

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

ROUSE AVENUE COURTS , NEW DELHI

Industrial Dispute No. LIR-7928/2016

INDUSTRIAL DISPUTE BETWEEN :-

Ms. Rashmi Pahwa D/o Sh. Harish Chandra Pahwa

R/o House No.3372, Gali Hari Mandir, Paharganj,

New Delhi-110055

Through Pragatisheel Mazdoor Sangh (Regd),

I-161, Karamplura, New Delhi

.....Worklady/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(34)Lab./CD/2016/209, 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 Ms. Rashmi Pahwa D/o Sh. Harish Chandra Pahwa 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 respect ?”

VERSION OF THE WROK-LADY CLAIMANT AS PER THE CLAIM:

LIR No:7928/2016, Ms. Rashmi Pahwa Vs. M/s Diamond Tradex Company Limited

2. The case of the work lady/workman as stated in the statement of claim is that she has been working with the management since 08-06-2012 as a "Senior Accountant" at the monthly salary of Rs.10,000/-. The management did not issue her appointment letter and she was not being paid minimum wages by the management. She used to work sincerely, honestly and her 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 her 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 her. No weekly off was provided to her, however, the workman used to demand such legal facilities from management but all in vain. It is further stated by workman that management marked her presence in their record and used to pay wages to her 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 28-02-2015 the workman has visited at the above address of the management for joining her 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 23-11-2015 regarding her 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 her 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 her case has been referred to the labour court.

Hence, the present claim. The workman prayed for her reinstatement with full back wages along with all consequential benefits.

VERSION OF THE MANAGMEENT 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 08-06-2012 or that management did not issue her appointment letter or that workman was not being paid minimum wages. It is stated that workman was working with them as "Assistant Accountant" only from the year 2013 at the last drawn salary of Rs.10,500/-. It is further denied by management that they have terminated the services of worklady as alleged by her in the statement of claim. It is stated that she has left the job of management of her own and never joined again and the present claim has been filed only to get undue benefits from the management by blackmailing 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 she has left the job of the management of her own and never approached the management for duty.
7. From the pleadings of the parties, the following issues were framed on 05-12-2016:-
**Issue no. (1) Whether claimant herself left the job by absenting w.e.f. 28-02-2015?
 OPM**
Issue No. (2) Whether termination of service of the claimant by the management on

28-02-2015 is illegal and unjustifiable ? OPW

Issue No.(3) Relief.

EVIDENCE OF THE CLAIMANT:

8. The Worklady has examined herself as WW1 and filed her evidence by way of affidavit which is exhibited as Ex.WW1/A. In her evidenciary affidavit the workman has reiterated the contents of the statement of claim. WW1 relied upon the documents
- a. Ex.WW1/1 is the carbon copy of complaint to Assistant Labour Commissioner.
 - b. Ex.WW1/2 is original labour inspector report.
 - c. Ex.WW1/3 is copy of demand notice.
 - d. Ex. WW1/4 is original postal receipt.
 - e. Ex.WW1/5 is the claim filed before the Assistant Labour Commissioner.
9. The workman has been cross examined by the Sh. Ravi Gopal, AR for the management. No other witness was examined by workman and her AR Sh. Ajit Singh has closed her evidence on 28-08-2017.

Evidence of the management

10. 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.
11. 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. 28-02-2015?

OPM

ISSUE No.(2) Whether termination of service of the claimant by the management on 28-02-

2015 is illegal and unjustifiable ? OPW

12. Both the issues no.1 & 2 are interconnected thus shall be disposed of together.
13. 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.
14. 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/ 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.

15. In the present case the during her cross examination WW1 has deposed as under:-
"I am post-graduate in English. I joined the management on 01.06.2012 as Accounts

Assistant. My salary at the time of my joining was Rs.5,000/- p.m and the last salary was Rs.10,000/- p.m. I have not filed and salary slip on record. My duty were related to accounts work. In the Accounts Department there was one person who was senior to me and one employee was junior to me. There were 18-20 employees working with the management. When I joined the management it was not covered with PF and ESI. However, after my joining the management was covered under PF. I was not provided salary slip, PF and ESI. The contents of my affidavit are true and correct. It is wrong to suggest that contents of para 5 of my affidavit are contradictory to my statement made in the court.My services were terminated when I demanded implement in my salary and I was also misbehaved. I did not make any complaint with the police for mis-behaviour. My services were terminated on 27th or 28th February 2015.... Whatever documents were available with me I have already filed on record...."

16. 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.The workman used to work as a Computer Operator with the management.The management had not provided any legal facilities to the workman. Again said PF and ESIC facility were provided to workman by management, The workman had worked with management till February-2015. It is correct that last day of working of workman was 28-02-2015. It is incorrect to suggest that I had terminated the workman on 28-02-2015. It is incorrect to suggest that the management had not paid the wages for the month of February-2015 to the workman. Vol. It had been paid through cheque. It is correct that I had not filed copy of said cheque or provided cheque number on record. It is correct that I had not sent any letter to workman for calling her on duty. No domestic inquiry was conducted

against the workman by the management. The management had enrolled the name of workman on record till 28-02-2015...."

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

18. 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..."

19. Observation of the Hon'ble Supreme Court in the Case of G.T.Lad v. Chemical and Fibers 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'."

20. 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”.

21. 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.
22. Thus the ISSUES No.1 & 2 are thus decided in favour of the workman and against the management.

ISSUE NO.(3) Relief.

23. 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."*

24. 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. I do not filed income tax return as I do not have any income. I have PAN card. Deduction of my PF contribution started in April 2013. The management did not offer of reinstatement without back wages.”.....”

25. 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...”*

26. 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...”*.

27. 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...”*.

28. In the present case the management has not been able to show that the workman-herein is gainfully employed elsewhere.

29. **In view of the facts of the case and the case law(s) on the point, the work-lady / claimant Ms. Rashmi Pahwa D/o Sh. Harish Chandra Pahwa is found entitled to be reinstated with full back-wages alongwith the consequential relief as per the last drawn**

wages @ Rs.10,000/- per month w.e.f. 28-02-2015 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.10,000/- per month w.e.f. 28.02.2015 till date and further as per the rule.

30. Reference is answered as per the relief granted and An Award is passed in above terms/directions in favour of the workman. 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.
31. 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-7928/2016

INDUSTRIAL DISPUTE BETWEEN :-

Ms. Rashmi Pahwa D/o Sh. Harish Chandra PahwaWorklady/Workman

VERSUS

Management of M/s Diamond Tradex Company Limited

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

Karol Bagh, New Delhi-110055

.....Management

17-09-2020.

Present : Sh.Ajeet Singh ,authorized representation of workman Through VC.

Sh. M.L. Mahajan , AR for management through VC.

Vide my separate detailed AWARD dictated and announced, an award is passed in favour of the work-lady / claimant Ms. Rashmi Pahwa D/o Sh. Harish Chandra Pahwa. 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

LIR No:7928/2016, Ms. Rashmi Pahwa Vs. M/s Diamond Tradex Company Limited