duly sent to him by the management, who ultimately stuck off his name from the rolls on 28.6.90, only vide Ex. WW1/M1.

10. I agree with the conclusion so arrived at by the Industrial Tribunal. In other words, when, it is not the case of the respondent that his services were terminated which is an imagination of the petitioner based on the note date June 15, 1989, the reference of nun-existent Industrial Dispute would not come in the way of the respondent to take action against the petitioner in terms of the memo dated June 29, 1989. The reliance placed by Mr. Rajiv Aggarwal to paras 13, 14 and 15 of the Judgment of the Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra) Would not be of any help as in that case, the Supreme Court considered the issue of the employer not filing an application u/s 33(2)(b) of the

Industrial Disputes Act, 1947 seeking approval of the Industrial Tribunal for discharge or dismissal of a workman during the pendency of any Industrial Dispute. Since I have held above, there was no dispute at-all between the parties, there was no reason or occasion for the respondent to seek the approval of the Industrial Tribunal where dispute was pending u/s 33(2)(b) of the Act. The conclusion of the Supreme Court in paras 13, 14 and 15 of the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra) have to be read with reference to the issue raised and decided by the Supreme Court in that case. Even otherwise, I find that no such contention was taken by the petitioner before the Industrial Tribunal. In the absence of any such contention, there was no occasion for the Industrial Tribunal to consider the plea as being advanced now on his behalf. Insofar as the judgment relied upon by the learned counsel for the petitioner in the case of Anil Kumar (supra) is concerned, in view of my conclusion above, the ratio of the said judgment would not be applicable in the facts of this case, more particularly, when the services of the petitioner have been terminated by the respondent in terms of the order dated June 28, 1990.

11. That apart, the petitioner has not challenged the order dated June 28, 1990. The services were terminated for the first time only on June 28, 1990 by the express act of the respondent. Even the abandonment is an act of the petitioner for which, me respondent has no role to play. I find that the alleged Industrial Dispute raised by the petitioner which was referred, was no dispute and should nut have been referred at the first instance.

12. Suffice to note that the petitioner has not challenged the order dated June 28, 1990, in the absence of any challenge to the order dated June 28, 1990, the termination of the petitioner having attained finality, I do not think it is fit case where this Court should interfere with the impugned order of the Industrial Tribunal in exercise of jurisdiction under Article 226 of the Constitution.

13. The writ petition is dismissed. The petitioner, however, shall De entitled to the wages for the period between June 15, 1989 to June 28, 1990 when his services were terminated, if not already paid. No costs.