

LIR No. 2646/16

Surjit Kumar vs M/s Prime Cable Industries

23.06.2020

Present: Sh. Sanjay Sharma, AR of the workman.

Sh. Sanjay Kumar, AR of the management.

Matter was preponed for today for passing award after serving notices to the ARs of the parties through whatsapp for appearing through Video Conferencing.

Vide my separate award of even date, the statement of claim filed by the claimant has been dismissed. The reference has been answered accordingly.

A copy of the award be sent to the Office of the Deputy Labour Commissioner, Government of NCT of Delhi of Distt./Area concerned for publication as per rules and judicial file be consigned to Record Room, as per rules after compliance of necessary legal formalities.

Ahalmad of this court is directed to send the copy of this order and copy of award to the concerned official of District Court, Rouse Avenue Court Complex, New Delhi for uploading on the official website of Delhi District Court.


(PAWAN KUMAR MATTO)
PRESIDING OFFICER: LABOUR COURT-IX
ROUSE AVENUE COURTS, NEW DELHI
23.06.2020.-

IN THE COURT OF SH. PAWAN KUMAR MATTO, (ADDITIONAL DISTRICT & SESSIONS JUDGE) PRESIDING OFFICER, LABOUR COURT NO. IX, ROUSE AVENUE COURTS: NEW DELHI

LIRNo.	2646/16
Date of institution	28.05.2015
Date of Award	23/06/20

Sh. Surjit Kumar,
S/o Sh. Kailash Narayan,
C/o Rastriya Krantikari Mazdoor Union (Regd.)
A-45D, Gali No.3,
Mahendra Enclave,
Azadpur, Delhi-110033.

.....Claimant (Workman)

Vs

M/s Prime Cable Industries

Office at:
E-894, DSIDC,
Narela, Bhorganh,
Delhi-110040.

.....Management

AWARD

1. This award of mine will dispose off the reference sent to the court by the Office of the Deputy Labour Commissioner, Labour Department, Distt. North-West, Govt. of the National Capital Territory of Delhi, arising out between the parties, as mentioned herein above, vide notification No. F.24/ID/850/14/NWD/273/15/Lab./1352-56 dated 10.05.15 with the following terms of reference:-

"Whether Sh. Surjit Kumar s/o Sh. Kailash Narayan abandoned his job or his services have been terminated illegally and/or unjustifiably by the management; and if so, to what relief is he entitled and what directions are necessary in this respect?"

2. Sh. Surjit Kumar (hereinafter will be referred to as the "Claimant") has filed a claim petition against M/s Prime Cable Industries (hereinafter will be referred to as the "Management"), wherein, the claimant has averred that he was working as Mistry in the management since June 2009 and his last drawn salary was of Rs. 7050/- per month.

LIR No. 2646/16

Sh. Surjit Kumar vs M/s Prime Cable Industries

Page no. 1 of 19



3. The claimant has also stated that he had worked in the management honestly and sincerely and he did not give any chance of complaint to the management. So, he was never chargesheeted.

4. The claimant has also stated that the management did not provide the appointment letter, attendance card, leave book, payslip, leaves encashment, over time charges, bonus and minimum wages and the claimant, used to make oral demands for the same and in view of the same, the management got annoyed and started harassing to the claimant.

5. The claimant has also stated that the management was harassing to the claimant, in view of raising of demand for legal facilities and the management intended that the claimant should leave the job himself. But, as the claimant was in need of job, so, he continued to do the job.

6. The claimant has also stated that when he made repeated demands for legal facilities, then, the management on the pretext of providing the legal facilities, had obtained his signatures on blank papers and vouchers and on dated 04.05.2014, the management had terminated his services without assigning any reason and without making payment of his dues.

7. The claimant has further stated that the management has failed to pay his earned wages w.e.f. 01.03.2014 to 04.05.2014 and the management also did not provide leaves encashment, overtime charges, bonus and arrear of minimum wages and his services have been terminated illegally by the management that too without payment of notice pay, compensation and without any enquiry or chargesheet and the management has violated the provision of Section 25F of the Industrial Dispute Act.

8. The claimant has also stated that he has gone to the management repeatedly, but, neither he is reinstated nor his dues were paid. He has also stated that neither he has left the job of the management nor he has absented from his duties and he is still desirous to do job.

9. The claimant has further stated that he had sent a demand notice dated



25.09.2014 to the management through register post/speed post, vide which, he had demanded for his reinstatement and payment of his dues. But, the management did not reply thereof.

