

**IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT  
ROUSE AVENUE COURTS , NEW DELHI**

**Industrial Dispute No. LIR-5093/2016**

**INDUSTRIAL DISPUTE BETWEEN :-**

Sh. Shanker Vishwakarma S/o Sh. Moti Lal  
C/o C-147, Ashok Hotel Staff Quarters,  
Chanakyapuri, New Delhi

.....Workman

**VERSUS**

Management of M/s Hotel Bridge View Tourist Lodge,  
Represented by Kapil Chopra Employer, 3737,  
Dariba Pan, Pahar Ganj, New Delhi

.....Management

**Date of Institution : 07-04-2015**  
**Dates of Arguments :16-11-2019**  
**Date of Award :10-08-2020 ( Through VC)**

**AWARD**


1. The Dy. Labour Commissioner (CD), Government of NCT of Delhi vide its order No. F.24(60)Lab./CD/2015/336, dated 30-03-2015, referred an industrial dispute of present worker namely Sh. Shanker Vishwakarma S/o Sh. Moti Lal with the above mentioned management to the Labour Court with the following terms of reference:-

*“Whether the services of Sh. Shanker Vishwakarma S/o Sh. Moti Lal have been terminated illegally and/or unjustifiably by the management; and if yes, to what relief is he entitled and what directions are necessary in this respect ?”*

2. The case of the workman as stated in the claim is that he was working as “Receptionist-cum-Telephone Operator-cum-Cashier” with the management and his last drawn salary was Rs.4500/- per month which was less then the minimum wages of Government of National Capital Territory of Delhi for his category of job. His record was unblemished and he worked very honestly with the management. No legal facilities were being provided to him by the management like issuance of appointment letter and service record.

**VERSION OF THE WORKMAN**

3. It is averred by the workman that he proceeded on leave w.e.f. 08-01-2014 due to illness of his mother at his native place in Nepal for 8 days and reported back on duty on 16-01-2014 and when on that he was performing his duties, the employer Mr. Kapil Chopra removed him from service without assigning any reason, notice, notice pay, compensation, legal dues and even without charge sheet or enquiry etc. and thus terminated the services of the workman in a most illegal and unjustified manner.

  
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4. The workman stated to have filed a complaint before the Labour Department, regarding his illegal termination, and on his complaint Labour Inspector visited the management's establishment in order to get the workman reinstated in service but management has not taken him back on services, hence, the present case has been referred to this court by the concerned Labour Commissioner. Hence, the workman filed the present statement of claim. Workman prayed for reinstatement of his services with full back wages and all other consequential benefits and allowances etc.

#### **VERSION OF THE MANAGEMENT**

5. The Management-herein filed its written statement and submitted that the claim of the workman is not maintainable and needs dismissal in view of the facts that the present case is counter blast against the complaint filed by the management on 20-02-2014 with the Police Station Paharganj over the issue of embezzlement of cash money of Rs.70,000/- taken away by the workman from the cash counter of the management. On 23-01-2014. It is further submitted that the workman is also guilty of taking money as debts from the other staffs of the Hotel and in order to cover up his all the misdeeds. It is stated that the workman was employed under the supervision and control of Sh. Surender Kumar Khosla, but Mr. Khosla died on 14-08-2015 and after his death, the workman used to look after the business activities of the management in complete manner. It is submitted that by the passage of time the workman occupied a room in the hotel for getting his guest stay and also doing business of some artificial jewellery. It is stated that after doing all necessary expenses such as maintenance of the rooms and disbursement of salary to the staffs including to himself the workman used to pay measures amount to the management by saying that the customers are not turning up and on sensing the dishonest way of dealing business affair of the hotel, Mr. Kapil Chopra son of deceased Sh. Surender Kumar Khosla, started visiting the hotel from the month of January 2014. It is further stated that when the workman was asked to settle previous accounts of the hotel, the workman avoided and finally on 23-01-2014, the workman took away cash of Rs.70,000/- and left the hotel without giving any information to any one and thereafter he did not turn up from the next day, however, on 04-02-2014, after rigorous efforts of management, the workman came to the house of the management and admitted to have taken away the money from the cash counter of the hotel and promised to return the said money but in order to save himself from the said monetary liability, the workman filed various false and frivolous complaints including the present one before the Labour Authority. It is submitted that in view of the above it is clear that the services of the workman had never been terminated at any point of time by the management rather the

  
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workman has left his employment at his own just to avoid his financial liability. The management denied other contentions and allegations of the workman and prayed for dismissal of the claim of the workman.

