

IN THE COURT OF Ms. VEENA RANI : POLC
PRESIDING OFFICER LABOUR COURT ROUSE AVENUE COURTS, NEW DELHI
I.D. No.- 7002/2016

INDUSTRIAL DISPUTE BETWEEN :-

Sh. Tilak Ram s/o Sh. Mithu Lal
r/o H.No.6, G-Block, Rampark,
Ilayacheepur, Distt. Ghaziabad, U.P.

.....Workman

VERSUS

M/s Gopal Das Estate and Housing (P) Ltd
16th Floor, Dr. Gopal das Bhawan,
28 Barakhamba Road, Counnought Place
New Delhi-110001.

.....Managements

Date of Institution :03-08-2013
Date of Written Final Arguments :08.08.2020 (management) 12.08.2020(workman);
Date of Award :18-08-2020

AWARD

1. The present matter arises out of the reference F.No.C-13/LO/NDD/2012/02/8 dated 08.01.2013 whereby the Dy. Labour Commissioner made the reference as per the following TERMS OF REFERENCE:

“Whether the Sh. Tilak s/o Sh. Mithu Lal left the job of his own or his service have been terminated illegally and / or unjustifiably by the management if yes , what relief he entitled to and what directions are necessary in this respect?”

2. In the due course, the above-said reference was disposed of vide No-Dispute-Award dated 31.05.2013 on non-filing of claim by the workman-herein. The said No-dispute-Award came to be published on 30.07.2013 vide No.F.23(29)/13DLC-NDD/94 to 96 and was to be effective from 29.08.2013. In the meantime and before the said No-Dispute-Award could become effective, the workman-herein moved an application to set aside the said No-dispute-Award dated 31.05.2013 which was allowed by the predecessor of this court vide its order dated 27.09.2013 and the I.D. proceedings were restored in its original number. Thereafter, the proceedings were conducted in the due course.

VERSION OF THE CLAIMANT AS PER THE CLAIM:

3. The workman-herein has averred that he was appointed at the post of “peon” since the year 1986 but his PF was deducted w.e.f. 1993. His salary at the time of his termination was

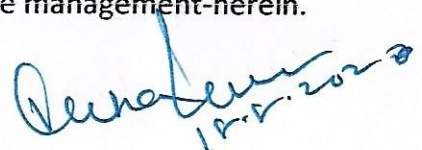
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Rs.7,000/- per month and after deduction of PF and ESI contribution it was Rs.6200/- which was deposited in the bank account No. 14913 at the workman's A/C at Vijaya Bank , 17 Barakhamba Road. At the time of service the workman was given uniform and bonus @ 8.33%, one month PL, Gazetted Holidays and Half Saturday. His duty timings at the address 28, Barakhamba Road, New Delhi were 9:00 AM to 6:00 PM.

4. The case of the workman as per the Statement of claim is that his services were illegally terminated on 10.10.2009. During the course of his employment, the workman was asked to stay at 25A, Akbar road, New Delhi alongwith his family and the workman continued to perform his duties at the address 28, Barakhamba Road, New Delhi. On 22.01.2007 the workman-herein was directed by the management to perform the duty of chowkidar at the said the address 28, Barakhamba Road, New Delhi for 12 hrs. a day with an assurance that he would be given overtime. However, no overtime was paid and the workman had to spend Rs.15,000/- on the repair of the accommodation as well as the on the hand pump installed at the said accommodation. The workman was paid only Rs.2,500/- and was told that the balance will be paid. Thereafter, the workman was again directed to perform duties at 28, Barakhamba Road till 10.10.2009 when he was asked to resign from the job. When the workman-herein refused to resign, the management terminated the services of the workman-herein on 10.10.2009.
5. The workman has sought the relief of reinstatement with full back wages with continuity service, consequential relief along-with the overtime dues accruing and the balance amount of the expenses incurred by the workman-herein.

