

LID No. 746/16

Hari Om Sharma vs GR. Sons

13.07.2020

Present:-

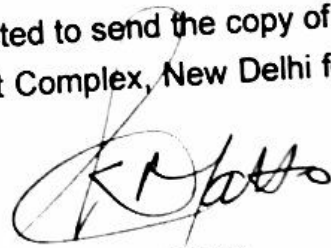
None for the parties.

The matter is fixed for today for hearing final arguments, but, in view of spreading of the pandemic COVID-19, no one has appeared on behalf of the parties.

Ahlmad of this court has told to the court that contact number of Id. AR for the workman was not available on the record, so, the court notices could not be issued to the Id. ARs for both the parties to advance arguments through video conference.

Accordingly, the matter stands adjourned for hearing final arguments in the enblocked date i.e. on 14.08.2020.

Ahalmad of this court is directed to send the copy of this order 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
13.07.2020.

LIR No. 5148/16

Mehar Chand vs Step by step

13.07.2020

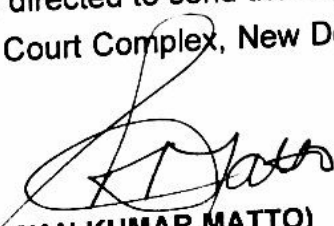
Present:- None for the parties.

The matter is fixed for today for hearing final arguments, but, in view of spreading of the pandemic COVID-19, no one has appeared on behalf of the parties.

Ahlmad of this court has told to the court that contact number of Id. AR for the workman was not available on the record, so, the court notices could not be issued to the Id. ARs for both the parties to advance arguments through video conference.

Accordingly, the matter stands adjourned for hearing final arguments in the enblocked date i.e. on 14.08.2020.

Ahalmad of this court is directed to send the copy of this order 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
13.07.2020.

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LCA No. 182/16

Bhimsen vs A. V.Engg. Industries

13.07.2020

Present:- None for the parties.

The matter is fixed for today for framing of issues, but, in view of spreading of the pandemic COVID-19, no one has appeared on behalf of the parties.

Ahlmad of this court has told to the court that contact numbers of Id. ARs of both the parties were not available on the record, so, the court notices could not be issued to the Id. ARs for both the parties to participate in the proceedings through video conference.

Accordingly, the matter is ordered to be listed in the enblocked date i.e. on 14.08.2020 for framing of issues.

Ahalmad of this court is directed to send the copy of this order 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
13.07.2020.

LIR No. 3857/18

Giriraj Singh vs M/s Auraa Fashion Garments

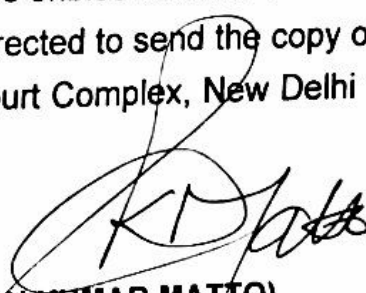
13.07.2020

Present:- None for the parties.

The matter is fixed for today for filing rejoinder and framing of issues, but, in view of spreading of the pandemic COVID-19, no one has appeared on behalf of any of the parties.

Since, the rejoinder has not been filed, so, the matter is ordered to be listed for filing the rejoinder and framing of issues in the enblocked date i.e. on 14.08.2020

Ahalmad of this court is directed to send the copy of this order 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
13.07.2020.

REDMI NOTE 5 PRO

LID No. 154/18

Devnath Yadav vs Gupta Steel

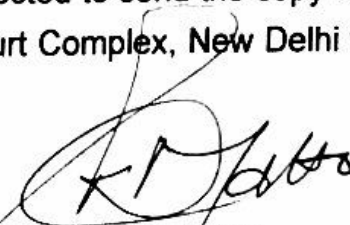
13.07.2020

Present:- None for the parties.

The matter was fixed for 11.07.2020 for evidence of the workman, so, the file is taken up today as 11.07.2020 was holiday.

Matter is ordered to be listed in the enblocked dated i.e. 14.08.2020 for the same purpose.

Ahalmad of this court is directed to send the copy of this order 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
13.07.2020.

LID No. 477/16

Shiv Balak vs G.L.T. Saraswati Bal Mandir

13.07.2020

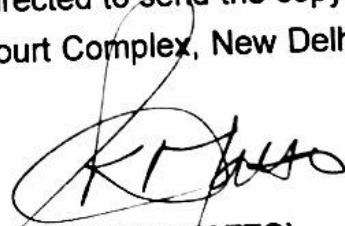
Present:- None for the parties.

The matter is fixed for today for hearing final arguments, but, in view of spreading of the pandemic COVID-19, no one has appeared on behalf of the parties.

