

(2013) 05 DEL CK 0400

Delhi High Court

Case No: Writ Petition (C) 9630 of 2007

The Management R.R.
Foundations Engineer P. Ltd.

APPELLANT

Vs

Pappu and Another

RESPONDENT

Date of Decision: May 14, 2013

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 25, 25F

Citation: (2013) 139 FLR 384 : (2013) LLR 726

Hon'ble Judges: Veena Birbal, J

Bench: Single Bench

Advocate: Anusuya Salwan with Ms. Renuka Arora, for the Appellant; Rama Shankar with Ms. Renu, for the Respondent

Final Decision: Dismissed

Judgement

Veena Birbal, J.

By way of this writ petition challenge has been made to award dated 15.11.2007 passed by the Presiding Officer, Labour Court-II in ID. No. 99/2002 whereby the termination of service of respondents No. 1 and 2 has been held to be illegal and unjustified and a compensation of Rs. 1 lakh has been awarded in favour of respondent No. 1 and Rs. 60,000/- has been awarded to respondent No. 2. Briefly, the factual background is as under:-

An industrial dispute raised by the respondents No. 1 and 2 was referred by Secretary (Labour), Government of NCT of Delhi for adjudication to Labour Court, Delhi vide order dated 9th February, 2002 with the following terms of reference.

Whether Sh. Pappu s/o Sh. Babu Lal and Smt. Gulab Dayee W/o Sh. Pappu have settled their accounts in full and final or their services have been terminated illegally and/or unjustifiably by the management and if so, to what sum of money as

monetary relief along with consequential benefits in terms of existing laws/Govt. Notification and to what directions are necessary in this respect.

2. Pursuant thereto, the respondents No. 1 and 2 had filed a statement of claim before the concerned Labour Court, Delhi stating therein that the respondent No. 1 was employed by the petitioner w.e.f. 1985 as "Electrician" on a monthly salary of Rs. 2,350/-. His wife i.e. respondent No. 2 was employed from 1989 as "Safai Karamchari" on a salary of Rs. 1,500/- p.m. However, they were not given the appointment letter, I-card, minimum wages, bonus, etc. and when they had demanded for the same, the petitioner/management started looking for an excuse to terminate them. They had alleged that on 29.5.2001 when both of them had reported for duty, the management did not give them any duty and compelled them to tender resignation. They protested the same, as a result of which their services were terminated. They were not given any legal dues. They had alleged that their termination was illegal and in violation of provisions of the Industrial Disputes Act, 1948. They had also sent a demand notice demanding their dues. However, petitioner did not reply to the same. They had also approached to conciliation machinery which resulted in failure. They had alleged that from the date of termination they were unemployed and had demanded for reinstatement with continuity of service and back wages.

3. The aforesaid claim was opposed by the petitioner by filing a written statement. Petitioner had alleged that the respondent No. 1 had worked only from 18.1.1998 upto 31.12.2000 and on 31.12.2000 respondent No. 1 had tendered resignation after taking all his dues from the management towards full and final settlement. The petitioner/management had also taken a stand that after resigning, respondent No. 1 had joined Dewan Chand Builders and Contractors at 33-B, Pusa Road, New Delhi. As regards respondent No. 2, the stand of the petitioner was that she never worked with the petitioner at any point of time.

4. Respondents had filed rejoinder wherein they had denied the allegations made by the petitioner/management.

On the pleadings of the parties, following issues were framed:-

(1) To what relief, if any, is the workman entitled against the management as in terms of reference? OPW

(2) Whether workman Pappy has taken his all dues after settlement? OPM.

(3) Whether there is no relationship between the claimant Gulab Dhair and the management? OPM.

5. Both the parties led their evidence. In evidence, respondent No. 1 had filed his affidavit Ex. WW1 and also produced documents Ex. WW1 to Ex. WW10 in support of his claim. The respondent No. 2 had examined herself as WW4 and her affidavit was also exhibited as Ex. WW 1/A and she also relied upon documents Ex. WW1/1 to Ex.

WW1/10 in support of her claim. The respondents also examined two witnesses i.e. Sh. Sewa Ram, WW-2 and Sh. Kanhaiya Lal, WW-3. On behalf of the petitioner, Sh. Jagdish Kumar, MW-1, an employee of the petitioner company had tendered his affidavit as Ex. MW1/A and had produced documents Ex. MW1/1 to Ex. MW1/7. The management also examined Sh. Shyam Lal, an Accountant from Employees Provident Fund as MW2.

6. After considering the evidence and documents on record, the learned Presiding Officer of the Labour Court had passed the impugned award which has been challenged before this court.

7. Learned counsel appearing for petitioner has contended that the respondent no. 1 had tendered her resignation of his own after taking full and final settlement and it is contended that he had filed a false claim. It is contended that respondent no. 2 was never the employee of petitioner. It is contended that their termination is illegal is a perverse finding.

8. On the other hand, learned counsel for the respondent has contended that the findings are based on evidence on record. It is contended that there is no illegality in the impugned order which calls for interference of this court in exercise of its jurisdiction under Article 226 of the Constitution of India.

