

IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT

ROUSE AVENUE COURTS , NEW DELHI

Industrial Dispute No. LIR-7921/2016

INDUSTRIAL DISPUTE BETWEEN :-

Shri Raj Kumar Singh Chauhan S/o Shri Mushi Singh Chauhan,

R/o House Number-319/5, Moonga Nagar,

Karawal Nagar, New Delhi

Through Pragatisheel Mazdoor Sangh (Regd),

I-161, Karampura, New Delhi

.....Workman

VERSUS

Management of M/s Diamond Tradex Company Limited

Plot Number-2, Bank Street Corner, Ajmalkhan Road,

Karol Bagh, New Delhi-110055

.....Management

Date of Institution :05-05-2016

Date of Arguments :07-03-2020 (In court hearing)

Date of Award :17-09-2020 (Through VC)

AWARD

1. The Joint Labour Commissioner (Central District), Government of NCT of Delhi vide its order No.F.24(35)Lab./CD/2016/214, dated 03-05-2016, referred an industrial dispute of present worker with the above mentioned management to the Labour Court with the following terms of reference:-

“Whether the services of Shri Raj KUMar Singh Chauhan S/o Shri Mushi Singh Chauhan have been terminated illegally and/or unjustifiably by the management; and if yes, to what relief is he entitled and what directions are necessary in this

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respect ?”

VERSION OF THE WORKMAN AS PER THE CLAIM:

2. The case of the workman as stated in the statement of claim is that he has been working with the management since June-2009 as a "Security Guard with Revolver" at the monthly salary of Rs.20,000/-. The management did not issue him appointment letter and he was not being paid minimum wages by the management. He used to work sincerely, honestly and his services record was satisfactory. It is stated that earlier the management was running its concern at Plot No:2656, First Floor, Bank Street Corner, Ajmalkhan Road, Karol Bagh New Delhi-110005. The salary to the workman was being disbursed through bank transfer and management has provided him only ESI, PF and Pay slip facilities to workman. Management used to take 12 hours duty from workman but no overtime was ever paid to him. No weekly off was provided to him, however, the workman used to demand such legal facilities from management but all in vain. It is further stated by workman that management marked his presence in his record and used to pay wages to him on the wages register. It is submitted by the workman that the management got annoyed and on 16-10-2015, the management shifted its company at plot No:2, Bank Street Corner, Ajmalkhan Road, Karol Bagh, New Delhi-110005 and when on 17-10-2015 the workman visited at the above address of the management for joining his duty then the management had illegally terminated the workman from his services, without any rhyme or reason, without any notice, show cause notice and without conducting any domestic enquiry against the workman.
3. The workman stated to have filed a complaint before the Assistant Labour Commissioner on 10-11-2015 regarding his illegal termination, on this the Labour Inspector had visited the office of management and requested for the reinstatement of the workman but all in vain and he filed its report in this regard on 17-05-2016. On 21-11-2015, the workman stated to have sent a demand notice to the management through

his union and same was duly stated to have served upon the management but the management did not reply to the same nor reinstated the workman on duty. Thereafter, the workman stated to have filed a statement of claim before the Assistant Labour Commissioner, Pusa , New Delhi but management did not appear there, hence his case has been referred to the labour court. Hence, the present claim. The workman prayed for his reinstatement with full back wages along with all consequential benefits.

VERSION OF THE MANAGEMENT AS PER THE WRITTEN STATEMENT:

4. **The Management** has filed its written statement and denied all the allegations of the workman. It is denied by the management that workman was working with them since June, 2009 or that management did not issue him appointment letter or that workman was not being paid minimum wages. It is stated that workman was working with them only from the year 2013 at the last drawn salary of Rs.20,000/-. It is further denied by management that workman was working honestly & sincerely or that he did not give any chance of complaint to the management. It is submitted that the violent and abusive behavior of the workman has not been conducive for working environment of the management. It is stated that he was told to amend his behavior with the colleagues/staff but the workman after abusing the management and other staffs left the place at his own in order to save himself from any disciplinary proceedings being initiated against him by the management. Management has denied all other contentions of the workman and it is stated that the statement of the claim of the workman is baseless and false. Management prayed for dismissal of the claim of the workman with heavy costs.
5. It is pertinent to mention here that two written statement have been filed on behalf of the management in this case, one was filed on 24-10-2016 and another written statement was filed with same contents because the earlier statement was not signed by the management, however, the contents of the both the written statement are same as

mentioned in order sheet dated 05-12-2016.

6. In his rejoinder the workman has reiterated his stands made in the statement of claim and denied the averments of the management. It is denied by workman that his behaviour was violent and abusive or that management received any complaint against him about his behavior.
7. From the pleadings of the parties, the following issues were framed on 05-12-2016:-

ISSUE No. (1) : Whether claimant himself left the job by absenting w.e.f. 16-10-2015? OPM

ISSUE No.(2) Whether termination of service of the claimant by the management on 17-10-2015 is illegal and unjustifiable ? OPW

ISSUE NO.(3) Relief.

