

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

W.P.(C) No.19713/2005

Judgment reserved on:23.3.2010
Judgment delivered on: 17.05.2010

Shri Shiv Kumar Petitioner.
Through : Mr. Piyush Sharma with
Mr. Rakesh Kumar, Advs.

versus

Hansita Respondent
Through : Ms. Anupma Beniwal, Adv. for
respondent No. 1.

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* **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.

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1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the impugned Award dated 8.5.2002 passed in ID No. 417/1993 whereby the reference was answered by the learned Labour Court

against the petitioner.

2. Brief facts as set out by the petitioner relevant for deciding the present petition are that the petitioner was appointed by the respondent as a machine man w.e.f 1.11.1976 with the last drawn wages of Rs. 3200 per month, but was not given legal facilities and on demanding the same, the management got annoyed and terminated his services w.e.f 18.06.1992. Aggrieved by the same, the petitioner sent a legal notice dated 21.7.1992 to the respondent to which he received no reply. Thereafter, he raised an industrial dispute bearing ID No. 417/1993 whereby vide order dated 8.5.2002 the petitioner workman was held not entitled to any relief. Thereafter, the petitioner workman filed an application u/s 11 of the I.D Act r/w section 114 & O.47 R.1 of CPC for review of the above said award whereby vide order dated 21.4.2004 the said application was held to be not maintainable. Hence, aggrieved by the award dated 8.5.2002, the petitioner has now filed the present writ petition.

3. Mr. Piyush Sharma, counsel for the petitioner submitted that the petitioner was appointed by the respondent management

on the post of machine man-cum-supervisor on 1.11.1976 on an initial salary of Rs. 450/-per month. Counsel further submitted that the last drawn salary of the petitioner was Rs. 3,200/- per month. Counsel also submitted that during the entire tenure of service, the workman did not give any opportunity of complaint to his superiors and had worked with the management diligently and honestly. Counsel further submitted that it is only when the petitioner had raised certain legal demands that the management got annoyed and when on 18th June, 1992 the petitioner reported for duty, he was declined duties by the management. Counsel thus submitted that the service of the petitioner was illegally and unjustifiably terminated by the respondent management without their being any rhyme or reason. Counsel also submitted that no show cause notice was served upon the petitioner nor any enquiry was set up by the respondent management before terminating the services of the petitioner. Counsel thus submitted that the action of respondent No. 1 was clearly in violation of Section 25-F of the I.D. Act. Counsel further submitted that the demand notice was sent by the petitioner vide legal notice dated

21st July, 1992 through Registered A.D. cover and UPC, but despite the service of the said letter the respondent management refused to reinstate the petitioner. Counsel also submitted that the petitioner had duly proved his case and in his affidavit filed before the learned Labour Court, the petitioner clearly took a stand that he had never received any letters from the respondent requiring him to join back his duties. Counsel also submitted that the petitioner had taken a stand that the respondent had forged postal receipts so as to cover up its illegal and unjustified action of termination. Counsel further submitted that in his cross-examination, the petitioner clearly denied the receipt of letter dated 8th July, 1992, 22nd June, 1992 and 30th June, 1992 alleged to have been sent by the respondent to the petitioner through UPC. Counsel also submitted that the service by way of UPC is a weak piece of evidence and, therefore, the learned Labour Court wrongly believed the said letters alleged to have been sent by the respondent to the petitioner under UPC. In support of his arguments counsel for the petitioner placed reliance on the judgment of the Apex Court in ***Shiv Kumar &***

Ors. Vs State of Haryana & Ors. 1994 SCC (L&S) 904.

Counsel for the petitioner further submitted that one of the letters was alleged to have been sent by the respondent on 22nd June, 1992 which infact was a holiday in the respondent management and the petitioner cross-examined the witnesses of the respondent management on this aspect also. Counsel for the petitioner further submitted that in response to the reply of the respondent dated 24.8.92, the petitioner categorically took a stand that he had never received any letters as were referred to by the respondent in their reply and through dubious means the respondent had obtained the service of posting from the post office. In the said rejoinder, the petitioner also took a stand that he was willing to join his duties and from the said reply also called upon the respondent to appear before the Assistant Labour Commissioner for disposal of the case. Mr. Sharma submitted that in the letter dated 25.9.92 sent by the respondent to the Assistant Labour Commissioner which was proved on record as Ex. RW1/X nowhere the respondent took a

stand that any such request was sent to the petitioner thereby calling upon him to join back his duties.

4. Refuting the said submissions, counsel for the respondent submitted that the petitioner himself had abandoned his service and, therefore, the case of the petitioner was not a case of illegal termination. Counsel further submitted that vide letters dated 22nd June, 1992, 30th June, 1992 and 8th July, 1992 the petitioner was called upon to resume back his duties, but the petitioner himself did not come forward to join his duties. Counsel further submitted that the said letters were proved on record by the respondent through the evidence of Mr. Inderjeet Singh, MW-2 and an employee of the management who himself had posted these letters. Counsel further submitted that even in the cross-examination, the petitioner had duly admitted the correctness of his address stated on these letters and that the presumption under Section 27 of the General Clauses Act would arise against the petitioner and in favour of the management. Based on the above submissions, counsel stated that no fault can be found in

the order passed by the learned Labour Court and in any case this Hon'ble Court will not reappreciate the findings of the facts as arrived at by the learned Labour Court the same being the final fact finding Court. Counsel for respondents No. 1 and 2 specifically submitted that the respondent firm already stands closed and, therefore, in any case the petitioner cannot be granted reinstatement. Counsel for the respondent further submitted that in the registered A.D. reply sent to the petitioner the respondent categorically took a stand that the petitioner was duly called upon to join back his duties through various letters sent under UPC. The contention of counsel for the respondent was that the petitioner at least cannot dispute the fact of the receipt of the reply.

