

IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE
INDUSTRIAL DISPUTES (CIVIL) COURT, GURGAON.

REFERENCE No. 372/05

DATE OF ENTRY: 14.7.2008

DATE OF AWARD: 1.8.2014.

Shansher Ansari C/o Shri Padam Kumar Society for Labour and Development, 5-1, Shaheen Jai, New Delhi.

..... Workman.

Versus

M/s V & S International, Plot No.301 Phase-II, Udyog Vihar, Gurgaon.

.....Respondent.

ARGUED BY:

Shri Ganjan Singh, Authorised Representative for the workman.
Respondent ex parte.

AWARD

In exercise of the powers conferred by Clause (c) sub section (1) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter to be referred as "Act" for short), the Governor of Haryana referred the following dispute, between the parties, named above, to this Court for adjudication:-

Whether the termination of services of Shri Shansher Ansari is justified or not? If not, to what relief he is entitled to?

2. The facts as culled out from the demand notice, as well as, elated statement are that workman was appointed in the respondent company on 28.11.2006 as Folder in the Printing and Packing Department. He was initially inducted as casual worker and his identification number was 0506. He worked in the respondent company for more than 240 days. In December, 2007 he requested the Packing Incharge Mr. Nishar Ahmed to grant him leave so that he can take care of his family affairs (personal matters) including his own father. The latter agreed to give him leave and, according to the workman, got reserved a seat in the train to go to native village in Jharkhand and submitted his leave from 18.12.2007 for eleven days. The aforesaid Mr. Nishar Ahmed rejected his leave application, but the workman in order to fulfill his commitment left for the village on 19.12.2007. On 3.1.2008 on his return, aforesaid Mr. Nishar Ahmed told him that his services have been terminated and he could collect his payment on 30.1.2008. He also instructed him to come on 10.1.2008 for discussion about payment. On 10.1.2008 when workman went in the company then he was asked to submit the resignation, but he refused. The workman submitted a letter to the respondent as to why his services have been terminated, but Mr. Nishar Ahmed refused to accept that letter.

3. The workman further submitted that during his employment the respondent has not paid him full salary as per Haryana Government rates which were revised in June, 2007. The rates as fixed by Haryana Government parameters were revised in the company in September, 2007 but the workman was not paid the amount of Rs. 10,000/- in March, 2007. He had further not been paid full amount of wages for November



and December, 2007. He has further not been paid for over time for December, 2006 to February, 2007. He was told that he would be paid basic rate i.e. single rate for the over time he had worked during this period. Since July, 2007 he was told that he would get double the basic rate for first two hours of over time in a day and single rate for rest of the over time hours. He submitted that he has not given even a single day break in a week during his employment. The company has paid him Rs 53884/- as his basic salary & over time pay, which is well short of Haryana Government's prescribed basic & over time rate, totaling Rs 1,71,480/-. Besides it, workman was forced to work in double shifts and was not issued any pay slip or made payment of PF.

4. The workman, further, submitted that he has not been paid any bonus in spite of the fact the respondent is an international company earning a lot of profits. There was no grievance mechanism in the respondent company, wherein, workman could go for ^{redressal} of their grievances. The respondent company has many big clients, multi-national companies on their rolls, details whereof was provided in paras No 17 to 20, but they themselves have violated the OECD guidelines. The respondent is also ISO 2001 certified company.

5. The termination of the workman has been challenged by the workman on as many as ten grounds, chiefs among them were unfair labour practice, deliberately employing workman as casual worker though the work discharged by the petitioner was of perennial nature, violation of the provisions of section 25-F, 205-G and 25-H of the Act, not paying the salary to workman as per Government rates fixed in the State of Haryana. Thus, the workman has claimed reinstatement of services as permanent worker with continuity in service, full back wages since 18.11.2006 and making payment of Rs.117596/- as per Haryana Government new rates for basic pay, double rate for over time work, bonus @ 8.32%, food allowance for over night stay. He also requested that respondent be directed to set up a Grievance Committee. The workman has, further, prayed that the management be directed to disclose the name of its multi-national clients, length of relationships and volumes of business transactions so that meaningful dialogue with the management & the workman representative could take place.

6. The respondent filed written statement, thereby, taking preliminary objections that there existed no relationship of employer and employee between the parties as per section 2-5 of the Act and, thus, the workman can not raise the industrial dispute. They also replied that this court has got no jurisdiction. On merits, the averments made in the claim statement were said to be wrong, baseless and hence denied. It was prayed that the workman is not entitled to any relief.

7. From the pleadings of the parties, the following issues were framed on 3.8.2009:-

- (1) Whether the termination of the services of the workman is illegal and unjustified, if so to what effect? OPW
- (2) Whether the workman is not covered under the definition of "workman" under I.D. Act? OPM
- (3) Whether the reference is not maintainable? OPM
- (4) Relief.