Ahlmad of this court has told to the court that contact number of Id. AR for the workman was not available on the record, so, the court notices could not be issued to the Id. ARs for both the parties to advance arguments through video conference.

Accordingly, the matter stands adjourned for hearing final arguments in the enblocked date i.e. on 14.08.2020.

Ahalmad of this court is directed to send the copy of this order 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
13.07.2020.

LIR No. 2818/16

Brijkishore Yadav vs Prime Cables Industries

13.07.2020

Present:-

Sh. Sanjay Sharma, AR of the workman.

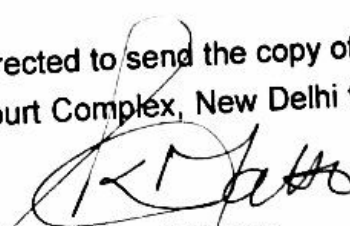
Sh. Sanjay Kumar, AR of the management.

Matter is fixed for today for passing award through Video Conference.

Vide my separate award of even date pronounced through video conference, 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 Dist./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 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
13.07.2020.

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

| | |
|----------------------------|-------------------|
| LIR No. | 2818/16 |
| Date of institution | 07.03.2015 |
| Date of Award | 13/07/20 |

Sh. Brijkishore Yadav

S/o Sh. Mantu Yadav,

Through 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,

Bhorgarh, Narela,

Delhi-110040.

(Proprietor Sh.Pushottam Singhal)

.....Management

AWARD

1. This award of mine will dispose off the reference sent to this court by the Office of the Joint 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/121/14/NWD/29/15/Lab./141-

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145 dated 20.02.15 with the following terms of reference:-

"Whether the services of workman Sh. Brijkishore Yadav s/o Sh. Mantu Yadav 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. Brijkishore Yadav (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 May 1998 and his last drawn salary was of Rs. 13350/- per month.
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 legal facilities 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 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 26.01.2014, 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 had failed to pay his earned wages w.e.f. 01.12.2013 to 26.01.2014 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 12.02.2014 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. The management has also stated that the services of the claimant were not terminated by the management, but, he has abandoned the job, when, the management found/received complaint against him from other fellow workers, hence claimant is not entitled to get benefit of his own wrong.

15. The management has also stated that claimant had misbehaved with the management/Director, when he was pointed out his acts in the premises of the management and the complaints were received from the other fellow workers. It is also stated that this claimant is gainfully employed.

16. Replying to the statement of claim on merit, the management has denied that this claimant had joined the management in May, 1998 and stated that this claimant had started working in the management as machine man since 1.4.2002 and also stated that he had left the job and he is gainfully employed. The management has denied that last drawn salary of claimant was of Rs. 13,350/- and stated that the last drawn salary of the claimant was Rs. 9386/- per month.

17. The management has also denied that this claimant had worked honestly or

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sincerely or that he did not give any chance of complaint and stated that the claimant had interfered in the working of the management and he had disturbed the smooth functioning of the management by way of organizing other workers for strike in the factory of management. It is also stated that this claimant has approached the trade union, which is not approved by the management and the other workers of the management had written to the management that on the provocation of this claimant, they had approached to the union and they don't want interference of the other union in the premises. It is further stated that some workers have written two letters to the management that the claimant without their consent has made the members of the trade union.

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.

19. The management has denied to have harassed to the claimant and also denied to have violated any provision of the Labour Law.

20. The management has denied to have terminated the services of the claimant on dated 26.01.2014 and stated that on 26.01.2014 was Sunday. The management



has alleged that this claimant had refused to obey the commands of his supervisor and stated that this claimant is absenting from his duty since 28.1.2014 without any leave application and the absence of the claimant from service is unauthorized. The management has also denied to have obtained any signature on blank papers as alleged.

21. The management has also denied to have withheld the earned wages of the claimant and stated that the management had paid the salary of December, 2013 of Rs. 8031/- 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 the claimant had committed misconduct and polluted the atmosphere of the management and this claimant has left his services. The management has denied to have received demand notice dated 12.02.2014.

23. The management has denied to have withheld the wages w.e.f 1.12.13 to 26.1.14 and stated that the bonus was paid by the management on each Dipawali and nothing is due in respect of the bonus and stated that the claimant has filed the claim with ulterior motive to extort the money from management.

24. The management has also stated that claimant has committed misconduct and polluted the atmosphere of the premises and he has left the job. It is also alleged that this claimant has also provoked other workers and the management has recruited the workers in place of this claimant and there is no vacancy in the premises of the management.
25. The management has also denied that this claimant is unemployed and stated that he is gainfully employed and after denying the other averments made in the statement of claim and the management has prayed for dismissal of the statement of claim.
26. 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.
27. On the basis of the pleadings of the parties, the predecessor of this court was pleased to frame the following issues vide order dated 10.12.2015:
1. Whether the workman has abandoned the services when the management found/received complaint against him by other fellow workers? OPM
 2. As per the terms of reference?
 3. Relief.



