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

+ **W.P.(C) 7600/2019 & CM No.31605/2019**

Judgement reserved on 18.02.2021
Judgement pronounced on 30.04.2021

RAKESH

.....Petitioner

Through : Mr. Ashish Virmani, Adv.

versus

M/S J.M.J. SIGNAGE

.....Respondent

Through : Ms. Dolly Nair, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

[Judgement pronounced via videoconferencing on account of COVID-19]

RAJIV SHAKDHER, J.

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Preface: -

1. This writ petition is directed against the award dated 12.02.2018 passed by the concerned labour court in LIR No. 3538/17. The principal grievance of the petitioner is, that the labour court has ruled on the reference made to it, although, he had made a plea for withdrawing the reference.

2. The record shows that the petitioner advanced the plea for withdrawing the reference on two grounds.

2.1 First, that his name had been wrongly recorded as “Rakesh” in the reference whereas his name is “Rakesh Ghosh” on the aadhar card.

2.2 Secondly, the name of his employer i.e. the respondent herein had been recorded in the order of reference as “J.M.J. Signage” whereas the correct name was “JMJ Signage (Print India)”.

Background facts: -

3. Before I deal with the pleas advanced by the learned counsel for the parties, it may be relevant to note the following broad facts and circumstances, which led to the institution of this writ petition.

3.1 The petitioner claims that he was employed by the respondent in 2010 and worked as a field worker at monthly wages of Rs. 12,000/-. It is also averred that the petitioner worked for nearly 12 hours a day.

3.2 In support of his plea, the petitioner has relied upon a copy of the extract, taken from the register, supposedly, maintained by the respondent. The petitioner claims that, because he was being denied his statutory rights, which included, timely payment of salary, overtime wages, issuance of a formal appointment letter, attendance card, leave -book, payslip, yearly and casual leave, he made a demand in respect of the same in and about

08.01.2017, which, ultimately, led to his termination from service.

3.3 It is averred by the petitioner that his services were terminated without prior notice or payment of due salary. According to the petitioner, arrears of salary for the period spanning between 01.01.2014 and 01.12.2016 were not paid to him when his services were terminated, *albeit*, without inquiry. It is, thus, averred that there was a violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short 'I.D. Act').

4. It is in this backdrop, the petitioner claims, that he filed a complaint dated 09.01.2017 with the Deputy Labour Commissioner which, essentially, *concerned* non-payment of salary/dues, and also, followed it up with a complaint lodged, on the same date, with the Station House Officer ('SHO'), P.S. Karol Bagh.

4.1 Although, the petitioner has also averred that he dispatched a letter on 08.02.2017 to the respondent, *via* speed post, demanding payment of outstanding salary and reinstatement of his services, a copy of this letter has not been placed before the court.

5. Be that as it may, it appears that the conciliation proceedings were carried out before the conciliation officer which having failed, propelled the Deputy Labour Commissioner (District Centre) to pass an order on 20.12.2017, referring the dispute for adjudication, to the concerned labour court. The terms of the reference, as framed in the order dated 20.12.2017, are set forth hereafter:

“Whether services of Sh. Rakesh S/o Sh. Naru Gopal Age 25 years have been terminated illegally and/or unjustifiably by the management, if so, to what relief is he entitled and what directions are necessary in this respect?”

6. Resultantly, on 22.12.2017, notice was issued by the labour court to both the parties, which was made returnable on 12.01.2018. On 12.01.2018 both the parties were represented before the labour court. The petitioner, in particular, was represented by, one Mr. Pyare Lal.

6.1. On that date, Mr. Pyare Lal filed, on behalf of the petitioner, the statement of claim along with the documents, apart from a letter of authority, issued by the petitioner.

6.2 The labour court, having taken on record the filings made on behalf of the petitioner, granted time to the respondent's representative, to file a written statement in the matter along with a letter of authority issued in his favour. The matter was, thus, posted for further proceedings on 23.01.2018.

6.3 On 23.01.2018, the petitioner moved an application for withdrawing the reference, in view of the fact that, not only was his name wrongly set out in the order of reference dated 20.12.2017, but also the name of the respondent had wrongly been noted in the said order.

