

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Writ Petition (Civil) No.734/2008**

% Date of Decision : April 28 , 2008

M/s. Priya Enterprises Petitioner

Through : Mr. A. K. Mishra,
Advocate

Versus

Govt. of NCT of Delhi & Anr. Respondents

Through : Mr. Prem Mishra,
Advocate for respondent
No.1

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

SUDERSHAN KUMAR MISRA, J :

1. A claim was filed by Mr. Het Narain Jha, a workman, employed by the petitioner. His last drawn salary was Rs.1,600/- per month. According to the workman, he was admitted to hospital for treatment after he had met with an accident during the course of his employment on 28.10.1998. However, after recovering, he was not permitted to re-join his duties on 10.1.1999. The workman claims to have sent a demand notice dated 21.4.1999. In defence, the petitioner-management pleaded that in fact the workman had not completed 240 days of service in the preceding year, and, as such, he could not be deemed to be in continuous service in terms of Section

25B of the Industrial Disputes Act, and, therefore, he was not entitled to the protection under Section 25F of the Industrial Disputes Act. According to the petitioner, Mr. Jha had worked for only five months from May 1998 to September 1998; and that too only as a Helper, for which he had been paid the requisite salary under the Minimum Wages Act. The petitioner also took the stand that even during the span of the five months that he worked with the petitioner, he was highly irregular, erratic, careless and dishonest, as well as insincere in his duties, because of which he was repeatedly warned and reprimanded, but to no avail. According to the petitioner, the workman was incorrigible and eventually abandoned his job.

2. In the written statement filed before the Labour Court, the petitioner also took the stand that it was unable to prove any of the facts pleaded therein because the entire record pertaining to attendance, salary, appointments, vouchers and ledgers for the period 1996 to 1998 had been lost. The petitioner stated that a complaint with regard to the loss of the record had been lodged, and a publication was also effected in that behalf. As noticed by the Labour Court, this record was allegedly lost when the same was being taken on a scooter to the conciliation proceedings in this very matter. All other facts pleaded by the respondent, Mr. Jha, were also denied in the written statement by the petitioner.

3. According to the management, Mr. Jha had left its services in the month of September 1998, which was much before the date of the alleged accident which he claimed had occurred during his employment on 28.10.1998. The petitioner took the stand that the entire story of the workman was concocted and baseless. In addition, the petitioner denied having received the demand notice dated

21.4.1999 allegedly sent by the respondent. In addition, it was also pleaded that the respondent, Mr. Jha, is gainfully employed elsewhere.

4. In its judgment, the Labour Court has noted that neither party addressed any arguments despite repeated opportunities. The matter had come up for final arguments initially on 7.1.2006. Thereafter, the matter was fixed repeatedly for final arguments on as many as 11 dates of hearing. Except for one or two days, on which the Presiding Officer was on leave, the matter was adjourned repeatedly. Ultimately, the Labour Court was constrained to close the opportunity to address arguments and proceeded to deliver judgment on the basis of the material on record.

5. With regard to the demand notice dated 21.4.1999, said to have been sent by the workman; an examination of the returned AD envelope shows that it was dispatched to the correct address. As many as seven efforts were made by the postman to deliver the same. Ultimately, it was returned with the report that the addressee was not found available. It is in these circumstances that the Labour Court has presumed due service on the petitioner-management, and since no reply was given to the said notice, the contents are deemed to be admitted by the petitioner-management. In the writ petition also, neither this reasoning nor this finding of the Labour Court has been assailed.

6. As for the stand of the petitioner that Mr. Jha abandoned his job; the Labour Court concluded that as the management failed to bring any attendance record to that effect, and its witness had admitted that the management did not write any letter calling Mr. Jha to resume duty; consequently, the management had failed to prove

abandonment. It also concluded that on the contrary, the workman, Mr. Jha, had done all he could to prove his claim that he was working with the management since 1994. In the case of ***G.T.Lad And Others Vs. Chemical And Fibers of India Ltd (1979) 1 SCC 590*** the Supreme Court dealing with the question of the true meaning of the expression 'abandonment of service' observed as follows:

"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 edition of the Random House Dictionary, the word 'abandon' has been explained as meaning 'to leave completely and finally; forsake utterly; to relinquish, renounce; to give up something. According to the Dictionary of English Law by Earl Jowitt (1959 Edition), 'abandonment' means 'relinquishment of an interest or 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 Apex Court relying on its decision in ***Buckingham & Carnatic Co. Vs. Venkatiah*****AIR 1964 SC 1272** also held that "Abandonment 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."

Similarly a Division Bench of this Court in ***Shiv Dayal Soin and Sons Vs. The Presiding Officer Labour Court IV and Others*** **LPA No.801/2002** decided on 20.12.2007 observed that a mere accusation that the workers had abandoned their jobs is not enough to accept the said imputation, and that the degree of proof required to establish abandonment of service, is rather strict. It was further

observed that it is for the management to establish abandonment to discharge the burden of proof. In the case of ***Nicks (India) Tools Vs. Ram Surat And Another (2004) 8 SCC 222***, the Supreme Court held that the burden of proving that the workman has voluntarily left the service is on the management. In the case at hand, the Labour Court has rightly come to the conclusion that in the absence of any evidence adduced, the management failed to substantiate their stand of abandonment.

