

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

+ **Writ Petition (Civil) No. 9084/2006**

Reserved on : 04.03.2009
Date of Decision : 26.03.2009

SHRI SOHAN LAL

.....Petitioner

Through : Mr. K. K. Jha, Advocate

Versus

M/S NOVEX (P) LTD.

.....Respondent

Through : Mr. Siddharth, Advocate

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

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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 |

V.K. SHALI, J.

1. This is a writ petition filed by the petitioner/workman against the award dated 7th January, 2005 passed by Mr. M. C. Garg, Presiding Officer, Industrial Tribunal-III, Karkardooma Courts, Delhi as His Lordship the then in ID No. 472/1990 in the case titled **M/s Novex (P) Ltd. Vs. Its Workman Sh. Sohan Lal.**

2. That briefly stated the facts of the case are that:

“Whether the services of Sh. Sohan Lal 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. On the basis of the aforesaid reference the petitioner/workman had filed a statement of claim stating that

he was employed as a machine-man for the last five years and his last drawn wages were Rs.562/- per month. It was also alleged by the petitioner/workman that he used to work on Hydro Machine and when he started demanding minimum wages which was not given by the respondent/management and it became vindictive. On 7th May, 1989 the respondent/management asked him to get a coal from dhulai/store which the petitioner/workman refused because of which he was turned away from the place of work. The petitioner/workman had sent a demand notice to the respondent/workman on 22nd June, 1989 and thereafter, approached the learned Labour Court.

4. The respondent/management filed its written statement and took the plea that the services of the petitioner/workman never terminated. On the contrary, the petitioner/workman was actually working as unskilled workman in the laundry section because of which he was asked to get the coal from the dhulai/store but he refused and thereafter he stopped coming to the office which was treated as an abandonment of the job.

5. On the pleadings of the parties. The following issues were framed:

- (i) Whether the reference is incompetent and no industrial dispute exists as alleged in the written statement?
- (ii) Whether the workman has himself abandoned the employment of management and failed to resume duty?
- (iii) As per terms of reference.

6. The petitioner/workman in support of his case has filed his affidavit which is Ex.WW1/A in which he has supported his statement of claim, but in cross examination he has slightly wavered. He stated that he did not remember the exact date of his joining. The learned counsel for the petitioner/workman admitted that he was earlier employed by Contractor for 1 ½ years and that his salary at the time of his joining as a Helper was Rs. 362/- per month. It was also admitted by the petitioner/workman in his cross examination that he had refused to carry out the instructions of the respondent/management whereupon it is stated by the petitioner/workman that he was asked to run away from the factory.

7. As against this, the respondent/management has filed an affidavit of one Mr. Ravi Shanker as Ex.MW1/1 and supported its case that the petitioner/workman was employed as a Helper and he was required to do all the jobs from time to time which were entrusted to him. Since the petitioner/workman himself refused to do the work which was assigned to him, he in order to save his face stopped coming and consequently this tantamounted to the abandonment of his job. It has been pointed out by the learned counsel for the respondent/management that even the Conciliation Officer had offered the petitioner/worker to join the establishment of the respondent/Management which petitioner refused. Another noticeable fact which was held by the learned Labour Court was that the petitioner/workman was employed only as a Helper and not a skilled labourer and as an unskilled

labourer he was required to do all the jobs entrusted to him from time to time. The respondent/management had also asked the petitioner/workman to resume the duties, however, this was also refused by the petitioner/workman, and therefore, the learned Labour Court after appreciating the evidence came to the conclusion that it was a case of abandonment of job and not an illegal termination, accordingly, his claim was disallowed.

8. I have heard the learned counsel for the parties and perused the record carefully. The learned counsel for the petitioner/workman has contended that the learned Labour Court has grossly erred in arriving at a finding that it was a case of abandonment of service by the petitioner/management. However, in order to establish that the learned Labour Court has grossly erred in appreciating the evidence, the learned counsel for the petitioner/workman wanted the Court to go into the entire evidence and then arrive at a finding with regard to the factum as to whether there was an abandonment of service or was illegally terminated.

9. The learned Labour Court for the respondent/management contested this and said that the scope of judicial interference is very limited. That the Court cannot go into the question of appreciation of the evidence it can only set aside the finding of a fact if it is perverse or there is no evidence to support the finding given by the Labour Court.

10. I have carefully considered the respective submissions. The thrust of the entire case of the learned counsel for the

petitioner/workman has been that this Court while exercising of its power of judicial review should re-appreciate the evidence of case and come to its own conclusion, that it was not a case of abandonment of service, it was only a case of termination of service. The termination was in violation of Section 25 (F) of the Industrial Disputes Act, 1947, and therefore, it was bad in law.

11. I do not agree with the contention of the learned counsel for the petitioner/workman. The Court while exercising the power under Section 226 of the Constitution of India cannot sit as a Court of Appeal and re-appreciate the evidence and Court to substitute its own finding in place of the finding of the court below. The only thing the petitioner/workman while assailing the order of the learned Labour Court in this writ petition must show that there is a violation of principle of natural justice, violation of any rule or regulation or that the award is perverse. On the contrary, there is a reasoned finding given by the learned Labour Court after appreciating the evidence and it has come to the conclusion that since the petitioner/workman was employed essentially as an unskilled labourer, therefore, he was expected to do all the jobs which are entrusted to him from time to time. This has been admitted by the petitioner/workman that he was asked to get the coal from dhulai/store and he refused the same. The petitioner/workman could not have refused to do the job which was expected to him to be done because he was employed as a Helper. The petitioner/workman despite having refused to work as a Helper had stopped coming and for this the

petitioner/workman was asked to resume the duties by the respondent/management which has also been noted by the learned Conciliation Officer. The petitioner/management asked the respondent /workman to join the duties afresh which he also refused. In the light of the fact that the petitioner/workman has refused to join the respondent/management while the matter was pending before the learned Labour Court and even earlier also will clearly indicate that it was a case of abandonment of service.

12. The learned counsel for the petitioner/management has cited one Division Bench judgment of this Court in the case titled **Tirloki Nath Vs. Sh. Dharam Paul Arora & Anr.** 2006 LLR 1043 wherein it has been held by the Division Bench that if a workman fails to resume duties, even when the offer is made before the Conciliation officer as well as the Industrial Tribunal, it will be irresistibly presumed that he is no longer interested in the job and he has actually abandoned the job of his own accord. The preposition of law laid down by the Division Bench in the aforesaid fully fits in with the facts of the present case. The petitioner/workman had been asked to get the coal which he failed to do and consequently thereafter he stopped coming to office. As an unskilled labourer, his services could be utilized by the respondent/Management in any manner whatsoever and since he failed to respond positively to the offer to resume the duty, this is indicative of the fact that the petitioner/workman has abandoned the service.

13. For the aforesaid reasons, I do not find any perversity, illegality in the impugned order nor has the petitioner/workman been able to establish that he was a skilled labourer and therefore, was well within his right to refuse to get the coal.

14. Accordingly, the writ petition is dismissed being without any merit.

No order as to costs.

V.K. SHALI, J.

March 26, 2009
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