6.4 In support of his plea, that his name was "Rakesh Ghosh" and not "Rakesh", the petitioner had placed reliance on the Aadhar card filed with the application.

7. The labour court, though, rejected the application for withdrawal of reference, preferred by the petitioner, on the ground that the dispute had been referred to it by the Government of NCT of Delhi (in short 'GNCTD'), and therefore, it was only that authority, who could withdraw the reference. The labour court, thus, went on to conclude, that the petitioner was incompetent to withdraw the reference. However, even while directing dismissal of the petitioner's application, the labour court observed, that the petitioner could move an appropriate application with the labour department

for carrying out the necessary corrections in the order of reference.

7.1 Importantly, the order dated 23.01.2018 recorded that the respondent's representative had sought further time, to file a written statement in the matter.

7.2 The *lis* was, thus, at that point, at a nascent stage. It may also be relevant to note, that during the course of the arguments, the petitioner's representative had accepted the fact, that the respondent's name had changed to "J.M.J. Signage", and was no longer "JMJ Signage (Print India)".

7.3 Thus, in effect, the only objection, which survived to the continuation of the reference, was that the petitioner's name had not been correctly recorded in the order of reference dated 20.12.2017, passed by the GNCTD.

8. On 07.02.2018, issues in the matter were framed by the labour court, *albeit*, in terms of the reference made to it, *via* order dated 20.12.2017. The two issues, framed on that date, read as follows:

- (i) In terms of reference.
- (ii) Relief.

8.1 By the very same order [i.e. 07.02.2017], the matter was posted by the labour court on 12.02.2018, for filing of the petitioner's evidence.

8.2 The petitioner filed a brief affidavit whereby he reiterated, that he wanted to withdraw the reference with liberty, to move afresh for the said purpose. There was nothing else stated by the petitioner in his affidavit of evidence.

9. On 12.02.2018, the labour court took several significant steps, one after the other. Firstly, the labour court took on record, the affidavit of evidence, filed by the petitioner [i.e. Ex.WW1/A], after it was, formally, tendered by him. Secondly, it closed the evidence of parties. And lastly,

after hearing final arguments in the matter, he proceeded to pass a final order in the matter.

9.1 The documents, which were relied upon by the petitioner, were also noticed by the court in its order dated 12.02.2018, which comprised, the application filed before the court i.e. Ex.WW1/1, a copy of the complaint dated 09.01.2017 i.e. Mark W1, and copies of complaint with some documents i.e. Mark W2 (running into 13 pages).

9.2. Pertinently, the only thing, that the petitioner said in his cross-examination was, that he wished to withdraw the case. The record shows, as noticed above, the labour court, accordingly, closed the evidence of the petitioner. It is, perhaps, for this reason, that the labour court proceeded to close the respondent's evidence as well, and proceeded to hear the final arguments in the matter.

10. It is in these circumstances, that the petitioner approached this court. The record of this Court shows that, on 20.11.2019, the matter was heard at some length when the submission advanced on behalf of the petitioner, that he was seeking a limited relief, which was an opportunity to file a fresh reference, was noted. The learned judge recorded, that the counsel for the respondent, who appeared on advance notice, had fairly stated that this limited prayer was not opposed. Learned counsel for the respondent, however, sought time, on that date, to take instructions *qua* the alternate submissions made. on behalf of the petitioner, which was, that he was willing to settle the matter with the respondent. if he was paid a lump-sum compensation of Rs.1,50,000/-.

11. Thereafter, on two successive dates, an adjournment was sought, on behalf of the learned counsel for the respondent. A substantial hearing in the

matter, it appears, took place on 22.01.2020. On that date, the learned judge recorded her unhappiness with the stand taken by the learned counsel for the respondent, which was, that she wished to withdraw the statement made by her, on 20.11.2019, as it was made without instructions.

11.1 Notwithstanding her disapproval with the approach adopted in the matter, the learned judge permitted the learned counsel for the respondent to recant, and thereafter, proceeded to issue notice, in the petition, with liberty to the respondent to file its counter-affidavit.