VERSION OF THE MANAGMEENT AS PER THE WRITTEN STATEMENT:

6. The management-herein has filed its Written Statement and has taken preliminary objections to the reference of the Dy. Labour Commissioner who entertained the claim (for reference purpose) of the workman after a delay of 2 ½ years. The competence of the Dy. Labour Commissioner in making this reference is also challenged by the management-herein on account of delay of 2 ½ years. The management-herein has also stated that the workman-herein had collected the cheque amounting to Rs.90,300/- (towards full and final settlement) vide cheque bearing No.780713 dated 09.10.2009 drawn on Bank of Nova Scotia, drawn on Branch at 28 Barakhamba road, New Delhi-110001. Since 10.09.2009 the workman has not turned up for duties and is gainfully employed. The management has denied that the workman-herein was appointed as peon in the year 1987. It is averred that one Sh. Gurvinder Saini, Ex-Director of the management-herein had appointed the workman in the year 1987. The services of the workman were never terminated by the management-herein. The working hours from 9:00 AM to 6:00 PM has also been denied by the management. Rest of the averments of the workman have also been denied by the management-herein.


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7. The case of the management-herein is that since Sh. Gurvinder Saini (Ex-Director of the management) had appointed the workman-herein in the year 1987, the said Sh. Gurvinder Saini had left and consequently the workman left the job after collecting the cheque amounting to Rs.90,300/- towards "full and Final" settlement. Thereafter, the workman never turned up for duties thus it "presumed abandonment" of job on part of the workman-herein. The management has denied the act-averments of the workman-herein relating to his assurance of overtime, expenses of Rs.15,000/- etc. allegedly incurred by the workman-herein. The management-herein has sought dismissal of the claim of the workman-herein.

FRAMING OF THE ISSUES:

8. The following issues were framed on the pleadings of the parties:

ISSUE No.1 : Whether the present dispute has not been made to the Court by the competent authority as alleged by the management, if so, its effect? OPM

ISSUE No.2 : Whether the present reference has been raised workman at belated stage before the Labour Commissioner as alleged by the management? OPM

ISSUE No.3: Whether the workman has accepted a cheque of Rs.90,300 from the management towards full and final settlement of his claim ? OPM

ISSUE No.4: Whether the workman was employed as Peon with the management since the year 1986 and his last drawn salary was Rs.7,000/- per month? OPW

ISSUE No.5: Whether the services of the workman have been terminated illegally and unjustifiably by the management ?OPW

ISSUE No.6 : As per terms of reference

ISSUE No.7: Whether the workman is entitled to the relief? OPW

ISSUE No.8: RELIEF

EVIDENCE OF THE WORKMAN:

9. The workman-herein has been examined as WW-1 and has filed evidence by way of Affidavit (Ex.WW1/A) relying upon the following documents exhibits:

- i. MARK A : Copy of the demand notice;
- ii. MARK-B : copy of the UPC receipt;
- iii. MARK C : copy of the Labour Inspector report;
- iv. MARK D : copy of the medical papers of the wife of the workman;
- v. MARK E : copy of the death certificate of the of the workman.

The workman-herein was cross-examined by the A/R of the management.

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EVIDENCE OF THE MANAGMEENT:

10. The management has examined Sh. Virender Singh (Accounts Officer of the management) as MW-1 who has relied upon the following documents:

- i. Ex.MW-1/1 : Authority Letter by way of Board resolution;
- ii. MW-1/2: Copy of the cheque amounting to Rs.90,300/-;
- iii. MW-1/3: informed to the police u/s S/155 Cr.P.C. regarding the earlier cheque given to the orkman;
- iv. MW-1/4 : Notice sated 21.03.2012 issued by the Dy. Labour Commissioner;
- v. MW-1/5 : Statement of claim before the Dy. Labour Commissioner in the year 2012;

The witness MW-1 was cross-examined by the A/R of the workman-herein.

ISSUE No.1 : Whether the present reference has not been made to the Court by the competent authority as alleged by the management, if so, its effect? OPM

ISSUE No.2: Whether the present dispute has been raised workman at belated stage before the Labour Commissioner as alleged by the management? OPM

11. The ISSUES No.1 & 2 shall be disposed of together as they are interlinked. The management has contended that the alleged date of termination from the services is 10.10.2009 and the workman approached the office of Dy. Labour Commissioner sometime in March 2012 after a gap of 2 ½ years at a belated stage. The claim ought to have been dismissed by the Dy. Labour Commissioner on this sole ground. Furthermore it has been contended by the management that the Deputy Labour Commissioner is not the competent authority to make reference as the said Dy. Labour Commissioner had not reason / rational in law to have exercised his powers after 2 ½ years. As per the management a dispute which is stale could not be the subject matter of reference u/s 10 of the I.D. Act.

12. The management has further contended in the Written Submissions that filing a case after 2 years is a fit case of abandonment of service by workman and there by raising a 'stale dispute' of which the reference made by DLC is illegal. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act.