**FRAMING OF ISSUES**

6. From the pleadings of the parties the following issues were framed on 16-11-2015:-

**Issue No. (1) Whether the claimant himself left the job w.e.f. 23-01-2014 ? OPM**

**Issue No. (2) As per the term of reference. OPW**

**Issue (3) Relief.**

**EVIDENCE OF WORKMAN:**

7. The Workman has examined himself as WW1 and filed his evidence by way of affidavit which is exhibited as Ex.WW1/A. In his evidenciary affidavit the workman has reiterated the contents of the statement of claim. The documents are Ex.WW1/1 to Ex.WW1/5.

- i. Ex. WW1/1 & Ex. WW1/2 : Copies of the complaints dated 10-02-2014 and 11-02-2014 are and
- ii. Ex. WW1/3. Copy of the labour inspector report
- iii. Ex. WW1/4 is Copy of the Conciliation case is
- iv. Ex.WW1/5 copy of written statement filed therein is.

(The workman has been cross examined by the AR for the management.)

**EVIDENCE OF THE MANAGEMENT:**

8. The management-witness Ms. Geeta Chopra, proprietor of management has examined himself as MW1, who filed her evidence by way of affidavit which is exhibited as Ex.MW1/A. In her evidentiary affidavit MW1 has reiterated the contents of the written statement. The documents are Ex. MW1/1 to Ex. MW1/3. The AR of the workman has also cross examined the MW1.

9. I have heard the Authorized Representative of the Workman as well as of management and perused the file. My findings on the issues are as under:-

  
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**ISSUE No.1 “Whether the claimant has himself left the job w.e.f. 23.01.2014? OPM”**

10. It is the case of the workman-herein that he had gone on 8 days leave from 08.01.2014 to 16.01.2014 due to the illness of his mother at his native place Nepal. The relevant portion of the cross-examination of the workman WW-1 is:

*“...I did not give any leave application to the management for proceedings on leave w.e.f. 08.01.2014. Vol. I proceed on leave w.e.f. 08.01.2014 after informing the management.”*

11. The relevant portion of the cross-examination of the workman MW-1 (Ms. Geeta Chopra Proprietor of Management) is:

*“...The workman had committed a fraud and taken money from the hotel of the management. It is correct that the management filed a police complaint against the workman but no action was taken by the police on the said complaint. It is correct that no chargesheet was issued against the workman, no enquiry was conducted against the workman in this regard.....”*

12. As per the version of the management the workman left the hotel on 23.01.2014 after taking cash of Rs.70,000/- of the management and did not turn up thereafter. However, the said workman came to the house of the management on 04.02.2014 and admitted his guilt and promised to return the money. However, the workman did not return the money and filed the case against the management.

13. 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...”*

14. 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 as under:

*“5a. Re Question 1: In the Act, we do not find any definition of the expression 'abandonment of service.' In the absence of any clue as to the meaning of the said expression, we have to depend on meaning assigned to it in the dictionary of English language. In the unabridged*

  
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*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'. According to the Dictionary of English Law by Earl Jowitt (1959 Edn.) 'abandonment' means 'relinquishment of an interest of claim'. According to Black's Law Dictionary 'abandonment' when used in relation to an office means 'voluntary relinquishment.' 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'."*

- 15.** 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".*

- 16.** The Division Bench of The Hon'ble Delhi Court in Shakuntala's Export House (P) Ltd Vs. Secretary (Labour) MANU/DE/0541/2005 has held that abandonment amounts to misconduct which requires proper inquiry. The judgment of the Single Judge was upheld by the Division Bench is reported as 117 (2005) DLT 479. To the same effect is another judgment in MCD Vs. Begh Raj 117(2005) DLT 438 laying down that if the workman had abandoned employment, that would be a ground for holding an enquiry and passing an appropriate order and that having not been done, the action of MCD could not have been sustained.