12. The respondent, since then, has filed its counter-affidavit in which, it has taken the following pleas.

- (i) That the petitioner was a daily wager, who was engaged by the respondent whenever, the work was available.
- (ii) The petitioner's claim that he had not been paid his wages since January 2014 was false.
- (iii) Because the petitioner was a daily wager, he was paid wages, as and when the work was available; there were no arrears towards wages payable by the respondent.
- (iv) Since, the petitioner was not working, on a regular basis, with the respondent, there cannot arise any question of removing him from service.
- (v) The petitioner's application, for withdrawing the reference, was dismissed on 23.01.2018, and despite an opportunity being given, to have the reference corrected, he chose not to approach the labour department at his peril.
- (vi) The petitioner did not challenge the order dated 23.01.2018, which entailed consequences.
- (vii) The assertions made, on behalf of the petitioner, are contradictory, in

the sense that, on the one hand, he avers that the jurisdiction of the labour court is confined to the reference made to it, and on the other hand, he asserts that the labour court ought to have exercised its jurisdiction, *albeit*, beyond the terms of the reference.

(viii) The labour court had, correctly, rejected the reference, as the petitioner had failed to prove, that his termination was brought about illegally and/or unjustifiably.

(ix) The labour court reached its conclusion, based on the affidavit of evidence, filed by the petitioner.

(x) The petitioner had neither worked with the respondent, since 2010, as a field worker for a monthly wage of Rs. 12,000/-, nor the petitioner worked for the respondent for nearly 12 hours each day.

Submissions on behalf of the parties: -

13. With this state of the pleadings and the material on record, arguments were advanced, on behalf of the petitioner, by Mr. Ashish Virmani, while submissions, on behalf of the respondent, were made by Ms. Dolly Nair.

14. Mr. Virmani submitted that the labour court acted, rather technically, in dismissing the petitioner's application, for withdrawing the reference, made in the first instance.

14.1 According to him, instead of dismissing the application, the labour court could have read the reference, as one made in the name of "Rakesh Ghosh" as against "Rakesh", having regard to the complaint dated 09.01.2017 made to the Deputy Labour Commissioner, based on which, the reference order dated 20.12.2017 was issued by the GNCTD.

14.2 In any event, since the reference had not been decided on merits, as

the petitioner only reiterated his stand in his affidavit of evidence dated 12.02.2018 that he wished to withdraw the reference, there can be no bar in a fresh request being made by the petitioner to the GNCTD, for referring the dispute once again to the concerned labour court.

14.3 The observations, made in paragraph 10 of the impugned award dated 12.02.2018, are, thus, erroneous, to that extent.

14.4 The plea for withdrawing the reference ought to have been allowed, and that, if allowed, cannot bar a fresh proceeding under the I.D. Act.

14.5 The principles and/or the technical rules of the Code of Civil Procedure, 1908 (in short 'CPC') cannot come in the way of the petitioner. Thus, effectively, the labour court, *via* the impugned award, has barred the initiation of fresh proceedings, by the petitioner, under the I.D. Act, by holding that. since the matter has been decided on merits, a fresh case cannot be filed by the petitioner on the same cause of action.

14.6 The labour court has, thus, in effect, invoked the principles of Section 11 of the CPC which do not apply to a dispute under the I.D. Act.

14.7 Mr. Virmani, in support of his plea, has relied upon the following judgments:

- (i) ***Ashoka Marketing Ltd. v. Shri B.D. Gupta & Anr., 1975 Lab I. 1715: 1975 SCC OnLine Del 41.***
- (ii) ***Dimple (P) Ltd. v. Harish Kumar Aggarwal, 1998 (44) DRJ 558 : 1997 SCC OnLine Del 950.***
- (iii) ***Guest, Keen, Williams Pr. Ltd., Calcutta v. P.J. Sterling & Ors., AIR 1959 SC 1279.***
- (iv) ***Radio Manufacturers of India v. State of West Bengal & Ors., 2004 (2) L.L.N. 274 : 2003 SCC OnLine Cal 452.***

15. Ms. Nair, on the other hand, has, broadly, argued in line with the reasoning, contained in the impugned award. Ms. Nair submitted that, since the petitioner had not taken advantage of the order dated 23.01.2018, passed by the concerned labour court, permitting him to approach the labour department for having the reference corrected, the labour court could not have come to any other conclusion, but only one, which it, finally, reached *via* the impugned award, since the affidavit of evidence, filed by the petitioner, stated nothing, which would prove the case set up by the petitioner, that his services were illegally and/or unjustifiably terminated.