9. I have heard counsel for the parties and perused the material on record.

10. The stand of the petitioner/management is that respondent no. 1 had resigned from the services of petitioner/management and thereafter had joined M/s. Diwan Chand Builders and Contractors and respondent no. 2 i.e., the wife of respondent no. 1 was never in their employment. The stand of the respondents is that they were illegally terminated and respondent no. 1 has denied having worked with M/s. Diwan Chand Builders and Contractors. Before the Labour Court, respondent no. 1 has given his evidence by way of affidavit Ex. WW1/A wherein he has reiterated his stand taken in his statement of claim. He has denied the suggestion of the petitioner/management in cross-examination that he had resigned from the services of the petitioner. He has denied having received salary from M/s. Diwan Chand by signing vouchers. As per him, he is surviving on "Dhyadi" work of Rs. 40/- - Rs. 50/- per day whenever he gets. In support of their case, respondents have brought two co-workers as witnesses i.e., Sh. Sewa Ram, WW-2 who has filed his affidavit by way of evidence Ex. WW1/B and Sh. Kanhaiya Lal, WW-3 who has filed his affidavit by way of evidence Ex. WW1/C supporting the case of the respondents. Both these witnesses have not been cross-examined by the petitioner/management.

11. Petitioner is relying upon the form for withdrawal of PF by respondent no. 1 vide Ex. MW1/1 from the office of Assistant Provident Commissioner wherein in one of the columns word "resigned" has been written. It is not disputed that the aforesaid form Ex. MW1/1 was forwarded to the Office of Employees Provident Fund by the petitioner/management. No other document substantiating its stand that

respondent no. 1 had resigned on 31st December, 2000 has been produced by the petitioner/management. No document that respondent no. 1 has taken his dues in full and final settlement is proved on record by petitioner/management before the Labour Court.

12. Further the stand of the petitioner/management that respondent no. 1 had resigned on 31.1.2000 and respondent no. 2 was never in their employment stands demolished from the reply Ex. MW-1/X1 which is a reply to the notice of the Labour Union by the petitioner wherein the petitioner/management had taken a stand that both the respondents were working as labourers with the petitioner and as management was not having any work, respondent no. 1 had started working with M/s. Diwan Chand. In these circumstances Ex. MW-1/1 is of no help to petitioner. The Labour Court after considering the documents on record has given the finding as under:-

As already discussed above in my finding on issue no. 3, MW-1 Jagdish during his cross-examination has already admitted that Ex. MW-1/X-1 had been sent by the management to the workers union and as per this letter management has already admitted that since there is no work available for both the workmen with them as on the relevant date, they have been shifted/absorbed with the sister concern of the management i.e., M/s. Diwan Chand. As such also the plea of management that workman Pappu left of his own accord after taking full and final settlement is rendered absolutely a false plea and the documents relied on by the management i.e., EX MW-1/1, EX MW-1/7 are rendered absolutely a contrary to EX MW-1/X1 and are of no help to the case of the management. Since MW-1 has already admitted through EX MW-1/X-1 there was no work available with the management in question and that both the workmen were adjusted/shifted to their sister concern, it is clearly a case of retrenchment as defined u/s. 25 of I.D. Act and since the management has not followed the procedure laid down for retrenchment in accordance with Section 25-F and G, and on the contrary they have taken false defence as regards work Gulab Dayee to the effect that she was not even employee of the management at any point of time and in case of Pappu that to the effect that he had left the services of management of his own accord after taking full and final settlement, it becomes established that both the workmen Pappu and Gulab Dayee were terminated in the most illegal and high handed manner without any notice or notice pay, without following the rules of "first come last go", without pasting any seniority list on the notice board, without sending information to the concerned authorities as u/s. 25-F and G of I.D. Act.

13. Learned counsel for the petitioner/management has also referred to the documents Ex. MW 1/3 to Ex. MW 1/6 i.e., copies of payment vouchers to substantiate its stand that respondent no. 1 had been working with M/s. Diwan Chand. Learned counsel has also relied on Ex. MW 1/7 which is alleged to be a certificate from M/s. Diwan Chand Builders and Contractors to substantiate that

respondent no. 1 had worked with them. Petitioner/management had never produced any witness from M/s. Diwan Chand Builders and Contractors to prove the said documents. Respondent no. 1/workman was never confronted with the aforesaid documents at the time of his cross-examination. The aforesaid documents are not proved in accordance with law, as such, the same are of no help to petitioner/management. In these circumstances, the learned Labour Court has rightly not relied upon these documents.

14. The finding of the Labour Court that respondent no. 1 never resigned from the services of petitioner/management has been arrived at by the Labour Court after appreciating the evidence on record. The finding of the Labour Court that the petitioner has taken a false plea that respondent no. 2 was not in their employment is also based on the documents on record. In view of above discussion, no illegality or perversity is seen in the findings of the Labour Court. Further the Labour Court has only granted compensation of Rs. 1 lac and Rs. 60,000/- to respondent no. 1 and 2 respectively in lieu of reinstatement and back wages. No case for interference is made out.

The petition is dismissed. There is no order as to costs.