10. The claimant has also stated that being aggrieved, he had filed a case before the conciliation officer, Labour Office, Nimri Colony, Ashok Vihar, Delhi, but, the management did not show any interest to settle the matter and the management has neither reinstated nor paid his dues.

11. The claimant has also stated that he is unemployed, since the day, his services were terminated by the management, as he could not get any job despite of his best efforts and he is suffering from financial crises and he is living on the mercy of his relatives.

12. The claimant has also stated that the management has terminated his services without any proof of any charge against him and he had worked in the management for more than 240 days in each year and he has prayed for passing an award for reinstating to the claimant with full back wages.

13. The notice of statement of claim was issued to the management. On completion of services, the management had filed the reply to the statement of claim, stating therein that the claim made by the claimant is false and frivolous and also stated that the statement of claim has been filed to harass the management and to extort the money from the management.

14. It is also stated that the claimant had worked with the management only for 12 days in the month of April, 2014 and he had joined the M/s Shrikant Tar Factory, without informing to the management. It is also stated that the claimant had left the services of the management without prior information and he came on dated 02.05.2014 for receiving his salary for the month of April, 2014 and the same was duly paid by the management and the claimant had informed to the management that he had joined the services with M/s Shrikant Tar Factory at PO-2383, DS IDC, Narela Industrial Area, Delhi.

15. The management has also stated that the services of the claimant were not terminated by the management, but, the claimant has abandoned the job from the



management for better opportunity, so, the statement of claim is liable to be dismissed.

16. Replying to the statement of claim on merit, the management has denied that this claimant had joined the management in June, 2009, as Mistri or that his last drawn salary was of Rs. 7,050/- and stated that the claimant had joined the management as helper on 14.07.11 and his last drawn salary was Rs. 8,554/- per month.

17. The management has also denied that this claimant had worked honestly or sincerely or that he did not give any chance of complaint to the management. The management has denied that it had terminated the services of the claimant and stated that this claimant had joined the services with M/s Shrikant Tar Factory for better employment.

18. The management has denied that it had not provided the appointment letter, wage slip, attendance card, leave book, earned leave, overtime charges, bonus or minimum wages or that the claimant had demanded for the same or that that management had harassed to the claimant and stated that management had issued ESI Card from the date of appointment itself and provided other benefits also to which the claimant was entitled.

19. The management has denied to have harassed to the claimant and stated that this claimant had voluntarily and without informing to the management had joined the services with M/s Shrikant Tar Factory.

20. The management has denied to have terminated the services of the claimant on dated 04.05.2014.

21. The management has also denied to have withheld the earned wages of the claimant and stated that the claimant had received the salary of April, 2014 of Rs. 3,362/- and stated that nothing is due. It is also stated that the management had provided wage slip to each worker and also stated that the management had paid the bonus to the workers on each Dipawali and nothing is due with respect to bonus.

22. The management has denied to have violated the provision of Section 25(F) of the Industrial Dispute Act and stated that this claimant had voluntarily left his services. The management has denied to have received demand notice dated 25.09.2014 and stated that since, this claimant has left the job of his own and joined the services with M/s Shri



Kant Tar Factory and the services of the claimant were never terminated by the management and after denying the other averments made in the statement of claim, the management has prayed for dismissal of the statement of claim filed by the claimant.

23. The claimant has filed rejoinder, wherein, he has reiterated the averments made in the statement of claim and denied the averments made in the written statement and prayed for grant of relief, as mentioned in the statement of claim.

24. On the basis of the pleadings of the parties, the predecessor of this court was pleased to frame the following issues vide order dated 04.04.2016:

1. Whether the workman has left the services of the management after working for 12 days in the month of April, 2014, if so to what effect? OPM
2. As per the terms of reference?
3. Relief.

25. In order to prove his case, the claimant has examined himself as WW-1 vide his affidavit Ex. WW-1/A and in one way or the other, he has reiterated the contents of his statement of claim therein. He has relied upon the documents Ex. WW1/1 to Ex. WW1/3. He was cross-examined by the Ld. AR of the management. He did not examine any other witness and closed his evidence.

26. Whereas, the management has examined Sh. Pushotam Singhal as MW1 vide his affidavit Ex.MW1/1. He has relied upon the documents Ex.MW1/A, Ex.MW1/B, Mark and Mark B. He was cross-examined by the Ld. AR for the claimant.