- 17.** The Hon'ble Supreme Court also in D.K. Yadav Vs J.M.A. Industries Ltd (1993) 3 SCC 259 has held that even where the standing orders of the employer provide for dismissing the workman from service for unexplained absence, the same has to be read with the principles of natural justice and without conducting domestic inquiry and without giving an opportunity of being heard, termination of service on the said ground cannot be effected. The same view was reiterated in Lakshmi Precision Screws Ltd. Vs. Ram Bahagat AIR 2002 SC 2914 (in this judgment Sakattar Singh mentioned below was distinguished). In V.C. Banaras Hindu University Vs. Shrikant AIR 2006 SC 2304 it was held that although laying down a provision providing for deemed abandonment from service may be permissible in law, it is not disputed

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that that an action taken thereunder must be fair and reasonable so as to satisfy the requirements of Article 14 of Constitution of India; if the action is found to be illogical in nature, the same cannot be sustained.

- 18.** In M/s Fateh Chand vs Presiding Officer Labour Court & Anr. 2012 LLR 468 Delhi, our own the Hon'ble High Court observed that the management has to bring on record sufficient material to show that the employee has abandoned the service and abandonment cannot be attributed to the employee without there being sufficient evidence. On failure to report for duty, the management has to call upon the employee and if he refuses to report, then an enquiry is required to be ordered against him and accordingly action taken. In the absence of anything placed on record by the petitioner management, no presumption against the respondent can be drawn. It was held to be a case of violation of Section 25F of the Act.
- 19.** 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.
- 20.** In view of the above discussion, it cannot be said that the workman-herein himself left his job. The management-herein has not been able to discharge their onus to show that the workmen had abandoned the job by remaining absent. The issue no:1 is decided in favour of workman and against the management.

**ISSUE No.2 – As per the terms of reference. :“Whether the services of Sh. Shanker Vishwakarma S/o Sh. Moti Lal have been terminated illegally and/or unjustifiably by the management; and if yes, to what relief is he entitled and what directions are necessary in this respect ?”**

- 21.** The version of the management is that the services of the workman were never “terminated” by the management and that the workman had himself left the job. On the other hand the version of the workman is that the management had refused to take him on job 20.01.2014. The workman has further contended that he had made a complaint before the Labour Office and that the Labour Inspector had visited the office of the management to facilitate the ‘rejoining’ of the workman. The cross-examination of the MW-1 (Ms. Geeta Chopra) reveals :

*“It is correct that the workman has filed his case before the conciliation and management had not taken the workman during the conciliation proceeding. (Volt.) The workman had committed a fraud and had taken money from the hotel of the management. It is correct that the management filed a police complaint against the workman but no action was taken by the police on the said complaint. It is correct that no charge sheet was issued against the workman, no enquiry was conducted against the workman in this regard...”*

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22. The management has not produced any record of the workman by stating that the workman had taken away his records from the office of the management. It has been stated so by the MW-1 in her cross-examination:

*“Q.-Have you seen the services record of the workman?”*

*Ans. I have not seen the services record of the workman.....I cannot produce the service record (Volt.) The said service record was taken by the workman from the hotel....”*

23. The intention of the management-herein appears to be dodgy inasmuch that the management did not want to take back the workman at any point of time and also did not formally terminated him. No charge sheet was issued against the workman, no enquiry was conducted against the workman in this regard. On the very face of it the act of the management is unjustified. On the other hand the workman has been able to show that he wanted to join the duties but was stopped by the management. Therefore, the court is of the opinion that although there is no termination letter issued by the management to the workman yet it amounts to termination of the services of the workman. “Refusal of employment” amounts to “termination from services”.

24. The Hon’ble Allahabad High Court “M/S Towers vs State {Writ Petition No. 9658 of 1993 decided on 21 October, 2013}” has held:

*“The contention of the petitioner that there was only refusal of employment and that there was no action of termination of services of the workman is patently erroneous. Mere jugglery of words of “refusal” and “termination” cannot be a ground to interfere in the award. The Court is of the opinion that the consistent stand of the workman was that the employer refused to give work and that he continuously came to the premises asking for work, which was refused by the employer. Such action of the management in refusing to give work amounts to termination of the services. Consequently, the reference made by the State Government with regard to the alleged termination was perfectly correct.”*

25. It has been observed in “Mohammad Mobin v/s State of U P” {C.M. Restoration Application No. 70437 of 1996 IN C.M.W.P. No. 499 of 1990 Decided On, 20 March 1997 : High Court of Judicature at Allahabad}

*“...Even though no order of termination is there, the employer was not prepared to allow him to work even if he was not been terminated. This results into refusal of employment amounting to non-employment...”*

26. The inescapable conclusion in the light of the facts of the case-herein and the action / conduct of the management is that the services of the workman were terminated unjustly and illegally by the management-herein. The issue No.2 is also decided in favour of the workman and against the management.