28. 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. WW1/8. He was cross-examined by the Ld. AR of the management. He did not examine any other witness and closed his evidence.

29. 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 to Ex. MW1/D. He was cross-examined by the Ld. AR for the claimant.

30. I have heard the Id. Authorized Representatives of both the parties through video conference and perused the record.

31. The Ld. Authorized Representative for the claimant has submitted that this claimant had served in the management since May, 1998 and his last drawn wages were Rs. 13350/- per month and the management was not providing legal facilities to the claimant, so, he had served the demand notice dated 13.01.14 Ex. WW1/3 to the management for granting him legal facilities. He has also submitted that in view of serving of such demand notice to this management, the management had illegally terminated the services of the claimant on dated 26.01.14. He has also submitted that the claimant had served the demand notice dated 12.02.14 Ex. WW1/1, the claimant had also filed a complaint in the Labour Office Ex. WW1/5. He has also

submitted that claimant had also filed complaint to the PF Department Ex.WW1/6, complaint to the Chief Factory Inspector Ex.WW.1/7. Copy of statement of claim filed before conciliation officer is Ex.WW1/8 and submitted that MW1 during his cross-examination has admitted that this claimant was working as Mistry and submitted that testimony of the MW1 is self contradictory as in para 6 of his affidavit Ex. MW1/A. He has stated that the claimant had settled his all legal dues with the management, whereas, as in para 10 of his affidavit he has stated that claimant is absenting from his service since 28.01.14 and submitted that in view of such contradictions in the testimony of MW1, the claimant is entitled to be reinstated with full back wages.

32. On the other hand, the Ld. Authorized Representative of the management has submitted that the claimant has claimed that he had joined the management in the month of May, 1998 and his services were terminated by the management on 26.01.2014. But, he failed to bring on record any cogent documentary evidence to show that he had joined the management in the month of May 1998 or that his services were terminated by the management on 26.01.2014 and submitted that infact the claimant had joined the management on 01.04.2002 and he is absenting from his duties since 28.01.2014 and submitted that the claimant has admitted that he cannot understand, what is written in his affidavit Ex.WW1/A. He has also submitted that the claimant has alleged that his salary since 01.12.13 to 26.01.14 was withheld by the management. But, during his cross-examination, this claimant

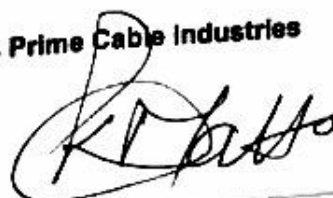
has admitted his signatures on the wageslip Ex. WW1/M.1 which shows that he had taken the salary till the month of December, 2013.

33. He has further submitted that the co-workmen had filed two applications in the management, photocopies whereof are Ex. MW1/B, wherein, the co-workmen had stated that they did not want any interference of any union and also stated that they had gone in the union on the provocation of this claimant. They have also stated that they have no concern with the said union and submitted that thereafter this claimant stopped attending his duties in the management since 28.01.2014 and submitted that the claimant has claimed that his services were terminated by the management on 26.01.2014 and also submitted that 26.01.2014 was Sunday and it was also a national holiday and further submitted that the claimant during his cross examination has admitted that Sunday was weekly off in the management, so, the story concocted by the claimant in his statement of claim is based on the falsehood and submitted that the management has also placed on record the copy of muster Roll Ex. WW1/M.2, for the month of January, 2014, wherein, the presence of this claimant is marked till 27.01.2014 and submitted that this claimant has failed to bring on record any cogent documentary proof to show that his services were terminated by the management on 26.01.2014 and submitted that since the presence of the claimant in the Muster Roll of the management is marked even on 27.01.2014, so, it is proved that this claimant had also worked in the management till 27.01.2014. He has also submitted that this claimant did not give his present



address to the management and during his cross examination, this claimant has admitted that he is living in his own house at 203, Chauhan Patti, Khasra No. 360, Delhi. Whereas, the claimant has mentioned his another address in the statement of claim and also in his affidavit given in the evidence and submitted that in para no.3 of his statement of claim, the claimant has mentioned that he had made oral request for the legal facilities and submitted that from such contents of his statement of claim, it is clear that this claimant has forged the document Ex. WW1/3 dated 13.01.2014 subsequently and submitted that there are material contradictions in the para no.3 of statement of claim and Ex. WW1/3 and submitted that the claimant has claimed that Ex.WW1/3 was sent to the management vide postal receipt Ex. WW1/4 and submitted that this document was never sent to the management and since the name of the Director mentioned on the postal receipt Ex. WW1/4 is also not correct nor the complete address of the management or its Director is mentioned thereon and even the pincode number mentioned on Ex. WW1/4 is not of Narela, where the office of the management is situated and on Ex. WW1/4, Samaypur is mentioned. Whereas, the office of the management was never situated in Samaypur and submitted that address of the management is mentioned in the resolution placed on record as annexure R.1. and also in the Muster Roll Ex. WW1/M.2, so, the claimant has failed to prove that he had sent any such letter i.e. Ex.WW1/3 to the management on 13.02.2014.