16. Ms. Nair also submitted that, since the petitioner had failed in withdrawing the reference in the first instance, his plea was, rightly, rejected by the labour court, *via* the impugned award [when it was made by the petitioner for the second time, by incorporating the same plea in his affidavit of evidence].

17. In support of her submissions, Ms. Nair has relied upon the following judgments:

- (i) ***Ratnagiri Gas & Power Pvt. Ltd. v. RDS Projects Ltd. & Ors., 2012 Law Suit (SC) 718 : (2013) 1 SCC 524.***
- (ii) ***Yogesh Daulat Rai Mehta v. Union of India & Ors, 2008 Law Suit (Del) 1254, passed in W.P. (Crl.) 139/2008 by the High Court of Delhi.***
- (iii) ***Ashok Kumar Chhabra v. Union of India, 1998 (72) DLT 291 : 1998 SCC OnLine Del 158.***

Reasons and Analysis: -

18. Having heard the counsel for the parties and perused the record, the undisputed position, which has emerged, and its ramifications, are set forth

hereafter:

18.1 The petitioner had filed a complaint with the labour department *qua* the respondent, which alluded to the fact, that his dues for various periods had not been paid. This complaint was made by the petitioner by adverting to his complete name i.e. Rakesh Ghosh.

18.2 The conciliation proceedings having failed, the Deputy Labour Commissioner, GNCTD, *vide* order dated 20.12.2017, made a reference, that alluded to the petitioner's first name i.e. Rakesh.

18.3 In this order, the respondent was described as "M/s J.M.J. Signage". The reference was taken up by the labour court, in the first instance, on 22.12.2017, when notice was issued to both the parties, which was made returnable on 12.01.2018. On that date, the representatives of both the sides were present. The petitioner's representative filed the statement of claim along with the documents, as also his letter of authority. The labour court posted the matter on 23.01.2018 for enabling the respondent's representative to file the written statement and letter of authority.

18.4 On 23.01.2018, the petitioner moved an application whereby he sought to withdraw the reference. The reasons given were that, not only his name was incorrectly recorded but also the name of the respondent was not correctly shown in the order of reference. The labour court on that very date i.e. 23.01.2018, considered the application, and thereafter, proceeded to dismiss the same. The reason given by the labour court for dismissal of the application was that, only the appropriate authority [i.e. the GNCTD] was competent to withdraw the reference. Liberty was, however, given to the petitioner to approach the labour department for having the reference corrected.

18.5 Concededly, the petitioner did not approach the labour department, and instead, ended up filing an affidavit of evidence, wherein a similar plea was taken. This affidavit was filed on 12.02.2018. The petitioner was cross-examined, on the same date, where he simply stated that he wished to withdraw the reference. The labour court, though, proceeded to hear the final arguments in the matter, since the respondent chose, not to cite any witnesses.

18.6 Therefore, the question which arises for consideration is: does the impugned award deal with the merits of the industrial dispute? The fact that it does not is reflected in paragraph 9 of the impugned award which reads as follows:

“9. In his affidavit in evidence Ex.WW/A, the claimant did not depose about cause of action. Rather, he deposed that he was withdrawing the case due to his and management's wrong name in reference order. Such kind of plea has already been decided by this court vide order dated 23.01.2018. He did not mince a single word about termination of his service. Due to that reason, he has failed to prove that his service was terminated illegally. Hence, this issue is decided in favour of management and against claimant.”

19. The labour court, having observed that the petitioner's affidavit of evidence and his deposition merely reiterated that he wished to withdraw the reference, could not have, then, gone on to say, in paragraph 10¹ of the impugned award, that he should not be permitted to file a fresh case on the same cause of action as the matter had been decided on merits.

¹ **“Issue No.2:**

10. As the matter has been decided on merit, the claimant cannot be permitted to file fresh case on the same cause of action. Hence, statement of claim is dismissed. He is not entitled to any relief. Parties to bear their own costs. Award is passed accordingly.