5. I have heard learned counsel for the parties and perused the records.

6. Indisputably, the petitioner was appointed on the post of Machine man-cum-supervisor on 1.11.1976 and after putting in service of 16 years he was not allowed to join his duties. Just within a period of little over one month, the petitioner sent a

demand notice to the respondent management calling upon the respondent management to allow the petitioner to join back his duties.

7. The entire thrust of the respondent management to claim abandonment on the part of the petitioner is based on letters dated 22.06.1992 and 30.6.1992 and letter dated 7.7.1992 sent by the management through UPCs thereby calling upon the petitioner to join back his duties. The Ld. Labour Court has drawn presumption of service of these letters as the same were sent by UPC carrying correct address of the petitioner and the labour court finding no justifiable reasons given by the petitioner not to join back his duties despite receipt of the said letters found the petitioner not entitled to any relief of reinstatement or grant of any back wages.

8. It is a settled legal position that the abandonment of service cannot be readily inferred. Abandonment of service is a question of intention which can be gathered from the totality of the facts and circumstances of each case. There has to be a clear evidence on record to show that despite grant of reasonable

opportunity to the employee by the management, he failed to join back his duties without any sufficient reasons and therefore in the absence of any such cogent and convincing evidence, voluntarily abandonment on the part of the employee cannot be readily inferred. As per the respondent management, the petitioner remained absent from his duties w.e.f. 19.06.1992 without permission or leave and was called upon to join back his duties vide letter dated 22.06.1992 which was proved on record by the management as Ex. RW 1/1 with certificate of posting proved on record as RW 1/II. On the failure of the petitioner to join back his duties another letter dated 30.06.1992 was sent by the respondent yet again through UPC thereby giving one last opportunity to the petitioner to return back to his work latest by 7.7.1992, failing which the necessary presumption would be drawn against the petitioner that he had abandoned his services. Yet another letter dated 8.7.1992 was sent by the respondent management to the petitioner by UPC and this time an amount of Rs.33,500/- was also sought to be returned by him, which amount the respondent management found outstanding against

him. None of these letters were sent by the respondent management through registered AD and on the other hand the petitioner sent a demand notice dated 21.7.1992 through registered AD which was replied by the respondent management vide their reply dated 24.08.1992 wherein the respondent management also gave reference of the above said letters sent to the petitioner by UPC. The petitioner in his rejoinder dated 3.9.1992 clarified to the respondent management that such letters were never received by him. The petitioner also sought to castigate the respondent in adopting dubious means in obtaining some certificates of posting from the post office to prove service of the said letters. No doubt that under Section 27 of the General Clauses Act service through UPC does give rise to a presumption but certainly service through UPC is a frail piece of evidence. The respondent management has failed to prove on record any dispatch register or any other documentary evidence to show that the said letters were dispatched by the respondent management in their normal and ordinary course of business . The petitioner who had put in 16 years of long service is not expected to be

thrown out of employment just based on three UPC letters purported to have been sent to him requiring him to join back his duties. Had the petitioner been not willing to join back his duties, he would not have sent demand notices just within a period of one-and-a-half month of his termination and immediately thereafter having raised an Industrial Dispute.

9. Hence, the totality of the facts do not justify that in the aforesaid back drop of the circumstances the petitioner would have voluntarily abandoned his services. It is not in dispute that the respondent did not issue any memo or set up an enquiry for the unauthorized absenteeism of the petitioner from his duties and it is quite evident that with the help of such UPC letters the respondent prepared the ground to circumvent the legitimate rights of the petitioner. It is a settled legal position that normally this court while exercising jurisdiction under Article 226 of the Constitution of India, would not interfere in the findings of facts arrived at by the Tribunal but in the facts of the present case, the findings on the very face of it appear to be irrational and perverse. In the case of ***Seema Ghosh vs. TISCO (2006) 7***

SCC 722 it was held that when the judgment of the Labour Court is perverse and against the facts and records, the High Court is entitled to exercise its jurisdiction under Article 226 and to interfere with the perverse finding and set aside the same. It would be worthwhile to refer to yet another judgment of the Apex Court in the case of **ONGC v ONGC Contractual Workers Union (2008)12 SCC 275** where it was held that:

"We have examined the arguments advanced by the learned counsel. This Court has held time and again that the High Court had the authority to enquire as to whether a finding arrived at by the Tribunal was based on evidence and to correct an error apparent on the face of the record. The observations in Trambak Rubber Industries Ltd. case² are to this effect and it has been highlighted that the High Court would be fully justified in interfering with an award of an Industrial Court on account of a patent illegality. In Seema Ghosh case³ this Court observed that the High Court's interference under Articles 226 and 227 of the Constitution with an award of the Labour Court was justified as the award had been rendered contrary to the law laid down by this Court and as a measure of "misplaced sympathy", and was thus perverse. The other judgments cited by Mr Dave lay down similar principles and need not be dealt with individually. It will be seen therefore that the interference would be limited to a few cases and as already noted above, in the case of a patent illegality or perversity."

Therefore, the Labour Court, without giving any weightage to the claim of the petitioner, unreasonably inferred voluntary abandonment on his part just based on the said UPC letters alleged to have been sent by the respondent.

10 . Hence, in the light of the above discussion, I find

considerable merit in the present petition and the same is allowed. The respondent is accordingly directed to reinstate the petitioner on the post of 'machine man' with continuity of service and grant of 50% of back wages.

May 17, 2010

KAILASH GAMBHIR, J.