

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

+ **W.P.(C.) No. 12868/2009**

Date of Decision: 04TH NOVEMBER, 2009

M/S CENTURIAN SERVICES (P) LIMITED PETITIONER

Through: Mr. V.K. Tandon, Advocate.

VERSUS

\$ DHARAMVEER RESPONDENT

^ Through: NEMO.

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J (ORAL)

The management of M/s Centurian Services (P) Limited, in this writ petition seeks to challenge an industrial award dated 16.01.2009 directing reinstatement of the respondent workman with full back wages.

2. Heard on admission.
3. The impugned award has been passed by the Court below on a complaint under Section 33A of the Industrial Disputes Act, 1947 filed by the respondent workman against the management.
4. Briefly stated the facts of the case are that the respondent was employed by the petitioner as Despatch Clerk/Rider w.e.f. 11.03.1996. His services were terminated by the management w.e.f. 26.11.1998. However, with the intervention of the Conciliation Officer, the petitioner management agreed to take him back on duty w.e.f. 01.03.1999. After he was taken back on duty on the intervention of the Conciliation Officer, he was not paid wages for the period from 26.11.1998 to 28.02.1999. He

raised an industrial dispute for non-payment of wages for the period from 26.11.1998 to 28.02.1999 which was referred by the appropriate Government in the Government of NCT of Delhi to the Labour Court for adjudication vide reference order dated 13.07.1999. While that reference regarding payment of wages to the respondent for the period from 26.11.1998 to 28.02.1999 was pending before the Labour Court, the respondent fell sick and remained on medical leave from 15.04.2000 to 18.08.2000. On 19.08.2000, after he recovered from illness, when he went to join duties with the petitioner, he was not allowed to join duty by the petitioner management. The respondent wrote a letter to the petitioner management on 09.09.2000 (at page 96 of the paper book) registering his protest for not being allowed to join duty with the petitioner management on 19.08.2000. He, thereafter, filed a complaint under Section 33A of the Industrial Disputes Act, 1947 before the Labour Court on 17.10.2000 alleging illegal termination of his services by the petitioner management w.e.f. 19.08.2000.

5. The petitioner management filed its reply to the complaint under Section 33A in which it took a stand that the complaint was premature because the services of the respondent workman were terminated after filing of the complaint on 31.10.2000. The management of the petitioner also pleaded in its reply that the respondent workman was transferred from Delhi to Mumbai w.e.f. 14.04.2000 and that his said transfer was in terms of his appointment letter. The plea taken by the management in response to complaint under Section 33A was that the respondent had not complied with the transfer order transferring him from Delhi to Mumbai w.e.f. 15.04.2000 and, therefore, he was dismissed by the management w.e.f. 31.10.2000, i.e., after the date of filing of the complaint under Section 33A.

6. The complaint under Section 33A filed by the respondent workman was earlier decided by the Industrial Tribunal vide order dated 13.12.2004. This order of the Tribunal was set aside by this Court vide its order dated 21.04.2008 in W.P.(C.) No. 1417/2006 filed by the respondent workman and the case was remanded back to the Court below to ascertain the genuineness of the letter of termination dated 19.08.2000 relied upon by the respondent workman in support of his submission that his services were terminated w.e.f. 19.08.2000 before the date of complaint filed on 17.10.2000.

7. Pursuant to the remand order of this Court referred above, the Court below has decided the complaint under Section 33A against the management holding it guilty of violating the provisions of Section 33 of the Industrial Disputes Act, 1947 in terminating the respondent from its service during the pendency of an earlier industrial dispute relating to non-payment of wages for the period from 26.11.1998 to 28.02.1999.

8. I have carefully gone through the impugned award/order but on going through the same, I do not find any perversity or illegality in the said order calling for an interference by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution.

9. Mr. V.K. Tandon, learned counsel appearing on behalf of the petitioner, has contended that the Court below has failed to take into account the admission of the respondent workman that he had received the termination letter dated 31.10.2000 (Exhibit WW-1/M-1) and according to him, this admission on the part of the workman shows that his services were terminated w.e.f. 31.10.2000, i.e., after the date of filing of the complaint.

10. This argument is devoid of any merit. The admission on the part of the workman regarding receipt of termination letter dated 31.10.2000

(Exhibit WW-1/M-1) does not prove the date of termination. It is an admitted fact on record that the respondent workman was not allowed to join duty by the petitioner management after he recovered from illness w.e.f. 19.08.2000. The respondent workman had furnished medical certificate for the period he remained ill, i.e., for the period from 15.04.2000 to 18.08.2000. The management has taken a stand that the respondent was not allowed to join duties at Delhi on 19.08.2000 because he had already been transferred to Mumbai prior to that date vide transfer order dated 14.04.2000. The respondent workman has denied having received any transfer order from the management on which reliance is sought to be placed on behalf of the management. In case, the management was of the view that the respondent workman had not complied with the transfer order then the management could have very well initiated disciplinary proceedings against the respondent workman for not complying with the transfer orders. The management could have hold a domestic inquiry against the respondent workman for his not complying with the transfer order and for the proposed punishment it wanted to inflict on him. This procedure was not followed by the petitioner management even when the services of the respondent were terminated as per its own showing w.e.f. 31.10.2000. It is not disputed that an earlier dispute raised by the respondent workman regarding non-payment of wages for the period from 26.11.1998 to 28.02.1999 was pending adjudication before the Labour Court on the date the respondent alleged illegal termination or even the date on which the petitioner management says that the respondent was terminated. Admittedly, the approval of the Tribunal before whom the earlier industrial dispute was pending adjudication as required under Section 33(2)(b) was not taken by the petitioner management. This clearly

shows that the termination of the respondent from the service of the petitioner was in contravention of the procedure prescribed under Section 33 of the Industrial Disputes Act, 1947. The Court below has given cogent reasons for arriving at a conclusion that the services of the respondent workman were terminated by the petitioner management w.e.f. 19.08.2000 vide undated letter (Exhibit WW-1/1) and that was before the date of filing of the complaint under Section 33A filed on 17.10.2000.

11. In view of the foregoing, I do not find any merit in this writ petition which fails and is hereby dismissed in limine. The stay application is also dismissed.

NOVEMBER 04, 2009
'BSR'

S.N.AGGARWAL, J