

2022 SCC OnLine Del 2333 : 2022 LLR 986

In the High Court of Delhi at New Delhi
(BEFORE DINESH KUMAR SHARMA, J.)

Prince Maurya ... Petitioner;

Versus

Cadila Healthcare Ltd. ... Respondent.

W.P.(C) 1512/2020, CM APPL. 5233/2020 and CM APPL. 5234/2020

Decided on July 18, 2022, [Judgment reserved on : May 30, 2022]

Advocates who appeared in this case:

Ms. Charu Ambwani, Adv.

Mr. Anurag Lakhota and Mr. Udit Dwivedi, Advs.

The Judgment of the Court was delivered by

DINESH KUMAR SHARMA, J.:— The present petition has been preferred by the petitioner/workman challenging the impugned award dated 30.09.2019 passed in LID No. 308/2016 by the learned Presiding Officer, Labour Court, Rouse Avenue District Court, New Delhi, titled '*Prince Mourya v. Cadila Healthcare Limited*', whereby the learned labour court on the basis of the claim petition and the reply filed by the management, framed the following issues:

- 1 *Whether the services of workman have been terminated by the management illegally/unjustifiably on 03.08.2015 in violation of provisions of Section 25 F, G & H of the Industrial Disputes Act, 1947? If so, to what effect and to what relief workman is entitled to? OPW*
- 2 *Whether the workman has himself resigned from the services of the management on 24.07.2015? OPM*
- 3 *Relief.*

2. Learned Labour Court after considering the entire material on record inter alia held that the petitioner had not been able to prove that his services were terminated by the management illegally and unjustifiably in violation of provisions of section 25 F, G and H of the Industrial Disputes Act, 1947. Learned labour court has also returned a finding that the management had successfully been able to prove that the petitioner/workman had himself resigned from the services of the management on 24.07.2015.

3. The petitioner has challenged the award on the ground that the same is perverse and liable to be set aside. It has been submitted that the petitioner never resigned from the services of the respondent/management. It has been submitted that the award is

liable to be set aside as the email, printout of the resignation filed by the respondent were never entered on his official portal by the petitioner. It has been submitted that the respondents who filed the e-mail printout have neither filed any affidavit nor certificate along with the said print out as mandatorily prescribed under Section 65 (B) of the Indian Evidence Act, 1972, to buttress their contentions. The petitioner has submitted that even the e-mail printout dated 24.07.2015 of resignation reflects that the petitioner's resignation may be accepted with effect from 31.07.2015, whereas the acceptance of resignation vide return e-mail dated 24.07.2015 has been filed by the respondent only. The petitioner has stated that the management did not lead any evidence in support of their case and therefore the evidence produced by the petitioner remained unassailed and unchallenged.

4. The notice in the present case was issued to the respondent vide order 02.09.2021. As per order dated 15.02.2022, the learned counsel for the respondent submitted that he does not wish to file counter affidavit and would rely upon the records of the learned Industrial Tribunal.

5. It is the case of the petitioner that he was appointed as a trainee medical representative by the respondent/management on 06.05.2014 and was put on probation for a period of six months vide letter dated 01.02.2015. Learned counsel for the petitioner has submitted that on 22.07.2015, Mr. Neeraj Giri along with other field managers and regional business managers, threatened the petitioner and took him to a closed room and forcibly took his employer email id and password. Learned counsel for the petitioner has submitted on 24.07.2015, an email was allegedly sent using the petitioner's official email id and password, submitting his resignation from services w.e.f. 31.07.2015. Learned counsel for the petitioner has submitted that the same was accepted vide email dated 24.07.2015 and vide letter dated 01.08.2015, the petitioner was relieved from the services. The petitioner came to know about the relieving only on 10.08.2015. Learned counsel for the petitioner has submitted that the petitioner came to know about the fraudulent resignation on 31.07.2015 and thereafter he made a detailed handwritten representation to the management categorically narrating the incident leading to his forced resignation, indicating that he wishes to work further with the respondent/management. The petitioner has also annexed a CD, recording the manner in which the higher officials of the respondent management had threatened the petitioner to resign on 22.07.2015. The petitioner has also filed a complaint before the SHO, Moti Nagar, New Delhi on 02.08.2015 regarding the incident dated 22.07.2015. The petitioner has alleged that thereafter the respondent management terminated his services on 03.08.2015 without any notice and without

assigning any valid reason. Learned counsel for the petitioner has submitted that thereafter the petitioner filed a complaint through his union before the Labour Office, Karampura, Delhi on 03.08.2015, against the respondent management. Learned counsel for the petitioner has also submitted that the respondent management did not respond to the demand notice/legal notice of the petitioner dated 18.08.2015.

