

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

+ W.P.(C) 5498/2010

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Reserved on: 13th September, 2012

Decided on: 6th December, 2012

NAND LAL

..... Petitioner

Through: Mr. Sanjay Ghose, Adv.

versus

BAKSHI TRANSPORT CORPORATION & Ors. Respondents

Through: Mr. Manish Malhotra, Adv.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner seeks setting aside of the award dated 30th January, 2010 passed by the learned Presiding Officer, Labour Court in an industrial dispute ID No. 156/2003 whereby the learned Labour Court held that the workman has failed to prove his case and refused to grant him any relief.

2. Learned counsel for the Petitioner contends that the learned labour court has failed to appreciate that the services of the workman were terminated and that he did not leave his services of his own free will. The Petitioner who had a permanent job and was employed for over four years would not whimsically tender his resignation and thereafter within a month issue a demand notice to the management seeking reinstatement. The learned Presiding officer erred in relying upon the testimony of Kamal Kant Khandelwal (MW3) despite the fact that he has not demonstrated his expertise in handwriting and also in his cross-examination admitted that he cannot not say whether any other person can write such type of handwriting/signature. Further the Petitioner is illiterate and can sign in

Hindi and used to sign the 'paid wages register' once in a month. Learned counsel contends that if any doubt exists in an industrial adjudication its benefit must be given to the weaker party, that is, the workman. Reliance is placed on *KCP Employees Association, Madras vs. The Management of KCP Ltd. and others*, AIR 1978 SC 474 in support of this contention. On one hand the Respondent contends that there was no question of payment of any retrenchment compensation as the Petitioner had left his job on his own and on the other hand the records of Respondent indicate a full and final settlement which reflects the payment of Rs. 3,000/- as service compensation. The alleged payment of Rs. 6,000/- has been made in cash and no document or ledger entries were produced to indicate the withdrawal of said amount from the bank for the purpose of such payment. It is lastly contended that the workman never sought correction/corrigendum in the reference from the appropriate government before the labour court that he was a permanent employee of Respondent No. 1 from 1999 till his termination on 19th March, 2002. Further, the written statement of Respondents has submitted that the business of Bakshi Transport Service was amalgamated after 31st March, 2002 into Bakshi Transport Services Pvt. Ltd. Hence, it is impleaded as necessary party in the present petition which the High Court can do suo moto or on an application of a party to writ or at the instance of a proper party. Reliance is placed on *Uday vs. Board of Revenue*, AIR 1963 SC 786 and *Razia Begum vs. Anwar Begum*, AIR 1958 SC 886. The Respondents have also stated that on 2nd May, 2007 Petitioner was asked to join back which the workman refused. This clearly indicates that the Management of Bakshi Transport Services and Bakshi Transport Services Pvt. Ltd. are same, otherwise no offer to rejoin could be made by

Respondents when according to Respondents the business of Bakshi Transport Service was wound up on 31st March, 2002.

3. Per contra learned counsel for the Respondents contends that the Petitioner did not implead Sh. G.S. Sawhney, K.S. Sawhney and M/s Bakshi Transport Service Pvt. Ltd as Respondents before the learned Labour Court where the reference of the industrial dispute was made only against Respondent No. 1. Thus, the Petitioner cannot implead them as parties in the present petition, which would be beyond the term of reference and enlarging the scope of dispute as per his own whims and fancies. The services of the Petitioner were never terminated by the Respondents rather the workman himself had worked only upto 28th February, 2002 leaving the employment of his own accord, stating that he would not serve the management any longer, his dues and claims were settled and he received earned wages for February, 2002 besides a sum of Rs. 6,000/- in full and final settlement on that day. The Petitioner had put his signature on the full and final settlement voucher dated 28th February, 2002 exhibited as Ex. MW1/2. MW1 Sh. K.S. Sawhney has stated in his evidence by way of affidavit that the said voucher was signed by workman in his presence. Further, the handwriting expert MW3 Kamal Kant Khandelwal has also deposed before the Labour Court that he has examined the disputed signature Mark 'Q' with comparative signature of workman mark 'A1' to 'A5'. Learned counsel further contends that although the workman/Petitioner has challenged the opinion of MW3 stating that he had not demonstrated his expertise in hand writing comparison, however, the authorized representative of the workman had during the cross-examination of MW1 given a suggestion that the said signature could have been got done by the workman prior to February, 2002