8. In order to prove his case, workman Shamsher Ansari appeared in the witness box as PW-1, who tendered into evidence his affidavit Ex.P-1 and exhibited the following documents:-

Ex.PW1/B	Copy of employment code of the workman.
Ex.PW1/C	Copy of the Customer Information Form of Deutsche Bank.
Ex.PW1/D	Copy of pay details of the workman generated from the computer.

9. On the other hand, when the case was fixed for workman evidence on 13.12.2011, none appeared on behalf of the respondent and they allowed themselves to be proceeded against ex-parte.

10. I have heard the learned Authorized Representatives for the workman and have also gone through the material aspect of the case. My issuewise findings are as under:-

ISSUE No.1

11. Learned Authorized Representative for the workman submitted that since the management has not bothered to challenge the claims of the workman and his evidence remains unrebutted and unchallenged, therefore, the reference is liable to be decided in favour of the workman.

12. After hearing learned Authorized Representative for the workman, I am of the view that so far as the relationship of workman with respondent is concerned, the same is proved from the employee code Ex.PW1/B, Customer Information Form submitted to Deutsche Bank Ex.PW1/C, wherein, the Manager of respondent company has put his seal and has specifically stated that the workman is working in their company. So far as the workman putting in more than 240 days of continuous service in the respondent company is concerned, the same is proved from Ex.PW1/D payment calculation of wages of the workman which shows that the workman was in the employment of the respondent in December, 2006 to December, 2007.

13. Having come to the point that the workman has shown himself to be employee of respondent, I am of the view that so far as claiming payment of overtime, basic pay as per Haryana Government rates applicable to the State of Haryana, bonus and other benefits are concerned, the workman can file a separate petition for that as per law.

14. The only claim before this court is whether the act of management in having terminated his services was wrong and illegal, I am of the view that the management has neither cross-examined the workman nor they have put up their own version before the court. Since it is the own admission of the workman that he had left for his village on 19.12.2007 without getting his leave sanctioned, therefore, this aspect of the case definitely goes against the workman. If the workman had proceeded on leave without getting it sanctioned then the company was free to deal with him as per the rules of the company, but they were not justified in closing the doors of the company upon the workman. Thus, in my considered opinion the termination of services of the workman by the management is definitely wrong and illegal. Though the workman had his own role to play in that incident in as much as he proceeded on leave without getting sanction of leave but the act of management can not be said to be justified in terminating the services of workman arbitrarily without following the established principle of law. Still I am of the



view that the workman in my considered opinion is not entitled to full back wages in view of the facts and circumstances of the case. Accordingly, the workman is held entitled to reinstatement in services with continuity of service on 50% back wages @ of his last drawn salary, from the date of his termination i.e. 3.1.2008 till his reinstatement in job alongwith all consequential benefits. Hence, issue No.1 is decided in favour of the workman and against respondent.

ISSUES No.2 & 3

15. The onus to prove these issues was on the respondent. No evidence was led by the respondent and even respondent was proceeded against ex-parte. Accordingly, issues No.2 & 3 are decided against the respondent and in favour of workman.

RELIEF (ISSUE No.4)

16. In view of the findings recorded on the above issues, I hold the workman to be entitled to reinstatement in services with continuity of service with 50 % back wages @ last drawn salary i.e. Rs.14127.04/-, from the date of his termination i.e. 3.1.2008 till his reinstatement in job alongwith all consequential benefits and, hence, this reference is answered in favour of the workman.

Dated: 1.8.2014

(Ajay Prashar)
Presiding Officer
Industrial Tribunal cum Labour Court-II
Gurgaon

Endst. No. 390 / Dated 14-08-14

Forwarded (three copies) to the Deputy Labour Commissioner, Gurgaon, for necessary

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(Ajay Prashar)
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Pratha

Judgment Writer
Industrial Tribunal-Cum-Labour Court-II
Gurgaon. 11-9-2014

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3. The workman, further submitted that during his employment the respondent has not paid him full salary as per Haryana Government rates which were revised in June, 2007. The rates as fixed by Haryana Government parameters were revised in the company in September, 2007, but the workman was not paid any arrears for the period from 1.9.2007 till his services were terminated. He also submitted that he was not paid any arrears for the period from 1.9.2007 till his services were terminated.

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It is that the workman in my considered opinion is not entitled to full back wages in view of the facts and circumstances of the case. Accordingly, the workman is held entitled to reinstatement in services with continuity of service on 80% back wages (of) of his last drawn salary, from the date of his termination i.e. 3.1.2008 till his reinstatement in job alongwith all consequential benefits. Hence, issue No.1 is decided in favour of the workman and against respondent.

ISSUES No.2 & 3

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RELIEF (ISSUE No.4)

16. In view of the findings recorded on the above issues, I hold the workman to be entitled to reinstatement in services with continuity in service with 50 % back wages (of) last drawn salary (of) Rs.112704/- from the date of his termination i.e. 3.1.2008 till his reinstatement in job alongwith all consequential benefits and, hence, this reference is answered in favour of the workman.

Dated: 1.8.2014

(Ajay Prashar)
Presiding Officer
Industrial Tribunal cum Labour Court-II
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