

Before the Presiding Officer, Labour Court, Gurgaon.

REFERENCE NO.

Sh. SHAMSHER ANSARI

V/S

M/S. V & S INTERNATIONAL P. LTD., GURGAON

WRITTEN STATEMENT.

SIR,

We have the honor to submit as under:-

PRELIMINARY OBJECTIONS:-

1. That the Petitioner is not a workman as defined under Section 2 (S) of the Industrial Disputes Act 1947 as he was never in the employment of the Respondent and there never existed any relation ship of employer and employee between the applicant and Respondent.
2. That as Petitioner is not a WORKMAN, there is no INDUSTRIAL DISPUTE as per section 2(k) of the I.D. Act, 1947 and hence the Honorable court has no jurisdiction to deal with this case.

Without prejudice to the above preliminary objections we have to submit on merits as under:-

ON MERITS

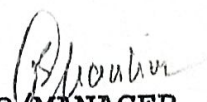
1. That para a is of facts and needs no reply.
2. That para 1 of the claim statement is wrong, baseless and hence denied. That it is wrong and denied that the Petitioner was in the employment of the Respondent. The fact is that he was never in the employment of the Respondent management and there never existed any relationship of employer and employee between the Petitioner and the Respondent.
3. That as the Petitioner was never in the employment of the Respondent management, the contents of para 2 to 15 of the claim statement are absolutely irrelevant, wrong, baseless and hence denied. The Petitioner be put to strict proof of the same.
4. That the contents of para 16 of the claim statement are of facts and the Petitioner be put to strict proof of the same.
5. That the contents of para 17 to 22 of the claim statement are of facts and better known to the Petitioner and the Petitioner be put to strict proof of the same.
6. That para 23 of the claim statement is wrong, baseless and hence denied. That as the Petitioner was never in the employment of the Respondent management, there is no question of illegal termination of his services.
7. That as the Petitioner was never in the employment of the Respondent management, there is no question of reinstatement of his services.

8. That above case has been filed with a bad and malafide intention just to harass the Respondent Management and extract the money.

9. That the Respondent management reserves the right to change, amend or alter the written statement at any stage of the case.

In view of the above it is prayed to your Honour that the above case may please be dismissed and filed.

For V & S INTERNATIONAL P. LTD.


DIRECTOR/MANAGER

Verification:- Verified on 30TH day of March, 2009 that the above statement is true to the best of my knowledge and belief.

For V & S INTERNATIONAL P. LTD.


DIRECTOR/MANAGER.

Through Sh. H.L. Dang
Labour Law Advisor

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 with a full.



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 (i.e. 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 (i.e. last drawn salary) 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

action

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



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ATTESTED TO BE TRUE COPY

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