thereby building up a new case altogether. Further, no averments were made in the rejoinder that the documents of the Respondents are forged and fabricated. The allegations of the workman that he was deprived of his livelihood and entitled for reinstatement are untenable under the light of his cross-examination where the workman has stated he has been working as a driver for last 26 years and that he started working as a driver since 1981. The Petitioner also refused to join the services before the learned labour court and the said refusal finds mentioned in the proceeding dated 2nd May, 2007. The learned counsel lastly contends that Respondent No. 1 have not been running any industry subsequent to 31st March, 2002. It had sold its assets to a private limited company Respondent No. 3 on that day. Hence, no claim of the Petitioner can be raised/maintained after 31st March, 2002.

4. I have heard learned counsel for the parties and perused the records.

5. Briefly the case of the workman/petitioner is that he was engaged as a driver with the Respondent No. 1 in May, 1999 at a last drawn salary of Rs. 2,860/- p.m. He was not being paid overtime, compensation for leave encashment and other benefits. When the same were demanded from the management, the respondents got annoyed. On 19th March, 2002 the Respondent No. 1 refused permission to the workman to enter the premises and his services were orally terminated. The workman thereafter got issued a demand notice dated 22nd April, 2002 to the management asking it to allow him to join his duties with immediate effect and to reinstate him with continuity of service and full back wages. Finally an industrial dispute was referred for adjudication on the following terms of reference:

“Whether Sh. Nandlal S/o Sh. Prag Sing has left the services after receiving full and final settlement and/or his services have

been terminated illegally and/or unjustifiably by the management and if so what relief he is entitled and what directions are necessary in the respect?”

6. The Petitioner/workman has in his evidence by way of an affidavit before the learned Labour Court stated that he was employed with Respondent No. 1 as a driver in May, 1999 and his last drawn salary was Rs. 2,860/- p.m. His services were orally terminated on 19th March, 2002. No notice of termination was served, no salary for March, 2002 was paid and no reason was given for his termination. He got served a demand notice dated 22nd April, 2002 however, the said notice was returned undelivered. In cross-examination he denied that he had worked with the Respondent upto 28th February, 2002. He also denied having put his signature on voucher marked 'A' at point 'X'. Although, the workman admitted receiving salary for February, 2002 however, denied a payment of Rs. 6,000/- at that time vide the voucher mark 'A' and that he had received all his dues and claims in full and final on 28th February, 2002. The Petitioner has also admitted in his cross-examination that the signatures at point 'X1' to X5' on statement of claim and authority letter existing on record of the court file were his and also that in none of his documents including demand notice, claim and affidavit the name of the person who terminated his services was mentioned.

7. Management has produced three witnesses, that is, Shri K.S. Sawhney MW1, Shri Vivek Kumar, MW2 and Shri Kamal Kant Khandelwal MW3 before the learned Labour Court. MW1 has in his evidence by way of an affidavit stated that the Petitioner joined Respondent No. 1 w.e.f. 1st October, 1999 and his last drawn wages were Rs. 3,000/- p.m. Workman approached