19.1 What has emerged from the record is, that the petitioner, consistently, expressed his desire to withdraw the reference. The fact, that the petitioner's earlier application was dismissed on 23.01.2018, when it could have been dealt with, more creatively, by the labour court, by holding that “Rakesh” and “Rakesh Ghosh” were the same persons, and thus, had assuaged the apprehensions of the petitioner, it decided to reject the application. Notwithstanding the fact, that the petitioner’s application was rejected, to my mind, the labour court could not have, *via* the impugned award, foreclosed the remedy available to the petitioner to seek a fresh reference or correction of the reference as that was, ultimately, the import of the order dated 23.01.2018.

19.2 Although, the labour court was right in noting, in the proceedings of 23.01.2018, that the petitioner had not moved the appropriate authority for carrying out the corrections in the reference, the gap, between that date and the date, when the matter came up and was, finally, decided, was not much.

19.3 The labour court could have either stood over the matter or permitted the petitioner to withdraw the case with liberty to take recourse to an appropriate remedy under the I.D. Act. The appropriate authority would not have, possibly, entertained a plea for making a fresh reference unless the case pending before the labour court was withdrawn.

19.4 What made the matters worse is, the observation of the labour court that, since the matter had been decided on merits, therefore, a fresh action would not lie on the same cause.

19.5 The I.D. Act, is a piece of welfare legislation whereby the labour courts and industrial tribunals have been given vast powers. Section 11A of

Reference is answered accordingly.”

the I.D. Act permits the labour court, Tribunal or National Tribunal, as the case may be, if it is satisfied that the order of discharge or dismissal is not justified, to set aside such order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, as it thinks fit or give such other relief to the workman including awarding lesser punishment in lieu of discharge or dismissal.

19.6 The concerned forum, thus, can, as noticed above, bring about industrial peace and end the disputes by fixing, when necessary, terms and conditions of reinstatement or by meting out lesser punishment.

19.7 Therefore, what is evident, not only upon a plain reading of this provision but other ancillary provisions of the I.D. Act, is, that the adjudicatory authorities acting under the said Act are not bound by the technical rules of procedure, as provided in the CPC which apply to a civil action. The labour court's obduracy in not permitting the petitioner to withdraw the reference [and then going on to bind him to the record, which did not bear his evidence, as none had been led] was, to my mind, both iniquitous and illogical as also unsustainable in law. This is for the reason that the labour court has dealt with a reference which adverts to "Rakesh" whereas the petitioner is "Rakesh Ghosh".

19.8 The judgements cited by Ms. Nair do not deal with the issue at hand, and therefore, are distinguishable on facts.

- i. The judgement in *Ratnagiri Gas* case, inter alia, dealt with the issue as to whether the appellant before the Court had adopted a correct approach, in law, in challenging, by way of a fresh writ petition, not only the terms and conditions contained in the amended tender but also those aspects which were embedded in the unamended tender and

formed part of an earlier writ action. The Supreme Court held that this was not permissible as the earlier writ petition had been dismissed as withdrawn. Clearly, no such situation arises in the instant case. The labour court, in the instant case, was required to apply its mind as to whether or not it should go ahead with the matter which was predicated on a reference made to it by GNCTD that did not relate to the petitioner.

- ii. The judgement rendered in *Ashok Kumar Chhabra* case also, to my mind, has no relevance given the facts and circumstances obtaining in the present writ petition. In *Ashok Kumar Chhabra* case, a miscellaneous application was moved in a disposed of writ petition; the Court held that this was not permissible.
- iii. The judgement rendered in *Yogesh Daulat Rai Mehta* case is also distinguishable on facts. This was a case where the petitioner before the Court had challenged the detention order passed qua him under Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The writ petition was dismissed as withdrawn as the petitioner had been released. Thereafter, the very same detention order was assailed by the petitioner concerning action taken against him under the Smugglers and Foreign Exchange Manipulators Act, 1976. The Court ruled that the second writ petition challenging the same detention order was not maintainable.

Conclusion: -

20. Therefore, for the foregoing reasons, I am inclined to set aside the impugned award dated 12.02.2018. It is ordered accordingly.

21. The petitioner would, thus, be free to take recourse to the remedy available under the I.D. Act to agitate his grievances as there was, in substance, no decision taken by the labour court on merits *via* the impugned award.

22. Resultantly, the pending interlocutory application shall stand closed.

APRIL 30, 2021/aj

RAJIV SHAKDHER, J