  
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**RELIEF:**

27. 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.

28. The workman has admitted in his cross-examination:

*"I am married. Nowadays I am residing at my native place, Nepal for the last three years. I am engaged in agricultural work. My wife is doing sewing work, which also helps me in managing my livelihood... I am only helping hand to my wife for monthly expenditure..."*

29. The Apex Court in the case of North East Karnataka Road Transport Corporation vs. M. Nagangouda [2007 (10) SCC 765] has held that self-employment, even in agricultural work would be a case of gainful employment. It was held:

*"17. On the said question, we are unable to accept the reasoning of the Labour Court that the income received by the respondent from agricultural pursuits could not be equated with income from gainful employment in any establishment. In our view, "gainful employment" would also include self-employment wherefrom income is generated. Income either from employment in an establishment or from self-employment merely differentiates the sources from which income is generated, the end us being the same. Since the respondent was earning some amount from his agricultural pursuits to maintain himself, the Labour Court was not justified in holding that merely because the respondent was receiving agricultural income, he could not be treated to be engaged in "gainful employment"*

30. The workman deserves compensatory relief for the reasons: firstly that the agricultural work is also considered a "gainful employment" and ; secondly – perhaps more importantly that the management had levelled allegations of misappropriation of Rs.70,000/-. It will be in the interest of the workman not to work in the said management. Re-instatement has not been considered desirable in cases where there have been strained relationship between employer and employee or there is lack of trust or loss of confidence. Courts have also denied

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reinstatement with back wages in cases where long time has lapsed. Reference in this regard may be made to the judgment of the Supreme Court in cases of Rattan Singh vs. Union of India & Anr. (1997) 11 SCC 396, Rolston John vs. Central Government Industrial Tribunal-cum-Labour Court & Ors 1995 (Supp) 4 SCC 549, Gujarat State Road Road Transport Corporation & Anr vs. Mulu Amra, 1995 Supp (4) SCC 548 and MP Shikshak Snagh & Ors vs. State of MP & Ors, 1995 Supp (1) SCC 556.

31. The services of the workman Sh. Shankar Vishwakarma s/o Sh. Moti Lal has been terminated illegally and / or unjustifiably by the management and Sh. Shankar Vishwakarma s/o Sh. Moti Lal is entitled to compensation. The workman deserves the relief. Looking into the circumstances of the case, it will be proper to grant compensation to the workman to the tune of Rs.2 Lakhs.

**DIRECTIONS TO THE MANAGMEENT:**

32. The management is directed to pay the said amount **Rs.2,00,000/- (Rupees Two Lakhs)** to the workman **within thirty days** from the date of publication of the award failing which the workman will be entitled to recover the aforementioned amount of **Rs.2,00,000/- (Rupees Two Lakhs)** from the management along with the interest @12% per annum till its realization.
33. The Award is passed in favour of the workman against the management in the above terms of relief.
34. Reference is answered as per the relief granted. Matter Disposed of Accordingly. A copy of the award be uploaded on the website of RADDC. 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 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.

Announced through Video Conferencing.

Dated:10-08-2020

  
10.8.2020  
( VEENA RANI )

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

**IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT  
ROUSE AVENUE COURTS , NEW DELHI**

**Industrial Dispute No. LIR-5093/2016**

**INDUSTRIAL DISPUTE BETWEEN :-**

Sh. Shanker Vishwakarma S/o Sh. Moti Lal  
C/o C-147, Ashok Hotel Staff Quarters,  
Chanakyapuri, New Delhi

.....Workman

**VERSUS**

Management of M/s Hotel Bridge View Tourist Lodge,  
Represented by Kapil Chopra Employer, 3737,  
Dariba Pan, Pahar Ganj, New Delhi

.....Management

10-08-2020

Present : Sh. Maya Ram, authorized representation of workman Through VC.

Sh. Anjani Kumar, AR for management through VC.

Clarification done. Heard.

Vide my separate detailed AWARD dictated and announced, an award is passed in favour of the workman **Sh. Shanker Vishwakarma S/o Sh. Moti Lal** and against the management. A copy of the award be uploaded on the website of RADDC. 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 in the open court.

Dated: 10-08-2020



( VEENA RANI )

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