13. The words used in the S.10 of the I.D. Act is "Appropriate Government" which refers to the State Government or the Central Government. The Labour Commissioner represents the State Government in the NCT of Delhi and so does the Deputy Labour Commissioner.

14. The workman has adduced sufficient evidence to justify the delay. In M/s Western India Match Co. Ltd. vs. The Western India Match Co. Workers Union and Ors, (1970) 1 SCC 225 = AIR 1970 SC 1205, the learned Judges made the following observations:-


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"15. There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval, it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanised by the workmen or the union on account of other justified reasons, it does not cause the dispute to wane into total eclipse...."

15. As far as the competence of the Dy. Labour Commissioner vis-à-vis delay is concerned. In *Kuldeep Singh vs G.M., Instrument Design D&F.* {CIVIL APPEAL NO. OF 2010 (Arising out of S.L.P. (C) No. 4137 of 2007)} decided on 3 December, 2010, the Hon'ble Supreme Court has held th:

"21)law can be summarized that there is no prescribed time limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is more so in view of the language used, namely, if any industrial dispute exists or is apprehended, the appropriate government "at any time" refer the dispute to a Board or Court for enquiry. The reference sought for by the workman cannot be said to be delayed or suffering from a lapse when law does not prescribe any period of limitation for raising a dispute under Section 10 of the Act. The real test for making a reference is whether at the time of the reference dispute exists or not and when it is made it is presumed that the State Government is satisfied with the ingredients of the provision, hence the Labour Court cannot go behind the reference. It is not open to the Government to go into the merit of the dispute concerned and once it is found that an industrial dispute exists then it is incumbent on the part of the Government to make reference. It cannot itself decide the merit of the dispute and it is for the appropriate Court or Forum to decide the same. The satisfaction of the appropriate authority in the matter of making reference under Section 10(1) of the Act is a subjective satisfaction. Normally, the Government cannot decline to make reference for laches committed by the workman. If adequate reasons are shown, the Government is bound to refer the dispute to the appropriate Court or Forum for adjudication. Even though, there is no limitation prescribed for reference of dispute to the Labour Court/Industrial Tribunal, even so, it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly, when disputes relate to discharge of workman. If sufficient materials are not put forth for the enormous delay, it would certainly be fatal. However, in view of the explanation offered by the workman, in the case on hand, as stated and discussed by us in the earlier paragraphs, we do not think that the delay in the case on hand has been so culpable as to disentitle him any relief. We are also satisfied that in view of the details furnished and the explanation offered, the workman cannot be blamed for the delay and he was all along hoping that one day his grievance would be considered by the Management or by the State Government."

16. In view of the facts and circumstances of the case as discussed herein-above the Issue No.1 & 2 relating to limitation & delay is decided in favour of the workman and against the management.

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ISSUE No.3: Whether the workman has accepted a cheque of Rs.90,300 from the management towards full and final settlement of his claim ? OPM

17. The witness MW-1 has testified in his affidavit of evidence that the workman-herein often absented himself unauthorisedly without proper sanction of leave. However, there happens be no averment in regard to unauthorised absenteeism without sanction of leave in the Written /Statement of the management-herein. The said affidavit has also mentioned that the workman-herein used to sell "ice chuski" at India Gate daily. This fact has also emerged for the first time in the affidavit. The said affidavit further mentions that the workman had visited the management or the fresh cheque of Rs.90,300/- as the previous cheque was lost by the workman. The management informed the police u/s S/155 Cr.P.C.
18. The management-herein appears to have been taking inconsistent grounds / defences.
19. It is the case of the management that the workman-herein was employed by Sh. Gurvinder Saini one of the ex-Directors and had left the job after the Sh. Gurvinder Saini had left the company. As per the management the workman has accepted a cheque of Rs.90,300/- from the management towards full and final settlement of his claim on 09.10.2009. The workman revealed in his cross-examination:

"Q Is it correct that the management had given me a cheque for the amount of Rs.90,300/-?"

Ans. Management was giving the cheque of Rs.90,000/- but did not receive the same. It is wrong to suggest that I had taken the cheque of Rs.90,000/- from the management but did not present the same in my bank....."

