

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

+ **WP(C) No.2267/2008**

% **Date of decision : 24.03.2008**

M/s.Dimple Creation Petitioner
Through: Mr.Rajesh Anand, Advocate.

Versus

Smt.Poonam Devi Respondent
Through: Nemo.

CORAM :-

HON'BLE MR. JUSTICE ANIL KUMAR

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| 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 15th February, 2007 of the Labour Court holding that the services of the respondent workman were terminated illegally and, therefore, she is entitled to be reinstated in service on the same terms and conditions and granting her 100% back wages from the date of termination till she is reinstated in the service.

2. The respondent workman had raised an industrial dispute which was referred by the appropriate Government in the following terms:-

“Whether the services of Smt.Poonam Devi have been terminated illegally and/or unjustifiably by the management, and if so, to what relief is she entitled and what directions are necessary in this respect?”

3. The respondent/workman had contended in her claim that she was working with the petitioner for the last 9 years as a ‘sampling maker’ and her last drawn wages were Rs.1784/- per month. She alleged that she was not paid minimum wages and over time wages and when she demanded the same she was refused duty by the management from 18th September, 1997. She requested the petitioner to allow her to join the duties till 4th October, 1997 and thereafter a complaint was made by her to the Labour Department.

4. The respondent/workman had asserted that she has remained unemployed since her termination on 18th September, 1997 and she has not been able to get any employment despite best efforts on her part.

5. The claim of the respondent was contested by the petitioner contending inter-alia that the reference made by the Government of NCT was totally misconceived and untenable as the petitioner had not terminated the services of the respondent and it was the respondent who did not come to report for duty despite several reminders by the petitioner and there exists no industrial dispute between the parties as per the provisions of Industrial Dispute Act, 1947. The petitioner, however, in their written statement to the claim filed by the respondent admitted that the respondent was engaged as thread cutter since 1st January, 1991 and her last drawn salary was Rs.1784/-. Any harassment alleged by the respondent was denied by the petitioner/management. The petitioner also contended that she was never refused to join the duties and the services of the respondent has not been terminated on 18th September, 1997 in contravention of the provisions of law. The petitioner/management contended that the respondent/workman abandoned the job on her own with effect from 18th September, 1997 and did not turn up to resume the duties despite several reminders dated 29th September, 1997, 10th November, 1997, 24th January, 1998, 17th February, 1998, 19th March, 1998, 14th April, 1998, 15th May, 1998 and 25th June, 1998. It was also denied that the respondent had come to report for duty till 4th October, 1997.

6. The Labour Court considered the pleas and contentions of the parties. It appears that the petitioner was proceeded ex-parte. The learned counsel for the petitioner has produced a certified copy of the proceedings conducted before the Labour Court which reveals that the evidence of the respondent/workman was concluded on 1st July, 2002 and the matter was listed on 17th September, 2002 for the petitioner/management witness. From 17th September, 2002 the matter was adjourned on various dates for the evidence of the management witnesses, however, the evidence was not recorded. The adjournments were granted to the management subject to cost also which was paid, however, the witnesses were not examined leading to closure of management evidence on 31st March, 2006. After 2006 the matter was taken up on various dates, however, no application seems to have been filed by the petitioner for setting aside the order closing the evidence of the petitioner management leading to an award dated 15th February, 2007 passed against the petitioner management.

7. Perusal of the averments made in the writ petition also reveals that no ground has been made out by the petitioner against closing of his evidence on 31st March, 2006 after various opportunities were given to the petitioner since 17th September, 2002. Therefore, there is no cogent evidence on the part of the petitioner/management to refute the established pleas of the respondent/workman.

8. The plea of the petitioner/management is that the respondent abandoned her job on her own and did not report for work with effect from 18th September, 1997. It is also contended that various reminders were sent to the respondent workman to come and join the duties, however, none of these alleged reminders had been served on the respondent. The Labour Court has relied on the fact that the petitioner failed to lead any evidence and prove those letters whether they were actually sent and delivered to the respondent or not. The letter exhibit WW.1/6 was not relied on as the same was sent after the receipt of reference in the Court and the fact that in the written statement the petitioner did not offer to take the respondent back on duty.

9. Based on this that no letters have been proved by the petitioner/management asking the respondent to come and join the duties and the sole letter allegedly sent by the petitioner was also after filing of the reference and in the written statement no offer was made to the respondent/workman to come and join the duties, it is inferred that the respondent did not abandon her employment on her own. Since the respondent had been working from 1991, even according to the petitioner, her services were not terminated after complying with the mandatory provisions of Section 25F of Industrial Disputes Act, 1947.

The plea of the petitioner is that the workman abandoned the services which fact has not been established by the petitioner. In these circumstances, it has been held that the termination of the service of the respondent was illegal and unjustified.

10. 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. Reliance for this proposition can be placed on the judgment of the Supreme Court, *Government of A.P. and Ors. v. Mohd. Nasrullah Khan* reported as (2006) 2 SCC 373. Reliance may also be placed on the following judgments rendered by the Supreme Court and this Court concerning the scope of judicial review by a writ court: *Harbans Lal v. Jagmohan Saran* (1985) 4 SCC 333; *B.C. Chaturvedi v. Union of India* (1995) 6 SCC 749; *Indian Overseas Bank v. I.O.B. staff Canteen Workers' Union* AIR 2000 SC 1508 ; *Municipal Corporation of Delhi v. Asha Ram and Anr.* 117 (2005) DLT 63 and *Filmistan Exhibitors Ltd. v. N.C.T. Secy. Labour and Ors.* 131 (2006) DLT. In all the above judgments, it has been held that a writ court should refrain from

interfering with the orders of an inferior tribunal or subordinate court unless it suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law.

11. The learned counsel for the petitioner has also emphasized on the letter dated 25th June, 1998, however, it is apparent that the same was received by the respondent after the reference was made to the Court. After the reference was made to the Court the petitioner filed the written statement and in case their offer to the respondent was genuine they should have made an offer even in their written statement asking respondent to come and join the duties. An inference arrived at by the Labour Court in the facts and circumstances is probable and reasonable and this Court in exercise of its jurisdiction under Article 226 of the Constitution of India will not substitute its own inference with the inference drawn by the Labour Court. Consequently, there is no manifest error or perversity in the award dated 15th February, 2007 nor there is any denial of principle of natural justice to the petitioner management so as to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

12. The writ petition in the facts and circumstances is without any merit and it is dismissed.

March 24th 2008.
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ANIL KUMAR, J.