6. Learned counsel for the petitioner has submitted that the petitioner in his evidence has categorically stated that he was made to forcibly resign. Learned counsel for the petitioner has submitted that in fact the petitioner was harassed from April to July, 2015 but he did not raise any voice as he wanted to work with the respondent management. Learned counsel for the petitioner has submitted that the learned Labour Court has dismissed the claim contrary to the material on record. Learned counsel for the petitioner has submitted that in fact the forced resignation amounts to constructive discharge. Reliance has been placed upon *X v. Registrar General, High Court of Madhya Pradesh*, 2022 SCC OnLine SC 171. Learned counsel has submitted that in order to constitute resignation it must be unconditional and with an intention to operate as such. Reliance has been placed upon *P.K. Ramachandra Iyer v. Union of India*, (1984) 2 SCC 141.

7. Per contra, learned counsel for the respondent submits that the petitioner was appointed as a probationary medical representative on 01.02.2015 and he remained on probation and himself resigned from the company on 24.07.2015, which was duly accepted and the petitioner was relieved from the services with effect from 31.07.2015. Learned counsel has submitted that the petitioner was not a permanent employee and his probation was not confirmed. Learned counsel has further submitted that in the demand notice/legal notice dated 18.08.2015, the petitioner has stated that his services were terminated on 03.08.2015 without any notice and any information and he was refused to be taken back on work. It has been submitted that there is not even a single averment in the said demand notice/legal notice regarding taking of any forceful resignation, or taking forcefully his email id and password or taking forceful signatures on blank papers either on 22.07.2015 or 24.07.2015. It has been submitted that in the statement of claim filed before the Labour office also, the petitioner had not stated anything with respect to the respondent management threatening him or forcibly taking his resignation or forcefully taking his email id or password and his signatures on blank papers. It has been submitted that that petitioner has only stated that his services were terminated on 03.08.2015 without any notice or information by refusing to take him back on work. Learned counsel for the respondent has further submitted that in the complaint dated 03.08.2015 to the Assistant Labour Commissioner, the petitioner had not alleged any date

of termination. However, he has stated that his earned wages from 01.07.2015 to 01.08.2015 were being stopped and his services were terminated and he was threatened and his signatures were taken on blank vouchers and blank papers and thereafter, he had been given verbal abuses and was beaten also.

8. It has been submitted that in the police complaint dated 02.08.2015 the petitioner had given the version that on 22.07.2015 he was threatened and tortured for three hours and was asked about his user ID and password so that they could themselves resign on behalf of him. The petitioner has alleged that when he refused to give his User ID and password, his bag was snatched and he was told to leave and then on 23.07.2015 he was called and compelled to resign and threatened. On 24.07.2015, he resigned because of their non-stop threats.

9. It has been submitted by the learned counsel for the respondent that all along, the petitioner has been giving completely different versions which had not even been pleaded in the statement of claim filed before the learned Labour Court. Learned counsel has submitted that the learned labour court after considering all the material has rightly held that the petitioner's services were not terminated illegally and the petitioner has himself resigned from the services of the management on 24.07.2015. Learned counsel has further submitted that the petitioner was on probation on 31.07.2015. It has been submitted that therefore his termination cannot be held to be illegal. Even if his services had been terminated then also, his services as per terms of the appointment were rightly terminated and it is squarely covered under Section 2 (oo) (bb) of the Industrial Disputes Act, 1947. Learned counsel for the respondent has placed reliance upon *Nitya Nand Sinha v. H.L. Promoters Pvt. Ltd.*, 2019 SCC OnLine Del 11775. Learned counsel for the respondent has further submitted the workman/petition does not fall within the definition of 'workman' as defined under Section 2 (2) of the Industrial Disputes Act. Reliance has been placed upon *Novartis India Limited v. Vipin Shrivastava*, Writ Appeal. No. 75/2017 passed by the Madhya Pradesh High Court. However, learned counsel has fairly submitted that this judgment has been subject matter of challenge before the Hon'ble Supreme Court. He has submitted that however, there is no stay on the subject matter. Learned counsel for the respondent has further submitted that in the cross examination it has also revealed that the petitioner has been gainfully employed.