27. I have heard the Ld. Authorized Representatives of both the parties and perused the record.

28. The Ld. Authorized Representative for the claimant has submitted that the claimant had joined the management as Mistri in the month of June, 2009 and his last drawn wages were Rs. 7,050/- and on dated 04.05.2014, the services of the claimant were terminated illegally by the management and submitted that the claimant has examined himself as WW1 vide his affidavit Ex.WW1/A. He has proved his case. He has also submitted that the



management has examined Sh. Purshotam Singhal as MW1 and during his cross-examination, this witness has stated that PF was not applicable to the management and submitted that this MW1 has admitted that the management did not send any letter to the claimant for joining his duties and submitted that neither any show cause notice was issued nor any enquiry was conducted and submitted that the services of the claimant were illegally terminated by the management and submitted that MW1 has also admitted that no appointment letter was issued to the claimant, so, the claimant is entitled to be reinstated in the management with full back wages.

29. On the other hand, the Ld. AR of the management has submitted that this claimant had joined the management on 14.07.2011 and he had worked in the management till 12.04.2014 and his last drawn wages were Rs. 8,554/- and submitted that the claimant has failed to bring on record any cogent evidence to prove that he had joined the management in the month of June, 2009 and the claimant has also failed to bring on record any cogent evidence to prove that his services were terminated by the management on 04.05.2014 and submitted that the claimant has claimed in his statement of claim that he was not provided the legal facilities, whereas at the time of his cross-examination, this claimant has admitted that he was getting the facilities of ESI and PF and he has also admitted it to be correct that he had approached to the management for getting his dues on 02.05.2014 and he has voluntarily stated that he was asked by the management to come on 07.05.2014 and submitted that this claimant has claimed that he had worked in the management as Mistri, but, he failed to tell the name of machine on which he was allegedly working, in his cross-examination and submitted that the claimant during his cross-examination has stated that he does not know, vide which mode, demand notice was sent to the management. Had he sent any demand notice, he could tell and submitted that the testimony of the claimant is self contradictory and since this claimant has abandoned the job, as he did not come in the management after 12.04.2014 and during his cross-examination, this claimant has stated that he does not remember, the date of joining the management. He has also stated that he does not know the contents of his affidavit Ex.WW1/A and he has also admitted that he had worked only for 12 Days in the month of April, 2014 in the management and submitted that this claimant has also admitted that he had gone at his native village for remaining 18 days of the April, 2014 and submitted that in view of such admission by the claimant, the case of the management is fortified and submitted that claimant has failed to prove on record that he had joined the



management in June, 2009 or that his services were terminated illegally by the management on 04.05.2014 and submitted that since, this claimant during his cross-examination had admitted that he is doing the work of agriculture, so, he is gainfully employed and since, this claimant had abandoned the job, so, he is not entitled to be reinstated and prayed for the dismissal of the statement of claim. He has relied upon the judgment passed by the Hon'ble High court Delhi in Diamond Toys vs Tufani Ram & Anr. WP(C)4501/04.

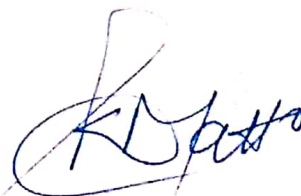
30. I have given thoughtful consideration to the submissions made by the Ld. Authorized Representatives for the claimant and management and perused the record.

31. The perusal of the record reveals that the claimant has claimed in his statement of claim that he had served in the management since June, 2009 and his services have been illegally terminated by the management on 04.05.2014 and his last drawn salary was of Rs. 7,050/-. The management has denied that the claimant has served in the management for the period of services, as claimed by the claimant and stated that this claimant had joined the management on 14.07.2011 and he worked therein till 12.04.2014 and his last drawn wages were of Rs. 8554/- per month and the management has also claimed that this claimant abandoned the job after 12.04.2014.

32. The burden of proving of issue no.1 was on the management, whereas, burden of proving that the claimant has abandoned his job was on the management and burden of proving that the services of the claimant have been terminated illegally and /or unjustifiably by the management, was on the claimant. Thus, the burden of proving issue no.2 was partially on the management and partially it was on the claimant. In order to avoid repetition, both the issues have been taken together for discussion.

33. In order to prove his case, the claimant has examined himself as WW1, vide his affidavit Ex. WW1/A, wherein the claimant has reiterated the contents of his statement of claim. He has relied upon the photocopy of demand notice dated 25.09.2014 Ex.WW1/1, its postal receipt Ex.WW1/2 and photocopy of statement of claim filed before the conciliation officer Ex.WW1/3.

