

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

+ **W.P(C) No.14134/2006**

% **Date of decision: 07.03.2008**

Sh.Sudhi Ram Petitioner

Through: Mr.H.K.Chaturvedi, Advocate.

Versus

The Management of M/s.D.N.Rehani Respondent

Through: Mr.Dhanesh Relan, Advocate.

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 has impugned the award dated 14th November, 2005 not granting the back wages while granting reinstatement and granting litigation expenses of Rs.20,000/-.

2. That a reference dated 6th March, 1991 in the following terms was made:-

“Whether the services of Sh.Sudhi Ram 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.”

3. The services of the petitioner were terminated on 7th July, 1990. On the reference being made the claim was filed by the petitioner and in the reply dated 10th November, 1992 to the claim, a copy of which is produced by the petitioner, it was contended by the management to direct the petitioner to report for duty immediately without causing any further delay.

4. An ex-parte award was passed against the respondent which was, however, set aside and thereafter the matter was reconsidered and it has been held that the petitioner had not abandoned the job and therefore, he has been granted reinstatement.

5. Regarding the back wages, it is apparent that the Labour Court has considered the plea of the respondent in the written statement dated 10th November, 1993 seeking a direction to the workman/petitioner to report on duty immediately without causing any further delay and the fact that even in the evidence of the management by affidavit dated 25th August, 2005, it was reiterated that the petitioner be directed to report for duty immediately without causing any further delay. However, the workman for the reason best

known to him did not bother to report for duty and chose litigation for his own convenience.

6. The petitioner workman in his cross examination had admitted that he has agricultural land of 1 bigha in the village and he is cultivating it himself.

7. The learned counsel for the petitioner has contended that the back wages have been declined to the petitioner on the ground that in the notice of demand the back wages were not demanded. It appears from the award dated 14th November, 2005 that considering the entirety of facts and circumstances the Labour Court has not granted back wages especially in view of the fact that the petitioner was offered to join the services as back as 10th November, 1993. The petitioner had been cultivating his lands and petitioner did not make any serious effort to go and join the duties offered by the respondent. In the circumstances the decision of the Labour Court not granting back wages cannot be held to suffer from any manifest error.

8. While exercising its powers of judicial review under Article 226 of the Constitution of India this Court is not to re-appreciate the pleas and evidence of the parties and give its own findings. 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 can 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 Labor Court 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.

9. The objective of judicial review is that a person receives a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. The Apex Court in (1995) 6 SCC 749, B.C.Chaturvedi v. Union of India at page 759 in para 12 had held as under:

“ 12 . 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. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Labor Court is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Labor Court in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/ Labor Court may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the

conclusion or finding be such as no reasonable person would have ever reached, the Court/Labor Court may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

10. Whether the finding of the Court that the petitioner is not entitled for back wages is based on some evidence or not. Perusal of the pleas and contentions of the parties that the inference drawn by the Labor Court is based on pleas and evidence of the parties. This Court does not have to review the findings of Labor Court in the facts and circumstances as an appellate authority. There is no manifest error or any perversity in the order of the Labor Court directing reinstatement of the petitioner but declining him the back wages. There are no grounds to invoke the jurisdiction of this Court under Article 226 of the Constitution of India in the present facts and circumstances of the case. The writ petition is without any merit.

11. The writ petition, therefore, is without any merit and it is dismissed. Parties are however, left to bear their own costs.

March 7th, 2008.
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ANIL KUMAR, J.