

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : January 8th, 2008

WP(C) No.8729/2007

Om Prakash Sharma PETITIONER
! Through: Mr.Vinay Sabharwal, Advocate

Versus

\$ Onida Savak Ltd. & Anr. RESPONDENTS
^ Through : Mr.Virender Singh, Advocate for
respondent No.2

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. (Oral)

1. The petitioner has impugned the award dated 27th August, 2007 of the Labour Court holding that the petitioner was workman and that his services were not illegally terminated by the management.

2. The petitioner was working with the respondent since 22.10.1999 and his last drawn salary was Rs.4676/- per month. The petitioner was transferred from Delhi office to Guwahati against which petitioner made representations dated 18th December, 1996, 19th

December, 1996 not to transfer him due to sickness of his wife and he alleged that even he had fallen sick and he remained under treatment of doctors till 12th January, 1997.

3. According to the petitioner, after availing medical leave, he had gone on 13th January, 1997 along with medical certificate for joining the duty but he was not allowed to join his duties.

4. The respondent's contention is that the petitioner was transferred to Guwahati. For the transfer he had also taken advance of Rs.8,000/- for joining his duties at Guwahati which fact has not been denied by the petitioner. The petitioner, however, did not join the duty at Guwahati. Even after 13th January, 1997 when petitioner is alleged to have gone with medical certificate to join the duties, letters dated 31st January, 1997, 12th February, 1997 and 20th February, 1997 were sent to the workman petitioner calling upon him to join duties, the receipt of which letters have not been denied by the petitioner.

5. The Labor Court has noted that during the course of argument it was contended by the authorized representative that the workman/petitioner could not join the duties at Guwahati as he was not relieved from Delhi Office in order to join the duties.

6. The Labour Court has considered the pleas and facts and circumstances and evidence and has held that there is no requirement for any formal order of relieving the workman and since the transfer order stipulated to join the duties at Guwahati immediately, there was no necessity for any formal relieving order which was only a ploy adopted by the petitioner to avoid joining the duties at Guwahati. The letter dated Ex.MW1/10 and MW1/11 and 12 were relied on by the Labour Court to draw an inference that petitioner did not join the duties despite specific demands by the management and, therefore, the contention of the workman that he went to join the duties but he was not allowed to join the duties were dis-believed.

7. The Labor Court dis-believed the version of the petitioner also on the ground that no complaint was filed by the petitioner with the Labor Department. Regarding the plea of the petitioner that no domestic inquiry was conducted, the Labour Court relied on 2007 LLR 344, University of Delhi vs. Suresh Chand, holding that termination of a workman remaining absent from duty without any intimation or prior permission even without holding of an inquiry will be justified.

8. Reliance has also been placed by the Labor Court on 2007 LLR 7, MCD Vs. Vijay Pal and Others. Learned counsel for the petitioner has also relied on AIR 1979 Supreme Court 582, G.T.Lad and others vs. Chemicals and Fibers India Limited and 1978 Vol.I Labour Law Journal page 1, Delhi Cloth & General Mills Ltd. Vs. Shambhu Nagh Mukherjee and others to contend that abandonment of service by the petitioner cannot be inferred in the present facts and circumstances.

9. Perusal of the precedents relied on by the petitioner reflect that they are distinguishable. In Ambica Quarry Works v. State of Gujarat and Ors. MANU/SC/0049/1986 the Supreme Court observed:-

"The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

Similarly in Bhavnagar University v. Palitana Sugar Mills Pvt Ltd (2003) 2 SC 111 (vide para 59), the Supreme observed:-

" It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

In Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr. (AIR 2004 SC 778), it was held that a decision cannot be relied on without disclosing the factual situation. The Apex Court had also observed:-

" Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

10. In G.T. Lad and others (supra), Supreme Court had held that whether there has been a voluntary abandonment of services or not is a question of fact which is to be determined in the light of surrounding circumstances. In the circumstances of that case it was held that the workers had not voluntarily abandoned as in reply to management letters they had intimated that they did not intend to abandon the services and in the circumstances it was held that there was no abandonment. In Delhi Cloth and General Mills Limited (supra), the workman absented for 8 days and the management had struck them off the rolls and the question for determination before the Supreme Court was whether the management was right in striking off the names of the workman from the rolls and in those facts and circumstances it was held that merely on workman remaining absent for 8 days will not entitle the management to strike off their names from the rolls. In contra distinction, the petitioner was asked to

attend the duties at Guwahati. The petitioner, however, did not join the duties at Guwahati. First he took the excuse that first wife was sick and then he avoided joining duties on the ground that he fell sick and he had given representations. Thereafter, his plea is that he went to join duties with his medical certificate but he was not allowed to join the duties, which has been disbelieved by the Labor Court. Even after that day, the management has sent many communications to the petitioner to join the duties at Guwahati, the receipt of which communications was admitted by the petitioner, but he did not join on the plea that he was not given relieving order. This ploy of the petitioner has also been disbelieved by the Labor Court.

11. From the award of the Labour Court, it is apparent that even after 13th January, 1997 various communications were sent to the petitioner to join the duties at Guwahati. The receipt of which letters had not been denied by the petitioner but he did not join the duties despite drawing an amount of Rs.8,000/- and during the arguments the plea has been raised that he could not join the duties as he was not relieved from his duties at Delhi which explanation has been disbelieved by the Labour Court. This Court in exercise of jurisdiction under Article 226 of the Constitution of India does not have to substitute the cogent inference drawn by the Labor Court with the other inference, if any, of this Court.

12. While exercising its powers of judicial review under Article [226](#) of the Constitution of India this Court ought 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 should not interfere with factual findings of the lower courts and should 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.

13. 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 Vs 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/Tribunal 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/Tribunal 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/Tribunal 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/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”**

14. In entirety of facts and circumstances, there is no perversity or manifest error or denial of principal of natural justice so as to entail interference by this Court under Article 226 of the Constitution of India against the award dated 27th August, 2007 of the Labour Court.

15. The writ petition is without any merit and it is, therefore, dismissed.

January 08, 2008
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ANIL KUMAR, J.