34. The claimant was cross-examined by the Ld. Authorized Representative for the



management. During his cross-examination, he has stated that he has studied upto high school, he did not know English Language, neither he can read nor write English Language. He does not know about the contents of his affidavit Ex.WW1/A. He has denied that he had joined the management on 14.07.2011 and stated that he does not remember the date of joining the management. He has denied that he had joined Shrikant Tar Factory after the alleged termination of his services. He has admitted that he had worked for 12 days in a month of April, 2014. He has denied that he had visited the management on 02.05.2014 for taking his salary of April, 2014. He has also stated that he had gone to his native village for remaining 18 days of April, 2014 and stated that he had taken sanction of leave from the management prior to going to his native village. He has also stated that he had given an application in writing for the said leaves. He has denied that he had never given any application for taking leave, to the management for the said period or that his leave was never sanctioned by the management for the said period. The claimant has denied his signature on Mark-A, and Mark-B. He has admitted his signature Mark-C (Ex. WW 1/M1). This claimant has also admitted that one Brij Kishore Yadav was also working in the management. He has denied that he was working as helper in the management. He has stated that he was handling the machine, which was called as "ADDA". He has denied that no such machine was installed in the factory of the management. He has admitted it to be correct that he was getting the facilities of ESI from the management and he was enrolled in PF account also. He has also admitted it to be correct that he was getting bonus from the management. He has also stated that he is not working at Delhi at present. He has further stated that he is residing away at Kanpur and he was having a mobile shop at Bhagpur, Kanpur, but, the same has been closed and further stated that at present he is doing his own agricultural/farming work. He has admitted that he has not filed any case against the management except the present case. He has denied that he had left the job for better opportunities. He has denied that he has not provided his permanent address to the management. He has also denied that he did not visit the management after leaving his job.

35. This claimant has admitted that he had approached to the management on 02.05.2014 for getting his dues from the management and voluntarily stated that the management had asked him to come on 07.05.2014 for the same. He has denied that he had received due amount on 02.05.2014. He has denied that he had joined Shrikant Tar Factory at Narela Industrial Area, Delhi. He has also denied that he had left the job of his

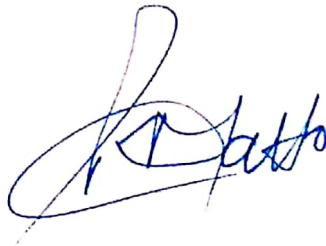


own in the management. He has denied that he had never approached the management after 02.05.2014 and voluntarily stated that he had approached the management on 07.05.2014 and the management had asked him to inform in writing as to where was he working and thereafter, the management would pay his due wages of last month, which this claimant had denied and asked the management to pay his dues first, then he would give in writing, as to where was he working presently.

36. He has also stated that he does not know, vide which mode the demand notice Ex.WW1/1 was sent to the management. He has denied that Ex. WW1/2 is forged and fabricated document or that he has deposed falsely. The claimant did not examine any other witness.

37. The management has examined Sh. Purshotam Singhal as MW1 vide his affidavit Ex.MW1/1, who has deposed that he is conversant with the facts and circumstances of the present case. He is authorized by the resolution of board dated 20.09.2017 Ex.MW1/A to depose. He has also deposed that the claimant had worked as helper. He had worked only for 12 days in the month of April, 2014 with the management and he joined M/s Shrikant Tar Factory without informing to the management. He has also deposed that this claimant had left the services from the management without prior information and came to the management on dated 02.05.2014 for receiving the salary for the month of April, 2014, which was duly paid by the management and then the workman had informed that he had joined the services with the M/s Shrikant Tar Factory at PO 2383, DSIDC Narela Industrial Area Delhi. This witness has also deposed that the services of the claimant were never terminated by the management, but. it is the claimant, who had abandoned the job from the management for better opportunity. He has also deposed that the claimant is gainfully employed and the claimant has concealed this material fact from the court.

38. This witness has also deposed that the claimant had joined the management on 14.07.2011 and he was lastly drawing the salary Rs. 8,554/-. He has further deposed that this claimant was duly enrolled with the ESI from the date of his service. He has further deposed that this claimant received the salary of Rs. 3,362/- for the month of April, 2014 and the management had provided wage slip to each worker and the management had also provided basic facilities to the claimant, which were applicable to the management. It is also deposed that this claimant had left his services for better



employment/business/agricultural work. He has relied upon the copy of page of wage register Mark A and Mark B and deposed that original thereof could not be produced. as the same were lost and the copy of NCR dated 06.03.2017 Ex.MW1/B is also placed on record.