20. The suggestions put by the management to the workman during the cross-examination point out that it is not the case of the management that the workman had taken the amount of Rs.90,300/- from the management by encashing the cheque. Even if the workman had encashed the said cheque of the management it would not have acted as estoppel against the workman from challenging his termination. This aspect is no more res integra and there is a catena of judgments on this point. However, in the present matter the cheque alleged to have been given by the management was never encashed by the workman. The management-herein has not adduced any evidence that the said cheque of Rs.90,300/- was encashed by the workman.
21. The workman-herein in his written arguments contended that the management-herein in their evidence submitted a photocopy of a cheque alleged to have been paid to the workman. The said cheque has been fabricated pursuant to an afterthought storey framed by the management to make out a false defense. The management did not file any receipt of the said cheque signed by the workman. The management has filed a paper Ex MW1/3 claiming the


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same to be record of cheque. The same does not bear any serial number nor same is a part of any regular record, register or account book maintained during ordinary course of business. The same is stray piece of paper which can be prepared at any time as per the connivance of the party.

22. To understand the word 'full and final settlement', it is to be understood first that what amount may come or may be included in full and final settlement. As far as I.D Act is concerned, there is no definition of the phrase 'full and final settlement' but as far as various pronouncements are concerned, the word 'full and final settlement' would simply mean that it would include such an amount which if paid by the management and accepted and received by the workmen then thereafter there would be no claim either of the management upon the workmen or vice versa with respect to any monetary benefits qua the terms and nature of employment. Therefore, if a wider view is taken then it would include that all amount which the management paid to the workmen at the time of leaving/retiring/terminating the job i.e. their earned wages , leave encashment, bonus, amount of PF, amount towards gratuity if payable, retiral benefits and which may also include any other amount which the workmen owe to the management including the amount which the management has given to the workmen during its tenure by way of advancing loan or by way of any legal facility attached to the job entrusted to the workmen like accommodation or conveyance if any, or any other such benefit which the workmen have to return to the management at the time of such settlement & after adjusting all such benefits, the terms of full and final would be arrived at.
23. I am not able to hold this issue in favour of the management because the witness who had witnessed the final payment is not examined. The settlement projected by the management is not in conformity with Rule 58 (4) of the Industrial Disputes (Central) Rules, 1957. Therefore, the rulings urged by the workman would apply in this case and whereas the rulings relied on by the management on this aspect of resignation, do not attract to the present facts of the case. As per Section 58(4) in The Industrial Disputes (Central) Rules, 1957, Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Central Government, the Chief Labour Commissioner (Central) New Delhi, and the Regional Labour Commissioner (Central) and to the Assistant Labour Commissioner (Central) concerned.
24. in view of Section 2 (p) of I.D. Act 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957 a copy of settlement was required to be sent to the authorities as mentioned in Rule 58 (4) however, it has not been proved that any copy of the alleged settlement was ever sent to the authorities as mentioned in Rule 58 (4) of Industrial Dispute (Central) Act.


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25. In *Om Prakash Sikka v. The Presiding Officer, Labour Court and Anr.*, 1983 (46) FLR 172, it was observed that it has been held in decided cases that where there is non-compliance with Rule 58(4) the settlement is invalid because the settlement has to be in strict compliance with the statutory provisions of Rule 58(4) and in such cases it cannot be contended that the copy sent to the Labour Commissioner was in full compliance with sub-rule (4) of Rule 58, inasmuch as a copy of the settlement has to be sent to the authorities named specified therein. It was held that where a copy is not sent to the authorities named in sub-rule (4), it must be held that the settlement is inoperative. In the Case of *Workmen of M/s. Delhi Cloth and General Mills v. Management of M/s. Delhi Cloth and General Mills Ltd.*, reported as 1970 Scr (2) 886, the Hon'ble Supreme Court has held: "**(2) Rule, 28F(4) of the Industrial Disputes (Central) Rules 1957 made under S. 38 of the Industrial Disputes Act has full force of law of which judicial notice can be taken. This rule must be fully complied with if the settlement is to have a binding effect on all workmen.**" (896A).
26. A full and final settlement doesn't necessarily mean that the employer is exonerated from providing its employee all the benefits. The employer still has to pay the gratuity amount to its employees, which cannot be contracted out by it. It usually depends on the terms and conditions of the settlement agreement; all those pending disputes and claims, which are addressed within the said terms and conditions, will stand fully resolved and recovered.
27. In the present case all the workmen-herein are not in a position to understand the intricacies of the "full and final" settlement as imposed upon them by the management-herein. The management-herein has not been able to discharge its onus to prove that the workmen-herein had settled by way of amounts as "Full and final" settlement.
28. Thus this ISSUE No.3 is decided in favour of the workman and against the management.