7. The onus to prove the claim of the workman that he had worked continuously for more than 240 days in the year preceding the termination lay on the workman. Although in support of his claim, the workman did not produce any document which would have demonstrated this fact; it was however open to the workman to have summoned the record of the management to prove this fact. This, unfortunately, was not possible because, in its written statement itself, the petitioner-management had taken the stand that the entire record pertaining to attendance, salary, payment vouchers and ledgers for the period 1996 to 1998 had been lost. In this manner, the workman was clearly deprived of any opportunity to summon the relevant record from the management to prove his case. It would appear that this was a crucial piece of evidence and the petitioner management was well aware of this fact. However, as noted by the Labour Court in the impugned award, the petitioner has remained content by baldly stating that the documents had been “lost”. According to the Labour Court, no further details of the alleged loss have been furnished in the written statement. This has not been controverted before me. Copy of the written statement filed by the

petitioner before the Labour Court has also not been placed before this Court.

8. From the impugned judgment, I find that the Labour Court has examined the question with regard to the loss of the records in some detail. It has found that although the report was lodged with the Police Station, Tri Nagar, Delhi, copy of which was exhibited as MW-1/3, however, the veracity and authenticity of this document was challenged in cross-examination and it was also suggested that all the relevant documents are actually in the possession of the management. Despite this challenge, the management did not bother to summon the concerned police official to prove this fact along with the relevant record of the police station. It has also emerged that although this complaint is dated 19.6.1999, the loss of this record apparently took place at 10.00 A.M. on 18.6.1999, and there is no explanation forthcoming as to what was being done for one full day before lodging this complaint. The Labour Court has found this delay in lodging this report undermined the credibility of the petitioner's case. Furthermore, it has also been found that the petitioner's witness was unable to name the place where the documents were lost. It appears that the story of the management was that this entire record, which was obviously a very voluminous one, fell from a scooter but it was unable to state when it fell, or even when the loss was noticed, lacks credibility. Another fact which has weighed with the learned Labour Court is that this incident of loss of the relevant record appears to have occurred in June 1999, i.e., after the conciliation proceedings had already started between the workman and the management and the management would have known very well that this record holds the key to the claim of the petitioner. The fact of the

very record, only pertaining to that limited period during which the petitioner claims employment, to have been lost at that crucial juncture, is by itself not free from suspicion. According to the Labour Court, the entire version of the management regarding the loss of the record is clearly an after-thought and cannot be believed. Interestingly enough, in the face of its stand that the entire record for the relevant period is lost, the management also failed to prove its own claim that the workman had joined only in the year 1998. In the case of ***Laik Ali Vs. M/s Ravissant Pvt. Ltd WP(C) No. 5733/2007*** decided on 06.08.2007, this court observed that taking adverse inference depends on the facts and circumstances of each case. It relied upon ***Municipal Corporation, Faridabad Vs. Siri Niwas (2004) 8 SCC 195*** wherein it was observed that presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of the facts involved in the lis. It is within the powers of the Labour Court not to draw an adverse inference on the basis of the evidence adduced before it. It is pertinent to note that these observations in ***Municipal Corporation, Faridabad (supra)*** have also been reiterated in the cases of ***R.M. Yellati Vs. Assistant Executive Engineer (2006) 1 SCC 106; Krishna Bhagya Jal Nigam Ltd. v. Mohd. Rafi,(2006) 9 SCC 697; Chief Engineer, Ranjit Sagar Dam v. Sham Lal,(2006) 9 SCC 124; Surendranagar Distt. Panchayat v. Gangaben Laljibhai,(2006) 9 SCC 132; ONGC Ltd. v. Shyamal Chandra Bhowmik,(2006) 1 SCC 337.*** It is therefore up to the Labour Court to draw the necessary inference depending on the facts and circumstances of each case.

9. Another factor that appears to have weighed with the learned Trial Court is the fact that although the record was available when the conciliation proceedings had commenced before the Conciliation Officer, the petitioner-management did not bother to file any written statement before the said Officer. It was stated that the records were lost when the officer of the management was going to attend the conciliation proceedings in this very matter. The management was ferrying this record back and forth, but did not bother to file a written statement putting up its case based on this record. Admittedly, at that stage, the petitioner-management had all the relevant records in its possession and would have known its claim also, yet it chose not to do so. Furthermore, conscious as I am, of the fact that the written statement of the management, which mentions the records that were apparently lost, does not talk of the Provident Fund Register, I find myself in agreement with the Labour Court. A Provident Fund Register of any management is a legitimate and reliable record of its employees. It is a permanent record for all times to come. It contains the names and other pertinent information of all the regular employees. The said record was never placed before the Labour Court by the petitioner to support their case and to rebut the claims of the respondent. This in itself is sufficient to suspect the stand of the petitioner. The fact remains that the Labour Court which tried the matter has exercised the discretion vested with that Court and concluded that the management's story about the loss of all its records at such a crucial juncture cannot be believed and that the same is merely a ploy. For this reason, Labour Court has drawn an adverse inference against the management. The inference drawn is plausible and based on cogent facts. Under the circumstances, I see

no reason to interfere.

10. On the basis of the above findings, the Labour Court, vide its order dated 6.10.2007, held that the termination of the respondent/workman, Mr. Het Narain Jha, was absolutely illegal as well as unjustified, being in violation of Section 25 F and N of the Industrial Disputes Act. On the premises that a long time has elapsed since termination, the Labour Court thought compensation to be more appropriate than reinstatement and awarded Rs.2,00,000/- as compensation to the respondent/workman. I am in concurrence with the findings of the learned Labour Court which are properly reasoned and well considered. The petitioner has failed to show anything to the contrary. The present petition does not warrant any interference of this court under Article 226 of the Constitution of India.

11. Under the circumstances, the petition is dismissed.

Sudershan Kumar Misra, J.

April 28 , 2008
OPN.