10. I have heard learned counsel for the parties and carefully perused the records and the impugned order.

11. Before proceeding further, it is pivotal to examine the scope of jurisdiction to be exercised under Article 226, Constitution of India. The

law in it has not provided any appeal against the order of the Labour Court/Tribunal. Thus, the finding of facts by the Labour Court/Tribunal is final, unless it is perverse. The writ court can interfere only if there is manifest error of law. The writ court cannot interfere only because it can reach on any other conclusion. Reliance can be placed upon *Sadhu Ram v. Delhi Transport Corporation*, (1983) 4 SCC 156 : AIR 1984 SC 1467, *Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union*, (2000) 4 SCC 245, *General Manager, Electrical Rengali Hydro Electric Project, Orissa v. Giridhari Sahu*, (2019) 10 SCC 695.

12. I consider that the Learned labour court has appreciated the evidence threadbare. Learned labour court has noted that pursuant to the resignation letter dated 24.07.2015 the petitioner was relieved vide order dated 01.08.2015 and thereafter the police complaint was filed on 02.08.2015. It was also noted that the petitioner had not pleaded in his demand notice dated 18.08.2015 that the senior managers of the management had threatened him and taken his resignation forcefully. Learned labour court also noted that the petitioner had not pleaded in his statement of claim before the labour officer that the management had threatened him and taken his resignation forcefully. It has been noted that the petitioner/workman in his complaint dated 03.08.2015 filed before the Assistant Labour Commissioner has stated a different version, that the management had obtained his signatures on blank voucher and papers after threatening him but he did not state that the management had obtained his resignation forcefully nor was this pleaded in the statement of claim filed before the court. It was also noted that the workman had not mentioned anywhere, except in the police complaint, that his user ID and password were obtained by the management to send his resignation to the management via email and that he was being harassed by the senior officers of the respondent management for four-five months. Learned labour court also noted that the petitioner had pleaded that he resigned on 24.07.2015 because of the non-stop threats. It has been noted that the petitioner did not lead any evidence to prove that he was being threatened or harassed by the senior officers of the respondent management.

13. Respondent management has taken a specific plea that the petitioner was on probation as on 31.07.2015. Perusal of the record indicates that initially vide letter of appointment dated 06.05.2014, the petitioner was appointed as a trainee medical representative with effect from 06.05.2014. Subsequently, vide communication dated 01.02.2015, the petitioner was offered the post of a probationary medical representative. It is pertinent to mention here that in the said appointment letter, it was specifically mentioned that the petitioner would be on probation for a period of six months with effect from February 01, 2015. It is relevant to reproduce para 5 and 8b of the

letter of appointment dated February 01, 2015, which reads as under:

5. *You would be probation for a period of six months from February 1, 2015. You would be confirmed to the post of Medical Representative only after you have satisfactorily completed six months probation period upto the standard required by the Company, of which standard the company shall be the sole judge. You will continue to be on probation until a letter of confirmation is issued to you in writing by the Management.*

8. *Other conditions of Service:*

a. xxx xxx xxx

b. *Any time during the period of probation, your services can be terminated by the Company, without notice or without assigning any reason. After confirmation, either party may terminate the services with one month notice or by paying one month basic salary in lieu thereof.*

14. It is not the case of the petitioner that his service was being confirmed after the expiry of his probation period. No such document in this regard has also been filed.

15. While dealing with a similar issue with respect to termination of workman during extended probation period, this Court in the case of *Nitya Nand Sinha* (supra), has held that termination before the expiry of the period of probation fell within the ambit of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and does not constitute retrenchment.

16. Thus, the inevitable conclusion is that the petitioner was on probation as on 31.07.2015. This court considers that there is no merit in the case. There is no material which could justify any interference by this Court. Hence the present petition along with all pending applications is dismissed.

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