ISSUE No.4: Whether the workman was employed as Peon with the management since the year 1986 and his last drawn salary was Rs.7,000/- per month? OPW

29. The workman has proved that he was serving as peon with the management which the management has not denied. The workman-herein has claimed that his last drawn salary was Rs.7,000/- per month. The management-herein has not mentioned any last drawn salary. In the process of proof the workman has adduced the original passbook of Vijaya Bank Branch : Barakhamba Road New Delhi with A/c No. 60401010014913. The workman has admitted in his cross-examination that he had no other bank account other than the accounts in the Viaya Bank and Central Bank of India:


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“It is correct that I deposit my saving money in my accounts in Central Bank of India and Vijaya Bank. It is correct that from my income I deposit the money. It is correct that besides the above bank account, I do not have any other bank account.”

30. The passbook of the Central Bank of India shows entries till 09.09.2005. As per the said passbook of Vijaya Bank Branch : Barakhamba Road New Delhi with A/c No. 60401010014913 the amounts deposited from May 2009 till Oct. 2009 are of Rs.6,200/- as on the dates / entries:

- i. 08.05.2009 - Rs.6,200/-;
- ii. 06.06.2009 - Rs.6,200/-;
- iii. 08.07.2009 - Rs.6,200/-;
- iv. 11.08.2009 - Rs.6,200/-;
- v. 09.09.2009 - Rs.6,200/-;
- vi. 08.10.2009 - Rs.6,200/-;

The alleged date of termination of the services is 10.10.2009. Thus the workman has been able to prove the last drawn salary after deductions of ESI / PF etc. till 08.10.2009 was Rs.6,200/- per month.

31. Thus ISSUE No.4 is decided in favour of the workman and against the management to the extent that the last drawn salary of the workman after deductions of ESI / PF etc. was Rs.6,200/- per month.

ISSUE No.5: Whether the services of the workman have been terminated illegally and unjustifiably by the management ?OPW

ISSUE No.6 : As per terms of reference

32. The management-herein has submitted written submissions and have contended that the dispute pertains to a case of abandonment. Since the workman never performed with sincerity and was always absenting without proper sanction of leave. He was not terminated by the management but voluntarily abandoned the services with an intention for not resuming the same. However, the cross-examination of the MW-1 reveals thus:

“...The workman did not give any resignation from the management. Vol. Workman left the job on his own. It is correct that workman was not given any call back notice. Vol. He was called many times to join the work telephonically.”

33. The management-herein has also submitted in the written submissions that the workman-herein was closely connected with the previous director and had join him later. The said

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written submission further asserts that the workman-herein always wanted to leave the job because he was earning handsomely by selling "ice chuski" and had no time to devote to his job with the management. It is submitted by the management-herein that in the case of abandonment of the service by the workman, it was for the workman to prove that his services were terminated for some reasons by the employer or without any reason by the employer. The workman has not produced any documents to prove the issue no (v) except self-serving affidavit that he has been illegally terminated by management. Even the Statement of Claim has not been supported by any affidavit and therefore, the content of illegal termination cannot be believed.

34. Per contra the workman-herein has submitted in his written /submissions arguments that the management has not disputed the period of service of the workman and the employer and employee relationship. As such the only issues arises as to whether the workman left the job after receiving the full and final settlement or his services were terminated by the management illegally and /or unjustifiably.
35. In the present case the management has not denied that the workman-herein was employed as Peon in 1987. The witness MW-1 (Sh. Virender Singh- Accounts Officer of the management-herein) has revealed in his cross-examination:

"It is correct that the workman was not issued any memo, notice or charge sheet during his period of service. It is correct that conduct of the workman during his period of service was satisfactory. It is correct that the workman was not issued any memo or notice regarding allegation of absence without leaver. Voi. He used to be warned orally for the same. It is correct that the management did not deposit gratuity amount with the controlling authority under the payment of Gratuity act 1972 nor the management obtained permission from the said authority for withholding the said amount...."

36. Thus it is clear from the testimony of MW-1 that neither any domestic enquiry was ever conducted by the management nor any call-back letter was sent by the management.
37. In the case of Shiv Dayal Soin and Sons vs., The Presiding Officer, Labour Court in LPA 801/2002 decided on 20.12.2007, the Division Bench of the Hon'ble Delhi High Court has held in para 11 thereof which is as follows:-

"However, it is pertinent to note that a mere accusation that the Workers had abandoned their jobs is not enough to accept the said imputation, degree of proof required to establish abandonment of service, is rather strict and the management in this case has failed miserably to discharge the said burden of proof..."

