

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

+ WP (C) Nos. 2414/2007

% Judgment delivered on: 26.03.2009

Shri Pramod Kumar Petitioner
Through: Mr. Lalit Kumar, Advocate

versus

M/s General Export Agencies Respondent
Through: Mr. Amit Seth, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J. (Oral)

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1. By way of this petition filed under Articles 226/227 of the Constitution of India the petitioner seeks to challenge the impugned award primarily on the ground that the petitioner had never sent the resignation letter nor had received any amount after the alleged settlement between the

parties which took place before the Assistant Labour Commission/Conciliation Officer.

2 . Brief facts relevant for deciding the present petition are as under:-

The petitioner was working with the respondent company as a skilled sampler since 5.2.1982 and his name was also included in the muster roll of the respondent company. The petitioner was paid by the respondent company a sum of Rs.137/- per day excluding tiffin expenses. Mr. Manmohan Singh is the owner/director of the respondent company and the respondents are registered companies dealing with the exports of various kinds of garments including embroidery to various foreign countries. The petitioner had put in 20 years of service with the respondent/management but to his utter surprise the management through management No.3 on November, 30th 2002 without any rhyme or reason compelled the workman to tender his resignation without giving him his due payments. The forcible resignation of the workman from the services of management without letting him know his fault or without conducting any departmental domestic inquiry shows that management's malafide intention and ulterior motive. The management's dictatorial conduct with the

workman not only amounts to retrenchment but also it is in utter violation of the general provisions of the standing orders. The management's acts also tantamounts to be gross violation of the principles of natural justice and the law of the land. The workman tried his best to convince the management that he does not want to leave the services of the management but the requests and persuasion fell on the deaf ears of the management, which compelled the workman to serve legal notice through his counsel to which no reply was received from management. The dispute was raised before conciliation officer but the management failed to appear and consequently the conciliation proceedings failed. Hence the reference was sent to the Labour court. The Labour Court held the reference in favour of the management and against the workman. Aggrieved with the same the workman/petitioner has preferred this petition.

3 . Mr. Lalit Kumar, counsel for the petitioner submits that in fact the said resignation letter and the settlement was manipulated by the respondent while in fact neither the petitioner had resigned from his job nor had agreed for the settlement before the Assistant Labour Commissioner/Conciliation Officer. Counsel thus submits that

the petitioner had never received an amount of Rs.53,933.50 on the date of the alleged settlement.

4 . Counsel for petitioner submits that perusal of the records of the Assistant Labour Commissioner would be necessary to appreciate the contention of the petitioner that no settlement before the Assistant Labour Commissioner between the parties took place.

5 . Mr. Amit Sethi, counsel for the respondent, on the other hand, submits that the issues raised by the petitioner have already been gone into much in detail by the Labour Court and therefore this court may not re-appreciate the facts. More, particularly, when there is no perversity or irrationality in the findings arrived at by the Tribunal. Counsel further submits that it is not the case of the petitioner that the said settlement was filed before the Conciliation Officer but in fact the settlement was agreed between the parties in the presence of the Assistant Labour Commissioner and the same was duly signed by the Assistant Labour Commissioner verifying the fact of the settlement. Counsel thus submits that the perusal of the records of the Assistant Labour Commissioner would not be necessary to examine the contention raised by the petitioner.

6 . I have heard counsel for the parties and perused the record.

7 . Perusal of record shows that the Tribunal has fully gone into all the issues as are being raised by the petitioner in the present petition and thereafter reached to the conclusion that the petitioner had tendered his resignation voluntarily and had also received the settlement amount of Rs.53,933.50 from the management. It is not the case of the petitioner that he had never signed the resignation letter or the settlement agreement. He is alleging that the said signatures were misused by the respondent management to their advantage with a view to fabricate the resignation letter and the settlement agreement. The Tribunal did not believe the said stand of the petitioner as nowhere in the statement of claim the petitioner alleged that such signatures were obtained by the management on blank papers. It would be worthwhile to refer to para 19 and 20 of the impugned award wherein the said issue was examined by the Tribunal in detail. The relevant paras are reproduced as under:-

“From the above authorities it is clear that if resignation is tendered voluntarily by the workman then he cannot back out and should not be allowed to come out of the effect of such voluntary resignation. In the present case the

management has relied upon the resignation letter dated 20.11.2002 Exhibit WW1/M.1 tendered by the workman and accepted by the management. The cash voucher dated the 7.2.2003 showing that the workman received a sum of Rs.53,933.50 from the management. The settlement recorded between the parties on 7.2.2003 before Assistant Labour Commissioner Exhibit WW1/M.3 the original of which was also filed later on by the management. The workman in the cross-examination has admitted his signatures on these documents but he has volunteered that the signatures were obtained on blank papers in the year 1991. This voluntary statement of the workman is not acceptable as nowhere in the statement of claim the workman has stated that in 1991 the signatures were obtained on blank papers. The case of the workman is that on 30.11.2002 he was compelled to tender the resignation without giving him due payments. The argument on behalf of workman that 20 paise revenue ticket was not available in the year 2003 or the signatures of the workman were obtained in 1991 when these revenue tickets were available is beyond pleadings and evidence so is liable to be discarded. The mere fact that the settlement agreement Exhibits WW1/M.3 shows the cutting on words appointment letter (Niyukti Patra) does not in itself make the document unreliable, more so, when it is executed before Assistant Labour Commissioner a very responsible officer of the Labour Department.

If the signatures on documents are admitted by a person, the heavy burden lies upon him to prove that he signed the documents when these were blank or he was forced to sign these documents. When the settlement agreement is executed before an officer of the Labour Department the possibility of such a malpractice on the part of management is completely ruled out. The workman in his application for withdrawal of the amount from Employees Provident Fund Organization copy of which is Exhibit WW1/M.4, has given the date of termination of his services as 10.10.2002 but in the statement of claim he has

given this date as 30.11.2002 while his resignation letter is dated 20.11.2002 and he has received settlement amount/full and final amount from the management on 7.2.2003. Therefore, the totality of facts and circumstances of the case clearly show that the workman himself has resigned from the job and has received full and final dues from the management before a responsible officer of the Labour Department. "

8 . It is a settled legal position that the Tribunal is the final arbiter on the finding of facts and unless there is a perversity or irrationality in such findings this court will not re-appreciate the facts or the evidence led by the parties before the Tribunal. In this regard, the Hon'ble Apex Court in **Indian Overseas bank vs I.O.B. Staff Canteen Workers' Union (2000) 4 SCC 245** explained the scope of Article 226 in the following terms: -

"17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can

reasonably and possibly be taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned Single Judge and in ordering restoration of the award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned Single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken, the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below."

9 . In the light of the above position, I do not find that the Labour Court has committed any illegality, perversity or irrationality in passing the award. No merit in the petition. Dismissed.

March 26, 2009
pkv

KAILASH GAMBHIR, J.