34. He has also submitted that Ex. WW1/5, Ex. WW1/6 and Ex. WW1/7 are not



pleaded in the statement of claim and these documents have been forged subsequently by the claimant.

35. He has also submitted that the claimant has claimed that he had sent demand notice dated 12.02.2014, photocopy whereof is Ex. WW1/1, vide postal receipt Ex. WW1/2 and submitted that this demand notice was never received by the management and submitted that since on this demand notice, it is mentioned that the same was sent through speed post and UPC, whereas, no postal receipt of speed post or UPC are brought on the record and submitted that the name and address of the management are not mentioned on postal receipt of regd. post Ex. WW1/2 and submitted that the claimant has claimed that Ex. WW1/1 was sent to the management vide postal receipt Ex. WW1/2 and submitted that this document was never sent to the management and since the name of the Director mentioned on the postal receipt Ex. WW1/2 is also not correct nor the complete address of the management or its Director is mentioned thereon and even the pincode number mentioned on Ex. WW1/2 is not of Narela, where the office of the management is situated and on Ex. WW1/2, Samaypur is mentioned. Whereas, the office of the management was never situated in Samaypur and submitted that address of the management is mentioned in the resolution placed on record as annexure R.1. and also in the Muster Roll Ex. WW1/M.2, so, the claimant has failed to prove that he had served any such demand notice i.e. Ex. WW1/1 dated 12.02.2014 to the management. He has further submitted that the claimant has failed to summon any

witness from the postal department to prove that the notice Ex. WW1/1 was ever served to the management and submitted that the postal receipt Ex. WW1/2 cannot be relied upon, as it does not bear the name and correct address of the management and also submitted that in the absence of service of demand notice, an Industrial Dispute cannot come into existence and submitted that prior to the filing of the case against the management, the claimant was required to serve demand notice to the management, but, as the claimant has failed to prove on record that he had served any demand notice to the management, so, statement of claim filed by the claimant is liable to be rejected on this ground.

36. He has further submitted that the claimant in para no.8 of the statement of claim has stated that on 12.02.2014, he had sent a demand notice to the management and the claimant has claimed that Ex. WW1/5 is the said demand notice, whereas, Ex. WW1/5 is not a demand notice, but, it is a complaint filed before the conciliation officer on 12.02.2014 and submitted that this is a forged document, which is prepared subsequently. He has also submitted that the claimant in his statement of claim and in his affidavit given in evidence and also in Ex. WW1/5, has claimed that his salary w.e.f. 01.12.2013 to 26.01.2014 was withheld by the management and submitted that at the time of his cross examination, the claimant has admitted that the wage slip Ex. WW1/M.1 bears his signatures, which clearly manifests that the claimant had taken his wages till December, 2013.
37. He has also submitted that the claimant has also admitted that facilities of PF & ESI were given to him by the management and submitted that the claimant has

alleged that his services were terminated by the management on 26.01.14, whereas 26.1.14 was national holiday and submitted that the claimant has stated in his cross-examination that he went to the management even on 27.01.14 and submitted that the claimant has admitted that demand notice Ex.WW1/3 does not bear his signatures and submitted that since, the claimant has admitted during his cross-examination that the claimant was getting the legal facility of PF and ESI, so, the story concocted by the claimant is not believable and this claimant is absenting from his duties since 28.01.2014 without moving any application in the management and his continuous absence from duty is unauthorized and in view of his absence from duties for long period, it may be inferred that he has abandoned the job in the management and further submitted that it was obligatory on the part of the claimant to prove that his services were illegally and unjustifiably terminated by the management no. 26.01.2014, but, from the inconsistent testimony of the claimant, it is proved on record that his case is based on the falsehood and submitted that on moving of two applications Ex. MW1/B by the co-workmen in the management, this claimant had stopped coming to the management and Ex. MW1/B remained unrebutted and submitted that in view of abandonment of the job by the claimant in the management, the management was not under obligation to conduct any inquiry and submitted that since the claimant has failed to prove on record that he had served any demand notice to the management, prior to the filing of the case against the management, so, the Industrial Dispute did not arise between the parties to the present lis and further submitted that the claimant was supposed to stand on his



own legs and since the claimant failed to prove on record that he joined the management in the month of May, 1998 or that his services were terminated by the management on dated 26.01.2014, so, his statement of claim is liable to be dismissed.