39. This witness was cross-examined by the Ld. Authorisec Representative of the claimant and during his cross-examination, this witness has deposed that he is looking after the work of personnel and accounts department. He has denied that this claimant was working as Mistri or that the claimant proceeded on sanctioned leave in the month of April, 2014. He has admitted that he does not have any documentary proof regarding the working of the claimant with M/s Shrikant Tar Factory. He has admitted that this claimant had never demanded his dues in writing and voluntarily stated that he had demanded orally. He has also deposed that PF was also not applicable to the management at that time. He has admitted that the management did not send any letter to the claimant to join his duties again. He has also admitted that no show cause notice was issued to the claimant. He has also deposed that he cannot say, if the ESI Facility was given to the claimant after three years of employment and he has voluntarily stated that it is not possible. He has denied that the claimant was not given legal facilities and stated that management used to provide pay slip to the workers. He has denied that the services of the claimant was terminated on 04.05.2014 or that his earned wages w.e.f. 01.03.2014 to 04.05.2014 were withheld by the management. He has also stated that the management could take the claimant on his job again alongwith the compensation for the period, for which he remained unemployed. If the claimant is ready and willing to work properly, He has denied that he has deposed falsely.

40. The perusal of record reveals that the claimant has claimed that he has worked in the management as 'Mistri' since, June 2009 and his services have been illegally and unjustifiably terminated by the management on dated 04.05.2014.

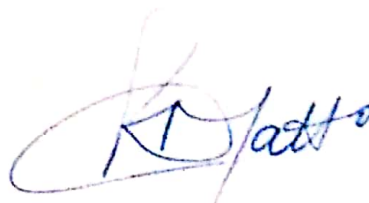
41. The management has taken the plea that this claimant had joined the management on 14.07.2011 and worked therein till 12.04.2014 and thereafter the claimant had abandoned the job in the management and he worked in the management for 12 days in the month of April, 2014 and he had taken the salary for these 12 days of April, 2014.



42. The burden of proving of issue no.1 was on the management and in order to discharge its burden of proving, the management has examined it's director as MW1, who has categorically deposed that this claimant had worked in the management only for 12 days in the month April, 2014 and this witness was not given any contrary suggestion by the Ld. Authorized Representative of the claimant, during his cross examination to rebut the testimony of MW1. Thus, the testimony of MW1 remained unrebutted, uncontroverted, unchallenged and unimpeached. Even otherwise, the claimant during his cross-examination has admitted it to be correct that he had worked in the management for 12 days in the month of April, 2014. So, in view of such admission made by the claimant that he had worked in the management only for 12 days in the month of April, 2014, the issue No.1 is decided against the claimant.

43. The burden of proving issue no.2 to the extent that his services were illegally and/or unjustifiably terminated by the management was on the claimant and in order to prove his case, the claimant has examined himself vide his affidavit Ex. WW-1/A and in one way or the other he has reiterated the contents of his statement of claim therein. He has relied upon the documents as discussed herein above. The claimant has claimed that he had served the demand notice dated 25.09.2014, copy whereof is Ex.WW1/1 to the management and the claimant has also placed on record one postal receipt dated 26.09.2014 Ex.WW1/2, but, the management has denied to have received the demand notice. The postal receipt does not contain the name and complete address of the management and during his cross-examination, the claimant has stated that he does not know, vide which mode, the demand notice Ex.WW1/1 was sent to the management.

44. The claimant has averred in para No. 8 of his statement of claim that on dated 25.09.2014, demand notice was sent to the management through registered AD/Speed post, but, he failed to bring on record any cogent proof of service of the demand notice to the management. Since, the management has taken the plea in its Written Statement that the Demand Notice was not served to the management prior to the filling of the present case against the management and the claimant has stated during his cross examination that he does not know vide which mode, the demand notice Ex.WW1/1/ was sent to the management and since, one postal receipt Ex.WW1/2 does not bear the name and complete address of the management, so, the service of the demand notice dated



45. Since, it is settled principle of law that an industrial dispute comes into existence after a demand notice is raised by the claimant regarding his grievances and on declining of the same by the management.

46. It was held by the Lordship of Hon'ble High Court of Delhi in Fedderslolloyd Corporation Pvt. Ltd. Vs. LG of Delhi (AIR 1970 Delhi 60) "that prior to making a demand to conciliation officer, the workman has to raise his / her demand with the management to bring an industrial dispute into existence and their Lordship was pleased to observe that "we are of the view that the decision of Supreme Court in ARI1968 HC 529 referred to above has finally established the position that a demand by the workman must be raised first on the management and rejected by them before industrial dispute can be said to arise and exists and that the making of such a demand to the conciliation officer and its communication by him to the management, who rejects the same is not sufficient to constitute an industrial dispute.

47. Similarly, in Orissa Industries Pvt. Ltd. Vs. Presiding Officer IT [1975 (31) FLR 305], the Hon'ble High Court has categorically held that in the absence of Demand Notice, no industrial dispute can be said to exist between the parties.