EVIDENCE OF THE WRKMAN:

8. Workman has examined himself as WW1 and filed his evidence by way of affidavit which is exhibited as Ex.WW1/A. In his evidenciary affidavit the workman has reiterated the contents of the statement of claim. WW1 relied upon the documents;
9. Ex.WW1/1 is the carbon copy of complaint to Assistant Labour Commissioner.
 - a. Ex.WW1/2 is original labour inspector report.
 - b. Ex.WW1/3 is copy of demand notice.
 - c. Ex. WW1/4 is original postal receipt.
 - d. Ex.WW1/5 is the claim filed before the Assistant Labour Commissioner.
 - e. Ex. WW1/6 is certificate issued by the management to the workman (Original of the same were seen and returned at the time of recording of evidence of WW1).
 - f. Ex.WW1/7 are the copies of PF receipts (OSR)(Colly 3 pages).
10. The workman has been cross examined by the AR for the management and during his

cross examination WW1 has deposed as under:-

- 11.No other witness was examined by workman and his AR Sh. Ajit Singh has closed his evidence on 28-08-2017.

EVIDENCE OF THE MANAGMEENT:

- 12.The Management has examined MW1-Sh. Vinod Patel S/o Sh. Karsan Bhai Patel, Director of the management, C/o 2885, Hardyan Singh Road, Second Floor, Karol Bagh, New Delhi, who tendered his affidavit in evidence, which is Ex.MW1/A bearing his signature at point A and B. He has been cross examined by Sh. Ajeet Singh, ARW. No other witness has been examined by management nor any other witness was produced by the management, therefore, the management's evidence was closed vide order dated 12-09-2019 and the matter was fixed for final arguments.
- 13.Final arguments were heard in the court on 07-03-2020. Perused the records. My findings on the issues are as under:-

ISSUE No. (1) : Whether claimant himself left the job by absenting w.e.f. 16-10-2015?

OPM

ISSUE No.(2) Whether termination of service of the claimant by the management on 17-10-2015 is illegal and unjustifiable ? OPW

14. Both the issues no.1 & 2 are interconnected thus shall be disposed of together.
15. The management has not denied that the workman-herein was working with it. The witness MW-1 as further admitted that the workman-herein was working with the management with a different address when it was a proprietary concern.
16. The Supreme Court in the case of D.K.Yadav Vs. J.M.A. Industries, 1993 SCC (3) 259 wherein,while holding that the termination is bad as the management did not conduct a domestic enquiry, has held as under:

"9. It is a fundamental rule of law that no decision must be taken which will effect the right of any person without first being informed of the case and be given him/

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her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill and Anr. v. The Chief Election Commissioner and Ors. MANU/SC/0209/1977 : [1978]2SCR272 the Constitution Bench held that 'civil consequences' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edition, page 1487 defined civil rights are such as belong to every citizen of the State or country - they include-rights capable of being enforced or redressed in a civil action -In State of Orissa v. Dr. (miss) Binapani Dei and Ors. (1967)IILLJ266SC this court held that even an administrative, order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case. The evidence in support thereof supplied and must be given fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice.

17. In the present case no procedure has been followed regarding the alleged absenteeism of the workman-herein. Admittedly no enquiry was done by the management-herein. The admission is revealed in the cross-examination of the MW-1 in the following words:

"The workman was appointed by the management in the year 2013, earlier the workman was working in my Proprietorship concern. .. It is correct that I had not issued any warning letter to workman regarding the alleged sleeping of the workman. ...It is correct that I had not sent any letter to workman for calling him on duty. No domestic inquiry was conducted against the workman by the

management. The management had enrolled the name of workman on record till 17-10-2015."

18. The workman has been able to prove his version and remained unshaken during his cross-examination in the following words;

"I am B. A. Pass. I joined the management on 17.06.2009 as Security Guard. My salary at the time of my joining was Rs.11,000/- p.m.Deduction of my PF was started from the year 2012.Earlier I was paid salary in cash but thereafter it was credited in my bank account. After the termination I approached the Union and thereafter I went to Labour Department. ...I do not know the reason for terminating my services by the management. I have not received any notice prior to my termination, from the management. On 17.10.2015 I went to the management at about 11 a.m. All the staff met me there. My services were terminated verbally."

19. The management-herein seems to have completely ignored the principles of natural justice. In the case of Shiv Dayal Soin and Sons vs., The Presiding Officer, Labour Court in LPA 801/2002 decided on 20.12.2007, the Division Bench of the Hon'ble Delhi High Court has held in para 11 thereof which is as follows:-

"However, it is pertinent to note that a mere accusation that the Workers had abandoned their jobs is not enough to accept the said imputation, degree of proof required to establish abandonment of service, is rather strict and the management in this case has failed miserably to discharge the said burden of proof..."

20. Observation of the Hon'ble Supreme Court in the Case of G.T.Lad v. Chemical and Fibres of India Ltd., reported in (1979) 1 SCC 590 throws great deal of light on this aspect, The Court noted:

“.. In the unabridged edition of the Random House Dictionary, the word 'abandon' has been explained as meaning 'to leave completely and word 'abandon' has been explained as meaning 'to leave completely and finally; forsake utterly; to relinquish, renounce; to give up all concern in something'. ...It must be total and under such circumstances as clearly to indicate an absolute relinquishment. The failure to perform the duties pertaining to the office must be with actual imputed intention, on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Temporary absence is not ordinarily sufficient to constitute an 'abandonment of office'.”