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

39. The perusal of the record reveals that the claimant has claimed in his statement of claim that he had served in the management since May, 1998 and his services have been illegally terminated by on 26.01.2014 and his last drawn salary was of Rs. 13350/-. The management had denied that the claimant has served in the management for a period of services as claimed by the claimant and stated that this claimant had joined the management on 01.04.2002 and he worked therein till 27.01.2014 and his last drawn wages were of Rs. 9386/- and also claimed that this claimant has abandoned the job after 27.01.2014. So, the burden of proving of issue no.1 was on the management, whereas the burden of proving issue no.2 was on the claimant. In order to avoid repetition, both the issues have been taken together for discussion.

40. In order to prove his case, the claimant has examined himself as WW1, vide his



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affidavit Ex. WW1/A, wherein the claimant has reiterated the contents of his statement of claim. He has relied upon the copy of demand notice Ex. WW1/1, original postal receipt Ex. WW1/2, copy of an other demand notice Ex. WW1/3, its original postal receipts Ex. WW1/4, copy of complaint to the Labour Department Ex. WW1/5, copy of complaint to the Regional Director, PF Ex. WW1/6, copy complaint to the Chief Factory Inspector Ex. WW1/7, copy of statement of claim filed before the conciliation officer Ex. WW1/8.

41. He was cross-examined by the Ld. AR for the management. During his cross-examination, he has stated that he is educated upto metriculation. He can understand and read English language little bit. He cannot understand what is written in his evidence Ex. WW1/A. He has deposed that he is residing in the rented accommodation for the last 18 years and the monthly rent is Rs. 2500/- and one year before, he had shifted in his own house no. 203, Chauhan Patti, Khasra no. 360, Delhi and at present he is not working anywhere with any other management. He has also stated that he had told his address as mentioned in his affidavit Ex. WW1/A on 28.04.2016. He has denied that he had not furnished his correct address in the court till the day, he was cross examined in the court, intentionally. He has also deposed that he has three children namely Sunil Kumar aged about 27 years, Ms. Sangita aged about 22 years, Sudhir Kumar aged about 17 years. Sudhir is studying in 12th class and his daughter Sangita is studying Nursing in Gorakhpur and she had joined this course three years before. He further deposed



that except his daughter, his all family members are residing at Delhi along with his mother aged about 80 years. He has denied that he has wrongly mentioned in his affidavit that his last drawn wages as Rs. 13,350/- in his affidavit. He has admitted that Ex. WW1/M.1, which is the wages slip, bear his signatures at point A. He has denied that he has joined the services in the management w.e.f. 01.04.2002. He has admitted that he had not filed any document relating to his employment, since May, 1998 and further admitted that he had not filed any document to show his salary as Rs. 13350/- per month in the management. He has admitted it to be correct that management had provided the facilities of ESI since 2002. He has denied that the management had provided facilities of ESI to him since the date of his joining or that he has falsely deposed in this regard or that the management used to pay bonus on the occasion of Dipawali to it's employees. The claimant has admitted that the management used to maintain the attendance register of the employees and photocopy of one page of the muster Roll for the month of January, 2014 is Ex. WW1/M.2 wherein his name is mentioned as serial no.1. He has denied that he had worked with the management till 27.01.2014. He has deposed that there is no holiday in the management either on 26th of January or on any other national holidays. He has admitted Sunday was weekly off in the management. He does not remember whether on 26th January was Sunday or not. He has admitted that he went to perform his duties on 27.01.2014, he has also deposed that he was not allowed to enter in the premises of the management. He has denied he had worked in the management full day on 27.01.2016 or that he has deposed falsely.



He has denied that he had not sent Ex. WW1/3 to the management. He has admitted that Ex. WW1/3 does not bear his signatures at point A and further stated that he cannot say as to who had signed the Ex. WW1/3 at point A. He has also admitted that Ex. WW1/3 bears his signature at point B. He has denied that Ex. WW1/3 and Ex. WW1/5 had been signed prior to the filing of the same in the present case.

42. He has further deposed that he became member of union in the month of January, 2014 and the union had not charged any membership fee from him. He has deposed that the union had issued him membership slip. He has admitted that he has not filed the same in the present case. He has denied that he never became member of the said union or for the same reason he did not file any document to show that he was member of the said union. He has also deposed that Ex. WW1/1 was sent by him through registered post. He has denied that he had never sent Ex. WW1/1 to the management. He has admitted that he had not annexed AD card along with the registered post.