38. Observation of the Hon'ble Supreme Court in the Case of G.T.Lad v. Chemical and Fibres of India Ltd., reported in (1979) 1 SCC 590 throws great deal of light on this aspect, The Court noted: *".. In the unabridged edition of the Random House Dictionary, the word 'abandon' has been explained as meaning 'to leave completely and word 'abandon' has been explained as meaning 'to leave completely and finally; forsake utterly; to relinquish, renounce; to give up all concern in something'. ...It must be total and under such circumstances as clearly to indicate an absolute relinquishment. The failure to perform the duties pertaining to the office must be with actual imputed intention, on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Temporary absence is not ordinarily sufficient to constitute an 'abandonment of office'."*
39. In Shiv Dayal Soin and Sons (supra) also relied upon in Buckingham and Carnatic Co. vs. Venkatiah AIR 1964 SC 1272 it was observed : *"abandoning or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf and thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case"*. In MCD vs Sukhbir Singh 1994 ILR 332, in case of abandonment of service, it was held that the management was duty bound to conduct an inquiry. Reference in this regard may also be made to Shakuntala Export House (P) Ltd. vs P.O. Labour Court X & Anr. 117(2005) DLT 479.
40. The judgments relied upon by the management-herein do not come to their rescue as the present case is premised upon different set of facts where the workman-herein has been able to discharge its onus. The delay has been well explained by the workman-herein. Thus there was not a "total silence" on part of the workman-herein. Admittedly, the workman was not given any call back notice by the management. The point is that the management-herein did not adhere to the principles of natural justice. Absolutely, no enquiry was conducted by the management. Even though there was no 'termination letter' issued by the management-herein, the conduct on its part amounts to termination.
41. In view of the above discussion, it cannot be said that the workman-herein abandoned his job with the management. The management-herein has not been able to discharge their onus to show that the workmen had abandoned the job by remaining absent. This issue is decided in favour of workman and against the management. In the present case neither any domestic enquiry was ever conducted by the management nor call-back letter was sent by the management. **Therefore, in view of the aforesaid discussion the management has failed to prove that workman has abandoned the service as he voluntarily remained absent. The onus to prove the ISSUE was on the management and same could not be discharged by the management.**
42. The ISSUE No.5 & 6 are thus decided in favour of the workman and against the management.


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ISSUE No.7: Whether the workman is entitled to the relief? OPW**ISSUE No.8: RELIEF**

43. The workman-herein has sought the relief of reinstatement in the service with full back wages along with the continuity of service and all the consequential benefits. The term "reinstatement" has not been elucidated in the Industrial Disputes Act, 1947. The Shorter Oxford English Dictionary, Vol. II, 3rd Edition stated that, the word "re- instate" means to reinstall or re-establish (a person or thing in a place, station, condition etc.); to restore to its proper and original state; to reinstate afresh and the word "reinstatement means the action of reinstating; re-establishment. "As per Black's Law Dictionary, 6th Edition, "reinstatement" means 'to reinstall, to re-establish, to place again in a former state, condition, or office, to restore to a state or position from which the object or person had been removed'. In cases of wrongful termination of service, reinstatement with continuity and back wages is the normal rule. Held by the Hon'ble Supreme Court in Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324. The concept of reinstatement was also discussed therein: *"17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer."*

44. In Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd., (1979 (2) SCC 80). The three judges Bench of the Hon'ble Supreme Court has laid down : *"In the very nature of things there cannot to a straightjacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances..."*

45. The workman-herein has admitted in his cross-examination:

"...Presently I am residing at Loni Ram Park. It is correct that my son is running a Hair Cutting Saloon at Loni and I occasionally help him in his work. It is correct that there are 2-3 other workers in his saloon of my son....."

I am willing to join my duty with the management.

Q. "Aap har Mahina Kitne Paise Bachake Jama Karte Hai?"

Ans. Jab Kaam Hi Nahi Karte to Kya Bhachayenge."