48. Same view was taken by the Hon'ble High Court of Delhi in case Nagender Sharma Vs. Management of Rajasthan (DID No.1875/16 5 of Timber Corporation and in S.N. Tiwari Vs. Govt. of NCT Delhi W.P. (c) 593/2008.

49. In Sindhu Resettlement Corporation Ltd., Vs. Industrial Tribunal of Gujrat and others, AIR 1968, Supreme Court 529 (V 55 C 115), following was held by the Hon'ble Supreme Court :-

"It may be that the Conciliation officer reported to the Government that an industrial dispute did exist relating to the reinstatement of respondent No. 3 and payment of wages to him from 21st February, 1958, but when the dispute came up for adjudication before the Tribunal, the evidence produced clearly showed that no such dispute had ever been raised by either respondent with the management of the appellant. If no

dispute at all was raised by the respondents with the management, any request sent by them to the Government would only be a demand by them and not an industrial dispute between them and their employer. An industrial dispute, as defined, must be a dispute between employers and employers, employers and workmen, and workmen and workmen. A mere demand to a Government, without a dispute being raised by the workmen with their employer cannot become an industrial dispute. Consequently, the material before the Tribunal clearly showed that no such industrial dispute, as was purported to be referred by the State Government to the tribunal had ever existed between the appellant Corporation and the respondents and the State government, in making a reference, obviously committed an error in basing its opinion on material which was not relevant to the formation of opinion. The Government had to come to an opinion that an industrial dispute did exist and that opinion could only be formed on the basis that there was a dispute between the appellant and the respondents relating to reinstatement. Such material could not possibly exist when, as early as March and July, 1958 respondent No. 3 and respondent No. 2 respectively had confined their demands to the management to retrenchment compensation only and did not make any demand for reinstatement. On these facts, it is clear that the reference made by the Government was not competent. The only reference that the Government could have made had to be related to payment of retrenchment compensation which was the only subject-matter of dispute between the appellant and the respondents”.

50. Thus, the claimant was required to prove on record that prior to the filing of present claim, he had raised demand of reinstatement with the management, but, as in the case in hand, the claimant (during his cross examination) has stated that he does know vide which mode, the demand notice was sent to the management and since, the postal receipt Ex.WW1/2 does not bear the name and proper address of the management, so, the service of the demand notice becomes doubtful and since, the claimant has categorically mentioned in his statement of claim that the demand notice dated 25.09.2014 was sent to the management through registered post/Speed post on 25.09.2014. But, as no postal receipt to show that demand notice was sent to management on 25.09.2014 is brought on the record. One postal receipt dated 26.09.2014 Ex.WW1/2 is placed on record, but, as the same does not bear the name and complete address of the management, so, the same does not inspire any confidence. Even otherwise, the testimony of this claimant is contradictory to the contents of his statement of claim, wherein, he has stated that he had



sent a demand notice to the management through registered AD/speed post on 25.09.2014, but, he has failed to bring on record any cogent evidence to prove that he had served the demand notice Ex.WW1/1 to the management, so as per settled law no industrial dispute had come into existence between the parties to the present lis, prior to the filing of present claim.

51. The claimant has claimed that he has served in the management since, June, 2009 and his services have been illegally terminated by the management on dated 04.05.2014, whereas, the management has taken the plea that this claimant had joined the management on 14.07.2011 and he worked therein till 12.04.2014 and thereafter, he had abandoned the job. The claimant has failed to bring on record any cogent evidence to fortify such contention. The claimant during his cross-examination has stated that he does not know the contents of his affidavit Ex.WW1/A. He has also deposed that he does not remember the date, when, he had joined the management. He has admitted it to be correct that he had worked in the management for 12 days in the month of April, 2014. He has also stated that he had gone to his native village for 18 days in the month of April, 2014 and stated that he had taken sanctioned leave from the management prior to the going to his native village and he had given an application in writing for the said leaves. He has also deposed that the said application used to be handed over to Sh. Arvind Singh, Supervisor of the management. He has denied that he had not given any application for taking leaves to management or that his leaves were never sanctioned by the management for the said period.

52. Since, the claimant has claimed that the application for leave was used to be given to Sh. Arvind Singh, who is the Supervisor of the management, so, the claimant was having opportunity to examine Sh. Arvind Singh to prove that he had applied for the leave. But, the claimant did not file copy of any application for leave nor he has chosen to examine any witness to prove that he had ever applied for leave in the month of April, 2014 or that his leaves for 18 days were ever sanctioned by the management in the month of April, 2014. So, in the absence of any cogent evidence to this effect, it cannot be presumed or assumed that the claimant had either applied for leave for 18 days in the month of April, 2014 or that such leaves for long period were ever sanctioned by the management.