43. He has also deposed that he used to demand the legal facilities from the management during the tenure of his services, but, he does not remember as to when did he make such demand for the first time. He has further deposed that he had made such demands orally from the management. He has denied that he had never made any such demand of legal facilities because he was provided legal facilities by the management. He has denied that Ex. WW1/6 and Ex. WW1/7 are false and fabricated documents or that the same have been prepared by him after



abandonment of job. He has denied that he has constituted a union in the management and provoked to the other employees for holding strike. He has admitted that other employees namely Budhna, Jugeshar, Sanjay, Abdul Gani, Hari Babu, Ramji, Rampal, and Surjeet were working in the management, at that time. He has denied that when the management had come to know that this claimant was provoking the other employees for holding strikes, he stopped from reporting his duties in the management. He has admitted that he did not send any application to the management for taking leaves etc. He has also deposed that he had changed his address after termination of his services by the management. He has denied that he has filed the present case in order to harass the management or that he is gainfully employed or that he did not furnish his address on the record of the court intentionally, so that, the management may not locate his present employment or that he has deposed falsely. The claimant did not examine any other witness and closed his evidence.

44. 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 abandoned the services, when, the management found/received complaint Ex. MW1/B against the claimant filed by other fellow workers. He has deposed that the claimant had misbehaved with the management/Director, when pointed out the acts

REDMI NOTE 5 PRO
MIDUAL CAMERA

of the claimant in management premises and the complaint received from other fellow workers. He has also deposed that the claimant is gainfully employed and this fact has been concealed from the court and the claimant has intentionally neither provided the correct address to the management nor to this court and the same facts have come on record during the cross examination of WW1 (claimant). He has deposed that the claimant has concealed the fact that the claimant had started his own business and he is unable to continue his services and before leaving the present service he has settled his all legal dues with the management. He has deposed that the claimant was working with the management, as Machine man since 01.04.2002 and his last drawn salary was Rs. 9,386/- p.m. Photocopy of the payslip is already Ex. WW1/M.1 and photocopy of attendance register is Ex. MW1/C. He has deposed that the services of the claimant were never terminated by the management and that the claimant was doing interference in the work of the management and he was mobilizing the workers against the management and he has disturbed smooth functioning of the management by organizing other workers to strike in the factory of the management. He has further deposed that the management provided all basic facilities to the claimant, which were applicable on the management. He has also deposed that the management had issued/given the ESI card from the date of appointment itself and other benefits for which the claimant was entitled. He has deposed that the claimant had absented from his services since 28.01.2014 without any leave application. He has deposed that the absentism of the claimant from the service is unauthorized.



45. This witness was cross-examined by the Ld. AR of the claimant and during his cross-examination, this witness has deposed that he is looking after the finance and other activities of the factory being director of the management and he also looking after the work of personal and accounts department. He has admitted that the claimant was working as Mistri. He has also admitted that this claimant has never given in writing that he was not inclined to work with the management any further. He has also deposed that this claimant never demanded his dues in writing and voluntarily deposed that he had demanded orally. He has also deposed that PF was not applicable to the management at that time. He has admitted that 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 denied that the claimant was working with the management since May 1998. He could not tell as to since when ESI was applicable to the management. He has denied that the facility of ESI was given to the claimant after five years from the date of his joining. He has also deposed that he does not know, who wrote the contents of Ex. WW1/B from point A to B. He has admitted that nobody had signed Ex. MW1/B (colly) in his presence. He has admitted it to be correct that no show cause notice was issued to the claimant for his misbehaviour. He has also admitted that no chargesheet was ever issued to the claimant regarding his misbehaviour with one of the director of the management. He has denied that the contents of para no. 6 of his affidavit are wrong. He has denied that the last drawn salary of the claimant was Rs.

13,350/- or that the claimant had not mobilized to the workers of the management against the management. He does not remember whether any letter was sent to the claimant to join the duty of the management. He has denied that the services of the claimant were terminated by the management on 26.01.2014 or that the management had withheld the earned wages of the claimant since 01.12.2013 till 26.01.2014. This witness has denied that Ex. WW1/3 was received by him, but, he has admitted that correct name and address of the management are mentioned thereon. He has denied that the management had terminated the services of the claimant after receiving Ex. WW1/3. He has admitted that the management is not ready and willing to reinstate the claimant or to give him compensation of the period, if any, for which, he remained unemployed. He has denied that he has deposed falsely.

46. The perusal of record reveals that the claimant has claimed that he has worked in the management as 'Mistri' since, May 1998 and his services have been illegally and unjustifiably terminated by the management on dated 26.01.2014.

47. The management has taken the plea that this claimant had joined the management as Machineman on 01.04.2002 and worked therein till 27.01.2014 and thereafter the claimant had abandoned the job in the management.