the management on 28th February, 2002 and stated that he would not serve the transport anymore and his oral request was accepted by the management. On the same day all his dues and claims were settled and he received his earned wages for February, 2002 and in addition thereto a sum of Rs. 6,000/- was also received by the claimant as full and final settlement of all his claims/dues. He has further stated that no relationship of master and servant existed between the workman and Respondent No. 1 after 28th February, 2002. Further the workman on that date had received the salary for the month of February, 2002 and the wage register (Ex. MW1/1) was signed in his presence. The workman had also received a sum of Rs. 6,000/- as full and final settlement by way of a voucher Ex. MW1/2 which too was signed in his presence. The said amount of Rs. 6,000/- figures in ledger account of Respondent No. 1 exhibited as Ex. MW1/2A and Ex. MW1/2B. MW1 has in his cross-examination denied that the demand notice dated 22nd April, 2002 was served on the management. He further stated that no termination order exists as the workman left his job on 28th February, 2002 much prior to his alleged termination on 19th March, 2002 after receiving all his claims and dues hence there was no occasion for the management to terminate his services.

8. MW3 Shri Kamal Kant Khandelwal, Handwriting and Fingerprint expert has in his examination stated that he has examined the disputed signature Mark 'Q' alleged to be of Shri Nandlal, Petitioner and compared it with comparative signatures mark A1 to A5 and has also exhibited his report as Ex. MW3/7. He has also exhibited the photo enlargement of the signature as Exs. MW3/1 to MW3/5 and their photo negatives collectively as Ex. MW3/6. In his cross-examination he has stated that he has not placed on

record any certificate of his training or any proof to the fact that he had examined more than 3500 cases.

9. It is the settled principle of law that the onus to prove existence of a fact lies on the party who contends that it exists. In the present case the workman contends that his services were terminated by the management on the other hand the management contends that the workman left his job on 28th February, 2002 of his own accord after receiving full and final settlement. The only evidence produced by the workman before the labour court is his evidence by way of an affidavit and documents exhibited as Ex. WW1/1 to WW1/6, that is, demand notice, postal receipt, undelivered AD, statement of claims filed before the conciliation officer and two provident fund receipts. However, the management has produced three witnesses, MW1 to MW3 and their respective exhibits. The management has lastly relied upon full and final settlement voucher, Ex. MW1/2, examination report of MW3, Ex. MW3/7, the photo enlargement of the signature as exhibits Ex. MW3/1 to MW3/5 and their photo negatives collectively exhibited as MW3/6. Learned counsel for the Petitioner has challenged the credentials of MW3 on the ground that he has not placed on record any proof to show that he had examined more than 3500 cases and any certificate of his training. Hence the reliance cannot be placed on Ex.MW3/7 to state that the signatures on the settlement voucher were that of the workman when the workman has not admitted the same. To my mind mere non-production of the certificate of training would not be sufficient to discredit the opinion of handwriting expert when the opinion is corroborated by reasoning in support of such an opinion. Present is not a case where the opinion of the expert is given in the absence of reasoning by him. A perusal of Ex. MW3/7 shows

that MW3 has given reasons in support of the particular opinion expressed by him. The opinions so expressed are always open to scrutiny by a court of law and their soundness can be tested by examining the disputed and the admitted writing in the light of the reasons given. The object of the expert evidence is to assist the court in forming its own opinion. The workman has availed the opportunity of cross-examining MW3 however, he has failed to bring anything on record to discredit his opinion. MW1 has also in his evidence by way of an affidavit stated that the said workman signed the full and final settlement voucher in his presence and he was not cross-examined on this point. The workman has failed to show that his services were terminated by the management. On the other hand the testimony of MW1 is cogent and convincing backed by material evidence.

10. Learned counsel has further contended that the management has not produced ledger entries to indicate the withdrawal of Rs. 6,000/-. However, a perusal of exhibits Ex. MW1/2A and Ex. MW1/2B shows the withdrawal of the full and final settlement amount from the account of respondent no.1. A perusal of the order sheet dated 2nd May, 2007 shows that the workman was given an opportunity to rejoin on his duties which he had denied.

11. In the light of the above discussion I find no infirmity in the impugned award. The present writ is dismissed.

(MUKTA GUPTA)
JUDGE

DECEMBER 06, 2012

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