53. Since, the claimant had claimed that he had worked in the management since June, 2009 till 04.05.2014 and the management has claimed that this claimant has worked in the management since 16.07.2011 till 12.04.2014 and thereafter, this claimant has abandoned the job. As, the claimant during his cross-examination has admitted that he had worked only for 12 days in the month of April, 2014 and he has also admitted it to be correct that he had approached to the management on 02.05.2014 for getting his due wages and he has also voluntarily deposed that he had approached to the management on 07.05.2014 and the management had asked him to inform in writing, as to where was he working and thereafter, the management would pay his due wages for the last month and this claimant has also deposed voluntarily that the management asked him to inform in writing as to where was he working and this claimant had asked to the management to pay first his due wages and then he would give in writing as to where was this claimant working at that time. Thus, from such statement of the claimant, it is proved that this claimant had worked in the management till 12.04.2014 and thereafter he started doing work somewhere else.

54. No doubt that the burden of proving that the claimant has abandoned the job in the management was not the management and in order to discharge it's burden of proving, the management has examined it's Director Sh. Purshottam Singhal as MW1 and this witness has deposed that this claimant had abandoned the job from the management for better opportunity. And since, the claimant during his cross-examination has admitted that he had approached the management on 02.05.2014 for getting his dues wages and voluntarily deposed that he had approached to the management on 07.05.2014 and he asked to the management to pay his due wages for the last month first and then he would inform to the management in writing, as to where was he working at that time. So, from such statement of the claimant, the case of the management is fortified, as the management has taken the plea that this claimant had worked till 12.04.2014 and thereafter, he had abandoned the job in the management.

55. Since, the claimant has claimed that he had worked in the management since, June 2009 and his services were terminated by the management on dated 04.05.2014, but he has failed to bring on record any cogent evidence to prove that he had joined the management in June 2009 or that his service were illegally terminated by the management on 04.05.2014 except his self serving affidavit which is not sufficient. Since, the



management has claimed that this claimant had worked with the management since 14.07.11 till 12.04.2014 and this claimant had also admittedly during his cross-examination that he had worked only for 12 days in the month of April, 2014 and the claimant has failed to bring on record any cogent evidence that he had ever worked in the management after 12.04.2014. Since, the claimant has claimed in his statement of claim that he was not given the legal facility by the management and on raising of such demand for legal facilities his services were illegally terminated by the management on 04.05.2014, but, the claimant during his cross-examination has admitted that he was getting the facilities of ESI, PF and bonus, so, testimony of the claimant is found to be inconsistent to the contents of his statement of claim. So, the same does not inspire any confidence.

56. The claimant has claimed in his statement of claim that he is unemployed, since the termination of his services by the management. The claimant during his cross-examination has admitted that he was having a mobile shop at Baghpur, Kanpur and the same has been closed and he has also admitted that at present, he is doing his own agricultural/ farming work. Thus, the testimony of the claimant is also inconsistent to the contents of his statement of claim.

57. The claimant has claimed in his statement of claim that demand notice was sent by Registered AD/Speed post, but, at the time of his cross-examination, he has stated that he does not know vide which mode, the demand notice Ex.WW1/1 was sent to the management. Thus, the testimony of the claimant was found to be contradictory and inconsistent to his statement of claim. So, the such inconsistent testimony of the claimant does not inspire any confidence. Since, the claimant during his cross-examination has claimed that he had gone to his village in the month of April, 2014 after applying and sanctioned of his leaves for 18 days by the management. But the claimant has failed to bring on record any such copy of application for leave or any proof of sanction of his leaves by the management for 18 days in the month of April, 2014.

58. Since the claimant has claimed that he worked in the management since, June 2009 till 04.05.2014 and on dated 04.05.2014, his services have been illegally terminated, so, it was incumbent on the part of the claimant to prove that he had served in the management for the said period. But, the claimant has failed to bring on record any cogent



evidence to prove that he worked with the management since June, 2009 till 04.05.2014. The management has taken the plea that this claimant had joined the management on 14.07.2011 and worked therein till 12.04.2014 and thereafter, he had abandoned the job. The claimant has failed to bring on record any cogent evidence to prove that he had worked in the management since June, 2009 till 04.05.2014 or that he had worked in the management after 12.04.2014.