48. 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 is absenting from his service since 28.01.2014 without any leave application and his such absenteeism is unauthorised and also stated that the management has abandoned the services, when, the management found/received the complaint Ex. MW1/B from the other fellow workers against this claimant. The MW1 was cross examined by the Id. Authorized Representative for the claimant and even during his cross examination, this MW1 has denied that the management had terminated the services of the claimant on 26.01.2014. The Id. AR for the claimant did not give any suggestion to the witness of management that the claimant has not abandoned the job in the management.

49. 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.
50. Similarly, in ***M/s Jeevan 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)."

51. 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."

52. 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.

53. In the case in hand, the claimant has claimed that his services were terminated by the management on 26.01.2014. From the copy of the Muster

Roll Ex. WW1/M.2, it is proved on the record that the claimant had worked in the management till 27.01.2014, as his presence is marked in the Muster Roll on 27.01.2014. Since, the claimant is shown absent from his duties in the Muster Roll of the management since 28.01.2014 and the witness of the management has stated that claimant is absenting from his duties without any leave application and his absence is unauthorized and from the copy of the Muster Roll Ex. WW1/M.2, it is proved on the record that the claimant had attended his duties even on 27.01.2014, so, the claim of the claimant that his services were terminated by the management on 26.01.2014, that too, on the national Holiday and also on Sunday, which was weekly off in the management is falsified, because after the termination of services of the claimant, the claimant could not be allowed to join his duties by the management on 27.01.2014 and since the Id. AR for the claimant has failed to give any suggestion to the witness of the management (MW1) that the claimant has not abandoned the job in the management, therefore, I am inclined to hold that from the un rebutted testimony of MW1 to this effect and in view of absence of the claimant from his duty for long period, it is proved on the record that the claimant had abandoned the job in the management since 28.01.2014, therefore, issue no.1 is decided in favour of the management and against the claimant.

54. The claimant has claimed that his services have been illegally and

unjustifiably terminated by the management on dated 26.01.2014, but, as management has relied upon the copies of muster Roll Ex. WW-1/M1, which shows that the claimant had lastly attended his duties on 27.01.2014. This document is not rebutted or controverted by the claimant.

55. The claimant has also claimed that he had sent a letter to the management Ex. WW1/3 dated 13.01.2014, vide which, demands for providing facilities and for general checking was made by the Rastriye Krantikari Mazdoor Union (Regd). The claimant has placed on record the postal receipt of registered letter dated 13.01.2014 Ex. WW1/4. Ld. AR for the management has submitted that neither the name nor complete address of the management is mentioned thereon. This court has perused the postal receipt of registered letter dated 13.01.2014 Ex. WW1/4, but, neither the name nor complete address of the management are mentioned thereon and the place of addressee is mentioned as Samaypur, Pincode no.110042. The Ld. AR for the management has submitted that office of the management is situated at Narela and the pincode number of Narela is 110040. This court has perused the annexure R.1 which is the extract of the resolution, copy of wage slip Ex. WW1/M.1 and also copy of Muster Roll Ex. WW1/M.2, which are not disputed documents and the address of the management of Industrial Area Narela is mentioned therein and pincode Narela (Delhi) is 110040.



56. The claimant has claimed in para No. 8 of his statement of claim that on dated 12.02.2014, demand notice was sent to the management through Registered AD/Speed post, but, on the copy of demand notice, it is mentioned that the service was through speed post/ UPC, the claimant failed to bring on record any postal receipt to show that any such demand notice was sent to the management by him on 12.02.2014 through speed post or UPC. The claimant has placed on record one postal receipt of registered letter Ex. WW1/2. Ld. AR for the management has submitted that neither the name nor complete address of the management is mentioned thereon. This court has perused the postal receipt of registered letter dated 12.02.2014 Ex. WW1/2, but, neither the name nor complete address of the management are mentioned thereon and the place of addressee is mentioned thereon as Samaypur, Pincode no.110042. The ld. AR for the management has submitted that office of the management is situated at Narela (Delhi) and the pincode number of Narela is 110040. This court has perused the annexure R.1, which is the extract of the resolution, copy of wage slip Ex. WW1/M.1 and also copy of Muster Roll Ex. WW1/M.2, which are not disputed documents and the address of the management of Industrial Area Narela (Delhi) is mentioned therein and pincode of Narela is 110040. Since, the management has denied to have received the demand notice Ex. WW1/1,

so, it was incumbent on the part of the claimant to prove that prior to the filing of the case against the management, he had served the demand notice to the management. Since, the name, complete address of the management and correct pincode number of the area, wherein the office of the management is situated, are not mentioned on the postal receipt Ex. WW1/2 and the claimant has failed to summon any person from the postal department to prove that the demand notice Ex. WW1/1 was ever served to the management. Since, the postal receipt Ex. WW1/2 does not bear the correct name, correct address of the management and correct pincode of the area wherein the office of the management is situated, so, the same does not inspire any confidence.