46. So far as the expression "gainful employment in an establishment" is concerned, it has been held by the courts that the self-employment too is not employment in an establishment. This question fell for consideration before the Apex Court in (1984) 4 SCC 635 entitled Rajinder Kumar Kundra Vs. Delhi Administration while considering the question relating to award of back wages, the court noticed thus:- *"... the appellant (workman) in his cross- examination has admitted that during his forced absence from employment since the date of termination of his*

Deekha
18.11.2020

service, he was maintaining his family by helping his father-in-law Tara Chand who owns a coal depot, and that he and the members of his family lived with his father-in-law and that he had no alternative source of maintenance. If this is gainful employment, the employer can contend that the dismissed employee in order to keep his body and soul together had taken to begging and that would as well be a gainful employment. The gross perversity with which the employer had approached this case has left us stunned. If the employer after an utterly unsustainable termination order of service wants to deny back wages on the ground that the appellant and the members of his family were staying with the father-in-law of the appellant as there was no alternative source of maintenance and during this period appellant was helping his father-in-law of the appellant as there was no alternative source of maintenance and during this period appellant was helping his father-in-law Tara Chand who had a coal depot, it cannot be said that the appellant was gainfully employed. This cannot be said to be gainful employment so as to reject the claim for back wages. There is no evidence on the record to show that the appellant was gainfully employed during the period of his absence from service. Therefore, the appellant would be entitled to full back wages and all consequential benefits." (as quoted in para 16 of "Kishan Lal & Sons vs Govt. Of. Nct. Of Delhi & Ors." {WRIT PETITION (CIVIL) NO. 2211/1998 decided on 28 April, 2010})


47. In the present case the management has not been able to show that the workman-herein is gainfully employed elsewhere. Thus the ISSUES No.7 & 8 are also decided in favour of the workman and against the management-herein.

48. In view of the facts of the case and the case law(s) on the point, the workman Sh. Tilak Ram s/o Sh. Tilak Ram is found entitled to be reinstated with full back-wages alongwith the consequential relief as per the last drawn wages @ Rs.7,000/- per month w.e.f. 10.10.2009 till date and further as per the rule. The management is directed to reinstate the workman-herein long with full back-wages alongwith the consequential relief as per the last drawn wages @ Rs.7,000/- per month w.e.f. 10.10.2009.

49. Reference answered accordingly. Disposed of. File be consigned to record room.

Announced as per the advisory / orders of the Hon'ble High Court vide its order/letter No.R-235/RG/DHC/2020 DATED 16-05-2020 and the Amended Protocol Letter No:24/DJ/RADC.2020 dated 07-05-2020 of Ld. District & Sessions Judge-Cum-Special Judge (PC-Act),CBI, Rouse Avenue District Courts, New Delhi.

Dated:18-08-2020


(VEENA RANI)
**Presiding Officer Labour Court
Rouse Avenue Courts, New Delhi
Judge Code : DL0271**

IN THE COURT OF Ms. VEENA RANI : POLC
PRESIDING OFFICER LABOUR COURT ROUSE AVENUE COURTS, NEW DELHI
I.D. No.- 7002/2016

INDUSTRIAL DISPUTE BETWEEN :-

Sh. Tilak Ram s/o Sh. Mithu Lal
r/o H.No.6, G-Block, Rampark,
Ilayacheepur, Distt. Ghaziabad, U.P.

.....Workman

VERSUS

M/s Gopal Das Estate and Housing (P) Ltd
16th Floor, Dr. Gopal das Bhawan,
28 Barakhamba Road, Counnought Place
New Delhi-110001.

.....Managements

17-08-2020

Present : Sh. M.N.Singh ,AR of the workman through VC.

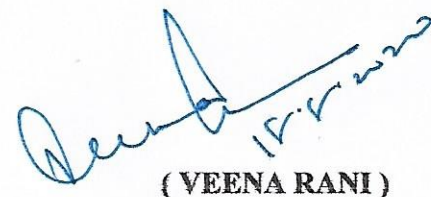
Sh. Bimlendu Shekhar, , AR of the management through VC.

Vide my separate detailed order the AWARD is being passed in favour of the workman **Sh. Tilak Ram s/o Sh. Mithu Lal**. A copy of the order be uploaded on the website of RADC. A copy of the same be also delivered to both the parties as well as to the concerned Department through electronic mode or through Dak, if possible. File be consigned to Record Room.

Announced through Video Conferencing

due to Covid-19.

Dated: 18-08-2020



(VEENA RANI)

Presiding Officer Labour Court
Rouse Avenue Courts, New Delhi
Judge Code : DL0271