

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P(C) No.2214/2008**

% **Date of decision: 19.03.2008**

Volga Metal Industries ..... Petitioner

Through: Mr.K.A.Dewan, Advocate.

Versus

Govt. of NCT of Delhi & Another ..... Respondents

Through: Nemo.

**CORAM :-**

**HON'BLE MR. JUSTICE ANIL KUMAR**

- |                                                                          |     |
|--------------------------------------------------------------------------|-----|
| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not?                                | NO  |
| 3. Whether the judgment should be reported in the Digest?                | NO  |

**ANIL KUMAR, J.**

1. The petitioner/management has impugned the award dated 2<sup>nd</sup> February, 2008 awarding 50% back wages to the respondent workman from the date of disengagement of his services with effect from 15<sup>th</sup> June, 2004 and reinstatement.

2. On the dispute being raised by the respondent/workman, the following reference was made by the appropriate government:

“Whether services of Sh.Virender Singh S/o Sh.Surinder Singh been terminated by the management illegally and/or unjustifiably and if so to what sum of money as monetary relief alongwith consequential benefits in terms of existing laws/Government notifications and to what other relief is he entitled, and what directions are necessary in this respect?”

3. Before the Labour Court, the petitioner had claimed that he had been employed with the management since April 1998 as *Karigar* and his last drawn salary was Rs.4,200/- per month. According to him, the management was not providing legal facilities nor had issued appointment letter, attendance card, leave book, earned leave, casual leave etc. despite the demands being made by the workman which annoyed the petitioner and the services were terminated on 15<sup>th</sup> June, 2004 without issuing any notice or charge sheet. The respondent/workman contended that he is unemployed since the date of termination of his services.

4. The claim of the respondent/workman was contested by the petitioner contending inter alia that the respondent was not in the employment of the management since April 1998 as *Karigar* and that his last drawn salary was not Rs.4,200/- per month. It was pleaded that the respondent was appointed with effect from 26<sup>th</sup> April, 2001 at the salary of Rs.2,419/- per month and he was on probation for a

period of six months which period expired on 25<sup>th</sup> October, 2001, the petitioner asserted that the conduct of workman was unsatisfactory and he was absenting without intimation to the management and, therefore, he collected his dues in full and final after making verbal request for resignation from the services of 10<sup>th</sup> April, 2004 and he executed a receipt after collecting his dues on 8<sup>th</sup> May, 2004 in presence of witnesses. The claim of the workman was also resisted on the ground that he had not completed 240 days of continuous service in 12 months preceding the date of termination, i.e., 15<sup>th</sup> June, 2004.

5. The Labour Court on the basis of pleadings and evidence produced held that the plea of the petitioner that the workman had voluntarily resigned is false. The Labour Court had relied on the copy of wages payment register for the month of May 2004 and the copy of muster roll for the month of May 2004 showing that the respondent had performed his duties in the months of May 2004 and, therefore, the claim of the petitioner that the workman had voluntarily resigned on 10<sup>th</sup> April, 2004 is not correct. The alleged receipt alleged to have been executed by the respondent on collection of sum of Rs.10,662/- was also disbelieved as the attesting witnesses, namely, Shri Vijay Goal and Shri Harish Kumar, were not examined nor any cogent explanation was given for not examining them. An adverse inference has also been taken by the Labour court against the petitioner for non-production of

the account books to show that in fact amount of Rs.10,662/- was paid to the workman in full and final settlement or not.

6. The findings of the Labour Court that the workman had not voluntarily resigned is based on evidence and cannot be termed perverse or suffering from any manifest error. It cannot be disputed that if the Labour court had drawn some inference based on cogent evidence, the High Court in exercise of its jurisdiction under Article 226 of Constitution of India is not substituted its inference with the inference drawn by the Labour Court. In the present case, I do not find any reason to differ with the inferences drawn by the Labor Court that the respondent workman had not voluntarily resigned on 10<sup>th</sup> April, 2004 because the petitioner's own record showed that he worked during May 2004. The alleged voucher for Rs.10,622/- cannot be relied on as the attesting witnesses have not been examined nor any cogent explanation has been given for not examining them and the payment of the alleged amount of Rs.10,662/- has not been established by the petitioner by producing the relevant evidence such as their account books etc.

7. Regarding the respondent having not worked for 240 days, the reliance has been placed on the fact that the respondent was paid gratuity and the amount of gratuity could not be paid, had the

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workman not worked for 12 months in a year. The respondent had pleaded that he worked for more than 240 days and the petitioner did not produce any record to rebut the plea of the respondent.

8. The petitioner before the Labour Court showed their willingness to reinstate the workman and consequently as the termination of the services of the respondent was illegal, the petitioner was directed to reinstate the workman and 50% back wages have also been awarded to the respondent from the date of his disengagement by the petitioner on 15<sup>th</sup> June, 2004. The petitioner has not been able to prove that the respondent remained employed during the period after the termination of his services and since the burden was on the respondent, considering the material before the Labour Court the inference was drawn regarding award of 50% back wages from the date of his termination which cannot be termed perverse or suffering from any manifest error.

9. While exercising its powers of judicial review under Article 226 of the Constitution of India this Court is not to re-appreciate the evidence. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court does not interfere with factual findings of the lower courts and restrain itself from re-appreciating evidence while exercising powers of judicial review. The objective of judicial review is to ascertain that a person received a fair

treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. The findings and inferences of the Labor Court are based on evidence and documents on record and there does not appear to be any manifest errors in them. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.

10. For the foregoing reasons, there are no ground to invoke the jurisdiction of this Court under Article 226 of the Constitution of India as there is no manifest error or perversity in the award dated 2<sup>nd</sup> February, 2008 and consequently the petition is without any merit and the same is dismissed.

March 19<sup>th</sup>, 2008.  
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**ANIL KUMAR, J.**