57. 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.

58. 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.

59. 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.

60. 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.

61. 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



REDMI NOTE 8 PRO
ORIGINAL CAMERA

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 employees, 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”.

62. 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 has stated in his alleged demand notice Ex. WW1/1 that the same was sent to the management through speed post /UPC, but, the claimant has failed to bring on record any postal receipt of speed post or UPC to prove that the said demand notice was served to the management through speed post or UPC, prior to the filing of the present case against the management. The claimant has placed on record one postal receipt of registered post dated 12.02.2014 Ex.WW1/2, but, the same does not bear the correct name of the management, complete address of the management and correct pincode of the area, wherein, the office of the management is situated, so, the same does not inspire any confidence. Even otherwise, the testimony of this claimant is

contradictory to the contents of his alleged demand notice, wherein, he has stated that he had sent a demand notice to the management through speed post/IUPC on 12.02.2014, 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 either through speed post, UPC or registered post, 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.

63. The claimant has claimed that he has served in the management since, May, 1998 and his services have been illegally terminated by the management on dated 26.01.2014, whereas, the management has taken the plea that this claimant had joined the management on 01.04.2002 and he worked therein till 27.01.2014 and thereafter, he had abandoned the job since 28.01.2014. The claimant has failed to bring on record any cogent documentary evidence to fortify such contention. The claimant during his cross-examination has stated that he does not understand as to what is written in his affidavit Ex. WW1/A. Thus, he failed to support his case.

64. He has also admitted his signatures on the wageslip Ex. WW1/M.1, which manifests that he had taken the salary even for the month of December, 2013. The claimant has claimed in his statement of claim that he was not provided the legal facilities and in view of raising of repeated demands for legal facilities, the management had terminated his services on 26.01.2014, whereas, during his cross examination, this claimant has admitted that he was provided the facilities of ESI by the management. The



claimant has admitted that he has not filed any document relating to his employment in the management since May, 1998. The claimant has also admitted during his cross examination that the management used to maintain attendance register of the employees and one page of the photocopy of the same is Ex. WW1/M.2, wherein, his name is mentioned at serial no.1 and this copy of Muster Roll makes it clear that this claimant had worked in the management till 27.01.2014. This claimant has stated that he went to perform his duties in the management on 27.01.2014 and stated that he was not allowed to enter in the premises. Whereas, the copy of the Muster Roll Ex. WW1/M.2 goes to prove that his attendance was marked therein. Thus, the testimony of the claimant is also found to be inconsistent to the Muster Roll Ex. WW1/M.2.

65. Since, the claimant has claimed that he had worked in the management since, May 1998 and his services were terminated by the management on dated 26.01.2014, but he has failed to bring on record any cogent documentary evidence to prove that he had joined the management in May 1998 or that his service were illegally terminated by the management on 26.01.2014 except his self serving affidavit which is not sufficient. 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 26.01.2014, but, the claimant during his cross-examination has admitted that he was getting the facilities of ESI, 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.

66. Since the claimant has claimed that he worked in the management since, May 1998 and on dated 26.01.2014, 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 May 1998 till 26.01.2014. The management has taken the plea that this claimant had joined the management on 01.04.2002 and worked therein till 27.01.2014 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 May 1998 or that his services were terminated by the management on 26.01.2014.

67. 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



REDMI NOTE 5 PRO
DUAL CAMERA

prior to the termination of his services. The claimant has alleged that his services have been terminated by the management on dated 26.01.2014, whereas, the management has denied to have terminated the services of the claimant. The plea of the management is that the claimant has abandoned the job and since, this court finds that this claimant did not go on his duty after 27.01.2014. 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 since 28.01.2014.

68. 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".

69. 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.

70. Since, the claimant has failed to bring on record any cogent evidence to prove that he had served in the management since May 1998 or that his services were illegally and/or unjustifiably terminated by the management on dated 26.01.2014. In view of the above discussion, it is proved on record that the claimant has abandoned the job in the management after 28.01.2014. The claimant has failed to prove on record that his services were illegally and/or unjustifiably terminated by the management on dated 26.01.2014, therefore, issue no. 2 is also decided against the claimant.


71. So, the claimant is not entitled to get any relief. **Therefore, statement of claim**



72. **filed by the claimant is hereby dismissed, being devoid of merits. The reference is answered accordingly.**

72. 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 13.07.2020
through Video Conference
using Cisco Webex**


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