21. In Shiv Dayal Soin and Sons (supra) also relied upon in Buckingham and Carnatic Co. vs. Venkatiah AIR 1964 SC 1272 it was observed :

“abandoning or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf and thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case”.

22. In the present case no show cause notice, charge sheet were ever served the workman. The action of the management was invalid / illegal / unjustified and ineffective and therefore the subsequent actions too, had no effect as per law. Thus the action of the management-herein is unjustified and illegal.

23. Thus the ISSUES No.1 & 2 are thus decided in favour of the workman and against the management.

ISSUE NO.(3) Relief.

24. The workman-herein has sought the relief of reinstatement in the service with full back wages along with the continuity of service and all the consequential benefits. The term "reinstatement" has not been elucidated in the Industrial Disputes Act, 1947. The Shorter Oxford English Dictionary, Vol. II, 3rd Edition stated that, the word "re-

instate" means to reinstall or re-establish (a person or thing in a place, station, condition etc.); to restore to its proper and original state; to reinstate afresh and the word "reinstatement means the action of reinstating; re-establishment. "As per Black's Law Dictionary, 6th Edition, "reinstatement" means 'to reinstall, to re-establish, to place again in a former state, condition, or office, to restore to a state or position from which the object or person had been removed'. In cases of wrongful termination of service, reinstatement with continuity and back wages is the normal rule. Held by the Hon'ble Supreme Court in Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324. The concept of reinstatement was also discussed therein: *"17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer."*

25. As far as the “gainful employment” of the workman is concerned he has stated in his affidavit-of-evidence that he is unemployed. The cross-examination of the workman reveals :

“...I am unemployed now a days. My son is working and he is running the family expenses. It is wrong to suggest that I am gainfully employed...”

26. In Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd., (1979 (2) SCC 80). The three judges Bench of the Hon'ble Supreme Court has laid down : *".. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances..."*

27. In the case of Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court[(1980) 4 SCC 443] a three-judge bench of the Supreme Court stated that, "... Plain common-sense dictates that the removal of an order terminating the

services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too..."

28. In *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*[(2013) 10 SCC 324] it was laid down certain principles for the payment of back wages, and unequivocally stated that, "...In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule..."
29. In the present case the management has not been able to show that the workman-herein is gainfully employed elsewhere.
30. **In view of the facts of the case and the case law(s) on the point, the workman Sh. Shri Raj Kumar Singh Chauhan S/o Shri Mushi Singh Chauhan, is found entitled to be reinstated with full back-wages alongwith the consequential relief as per the last drawn wages @ Rs.20,000/- per month w.e.f. 17-10-2015 till date and further as per the rule. The management is directed to reinstate the workman-herein long with full back-wages alongwith the consequential relief as per the last drawn wages @ Rs.20,000/- per month w.e.f. 17.10.2015 till date and further as per the rule.**
31. Reference is answered as per the relief granted. An Award is passed in above terms/directions in favour of the workman. Matter Disposed of Accordingly. A copy of the award be uploaded on the website of RADC. A copy of the same be also delivered to both the parties as well as to the concerned Department through electronic mode or through Dak, if possible. File be consigned to Record Room.
32. Announced as per the advisory / orders of the Hon'ble High Court vide its order/letter No.R-235/RG/DHC/2020 DATED 16-05-2020 and the Amended Protocol

Letter No:24/DJ/RADC.2020 dated 07-05-2020 of Ld. District & Sessions Judge-Cum-Special Judge (PC-Act),CBI, Rouse Avenue District Courts, New Delhi.

Announced through Video Conferencing.

Dated: 17-09-2020

(VEENA RANI)
Presiding Officer Labour Court
Rouse Avenue Courts, New Delhi
Judge Code : DL0271

**IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT
ROUSE AVENUE COURTS , NEW DELHI**

Industrial Dispute No. LIR-7921/2016

INDUSTRIAL DISPUTE BETWEEN :-

Shri Raj Kumar Singh Chauhan

.....Workman

VERSUS

Management of M/s Diamond Tradex Company Limited

.....Management

17-09-2020

Present : Sh.Ajeet Kumar Singh, Authorized representation of workman Through VC.
Ms. Meena Mahajan , AR for management through VC.

Vide my separate detailed AWARD dictated and announced, an award is passed in favour of the workman / claimant Shri Raj Kumar Singh Chauhan S/o Shri Mushi Singh Chauhan. A copy of the award be uploaded on the website of RADC. A copy of the same be also delivered to both the parties as well as to the concerned Department through electronic mode or through Dak, if possible. File be consigned to Record Room.

Announced through videoconferencing.

Dated: 17-09-2020

(VEENA RANI)

Presiding Officer Labour Court

Rouse Avenue Courts, New Delhi

Judge Code : DL0271

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