59. As their lordship of Supreme Court in case Vijay S. Sathaye vs Indian Airlines Ltd and ors. SLP(C) No. 24220-24221 of 2007 was pleased to hold that when absence is for a long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.

60. Similarly, in M/s Jeewan Lal (1929) Ltd Calcutta vs its Workman, AIR 1961, Supreme Court 1567, it was held by their lordship of Supreme Court that:

"there would be the class of cases where long unauthorized absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee (see also : Shahoodul-Haque vs Registrar, Coperative Societies, Bihar and ors AIR 1974, Supreme Court 1896)."

61. Since their lordship of Supreme Court in case Vijaya S. Sathaye (supra) was also pleased to hold that :

"for the purpose of termination, there has to be positive action on the part of the employer, while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Such an act cannot be termed as retrenchment from service."

62. Their lordship of Supreme Court in case Syndicate Bank vs General Secretary, Syndicate Bank Staff Association and anr. AIR 2000 SC 2198 and Aligarh Muslim University and ors vs Mansoor Ali Khan AIR 2000, SC 2783 had ruled that if a person is absent beyond prescribed period, for which, leave of any time can be granted, he should be treated to have resigned and ceases to be in service. In such a case, there is no need to hold an inquiry or to give any notice as it would amount to be useless formalities.

63. The Id. Authorized Representative for the claimant has submitted that the



management has failed to issue show cause notice to the claimant and the management has also failed to conduct any inquiry against the claimant prior to the termination of his services. The claimant has alleged that his services have been terminated by the management on dated 04.05.2014, whereas, the management has denied to have terminated the services of the claimant. The plea of the management was that the claimant has abandoned the job and since, this court finds that this claimant did not go on his duty after 12.04.2014. So, in view of the above discussion, this court has come to the conclusion that this is not a case of termination of services of the claimant, rather, it is a case of abandonment of job by the claimant, in view of his absence from duty after 12.04.14.

64. Since, the lordship of High Court of Delhi in case Diamond Toys Company Pvt. Ltd. Vs Tufani Ram and anr. decided on dated 07.02.2007 was pleased to hold that:

"an inquiry is required to be held only where the employer intends to impose punishment on the employee for an alleged misconduct and if an employer does not intend to impose any punishment on the employee and considers if employee has left the service, it be so, the law cannot compel the employer to hold an inquiry and punish an employee for the misconduct"

And further held :

" I consider that it was not necessary for employer to hold an inquiry into the abandonment of service by the respondent. It was for the respondent to prove that his services were terminated for some reason by the employer or without any reason by the employer. The respondent has taken a stand which was found to be false. Under these circumstances, labour court's conclusion that it was case of retrenchment is perverse".

65. Thus, from the law laid down by the Hon'ble High Court of Delhi in Diamond Toys case (supra), it is clear that in case of abandonment of job by a workman, no inquiry is required to be conducted. So, this court does not find any force in the submission made by the Ld. Authorized Representative for the claimant. This court is inclined to hold that even if the management has failed to issue any show cause notice to the claimant for his absence or even if the management has failed to conduct any inquiry, even then, the claimant cannot be reinstated in the management nor any back wages may be given to him, that too in case of abandonment of job by the claimant himself.

66. Since, the claimant has failed to bring on record any cogent evidence to prove that he had served in the management since June, 2009 till 04.05.2014 or that his services were illegally and/or unjustifiably terminated by the management on dated 04.05.2014. In

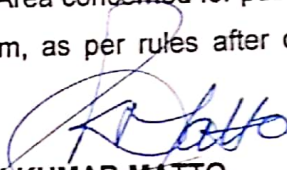


view of the above discussion, it is proved on record that the claimant has abandoned the job in the management after 12.04.2014. So, the issue no.2 to this effect is decided in favour of the management. The claimant has failed to prove on record that his services were illegally and/or unjustifiably terminated by the management on dated 04.05.2014, therefore, issue no. 2 to this effect is also decided against the claimant.

67. So, the claimant is not entitled to get any relief. Therefore, statement of claim filed by the claimant is hereby dismissed, by devoid of merits. The reference is answered accordingly.

68. The attested copy of the award be sent to the Office of the Deputy Labour Commissioner, Government of NCT of Delhi of Distt./Area concerned for publication as per rules and judicial file be consigned to Record Room, as per rules after compliance of necessary legal formalities.

Announced on 23.06.2020
through Video Conference
using Cisco Webex


PAWAN KUMAR MATTO
(ADDITIONAL DISTRICT & SESSIONS JUDGE)
PRESIDING OFFICER LABOUR COURT-IX
ROUSE AVENUE COURT:NEW DELHI