

* **HIGH COURT OF DELHI : NEW DELHI**

+ **WP (C) No. 8541/2009**

Smt. Ganga Petitioner

Through: Mr. Sanjay Ghose, Adv.

Versus

M/s. Lokesh Garment (P) Ltd. Respondent

Through: Nemo

Judgment pronounced on : April 16, 2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

MANMOHAN SINGH, J.

1. By this writ petition filed under Articles 226 and 227 of the Constitution of India the petitioner has prayed for the issuance of a writ of certiorari/ an order/ direction calling for the records of I.D. No. 742/2006 from the Presiding Officer, Labour Court – XVIII and for setting aside award dated 05.03.2008.

2. The facts leading up to filing of the present writ are that the petitioner was working as a Stitching Operator with the Respondent and earning wages of Rs. 2833/- per month when her services were terminated on 02.09.2002 in complete disregard of the principles of natural justice. The petitioner raised the matter before the Labour Court – XVIII which came up as ID No. 742/2006. Statements of claim were

filed on behalf of the petitioner as well as a co-worker Smt. Suman on 02.12.2003. In reply, the Respondent filed a written statement contending that the petitioner had abandoned her job after 31.08.2002. Issues were framed on 08.12.2005 and evidence of the petitioner and Smt. Suman was filed by way of evidence. Cross-examination was deferred once and then again on 11.05.2006 at which point the opportunity of the respondent management to cross-examine was closed due to non-appearance and the matter was adjourned to 23.08.2006. Again, the respondent sought an adjournment on the ground that it wanted to examine the witness and the matter was adjourned to 20.09.2006 at which date an application for reopening of cross-examination opportunity was filed. The same was allowed subject to cost and adjournment was given again.

3. Smt. Suman was cross-examined on 06.12.2006 while the petitioner's cross examination was adjourned to 20.01.2007 at which date though the petitioner was present, the absence of the respondent caused another adjournment for remaining evidence on 18.04.2007. Thereafter, adjournments were given in the matter at five consecutive hearings when finally the petitioner filed her affidavit of evidence of the management's witness and matter was adjourned to 01.11.2007 for cross examination of the respondent. As no witness was present on 01.11.2007, the matter was adjourned to 10.01.2008 and the management's evidence was closed. The matter was thereafter listed for arguments on 05.02.2008. The Labour Court by order dated 05.03.2008 directed payment of Rs. 1 lac as compensation to Smt. Suman and

insofar as the petitioner was concerned, held that she was unable to prove her case.

4. The matter was listed before this Court on 27.04.2009 and notice was issued to the respondent to show cause as to why the writ petition should not be admitted. On the same date, the record of ID No. 742/2006 titled Smt. Ganga Vs. The Management M/s. Lokesh Garment (P) Ltd. was requisitioned from the Labour Court – XVIII. On the next date of hearing it was noted that the notice had gone unserved and was directed to be served again at the correct address. On 20.11.2009 the Court observed that the notice has been returned unserved with the report of refusal and the respondent was proceeded ex parte.

5. I have heard counsel for the petitioner. The limited question that has arisen in this matter for the Court's consideration is this, whether the petitioner has been denied the mandatory opportunity of representing her case and/ or cross examination leading to violation of the natural principle of *audi alteram partem* and whether as a result of the same, the order of the Labour Court dated 05.03.2008 can be quashed/ set aside.

6. The petitioner has submitted that her husband is an alcoholic with a severely damaged liver and he is therefore incapacitated from doing any work. The petitioner's son is submitted to have been hurt in an accident due to which he also is unable to earn a living. The petitioner is the bread winner of the family and her job with the respondent was her only source of income.

7. Concisely I shall enumerate the grounds on which the

petitioner has sought setting aside of the order dated 05.03.2008. These can be read as under :

(i) The said order is illegal, arbitrary and suffers from errors on the face of the record as the learned Presiding Officer has failed to appreciate that the petitioner had been present on every date of the hearing and had filed her evidence by way of affidavit as far back as 01.02.2006. In spite of repeated opportunities for cross-examination, the respondent consistently failed to cross-examine the petitioner and in fact, even failed to produce its own witness for cross-examination.

(ii) The respondent admitted the factum of employment and stated that the petitioner and Smt. Suman had 'abandoned' their jobs. In such a case, the onus was on the respondent to prove the alleged abandonment which it clearly failed to, having not produced any evidence at all nor any witness for cross-examination.

(iii) The learned Presiding Officer failed to appreciate that the petitioner and Smt. Suman were in an identical situation and therefore, wrongfully treated the circumstances/ situation of the two differently.

(iv) The learned Presiding Officer noted in paragraph 14 that though the respondent had set up a case of abandonment it had failed to place on record any documents proving/ stating that the concerned workman is required to join service after his/ her absence. Further, paragraph 16 notes that abandonment can only be

proved by the management leading evidence, which is apparent in the present case that the respondent did not lead. Despite making a note of these facts, the learned Presiding Officer erroneously shifted the burden of proof on the petitioner and held that she had been unable to do so.

(v) Only one witness was produced by the respondent i.e. its Managing Director Sh. Lokesh Chander and even this sole witness was not produced for cross-examination leading to a lacuna so far as establishment of abandonment is concerned.

(vi) The fundamental rights of the petitioner under Articles 14, 19 and 21 of the Constitution are claimed to have been violated.

8. A bare perusal of the record of the case before the Labour Court shows that the matter was adjourned numerous times due to the absence of the respondent i.e. on 27.07.2005, 01.03.2006, 11.05.2006, 23.08.2006, 25.01.2007, 18.04.2007 and lastly on 05.03.2008 when the award was pronounced. The attitude of the respondent seems to have been consistently lackadaisical and the same has been noted in order dated 05.03.2008 and can be seen as reflected in paragraph 10 thereof wherein it was held that *“the workmen have filed affidavits in respect of their claim and have reiterated the averments made in the statement of claim. The management on the other hand has not examined Sh. Lokesh Chopra, Managing Director of the management.”*

9. After stating paragraph 15 that *“it is well settled that once, it is admitted that the workman has been in service of the management, the burden of proving that the workman abandoned the service lies on*

*the management....”, it has further been noted in paragraph 13 that “the management has not led any evidence in support of its contentions and after filing of the affidavit by the management the management did not submit for cross-examination and as such evidence cannot be read and the averments made by the **workmen** stands proved.” (emphasis supplied). Further in paragraph 14 “a case of abandonment has been put up by the management, however the management has not placed any document on record whereby they would have required the workmen to rejoin the services after their absence. In lieu of the aforesaid, the Court noted that “voluntary abandonment of job can only be proved by the management by bringing on record evidence of absence of employee alongwith his intention not to join back. No such evidence has been led by the management in the present case whereby it could be established (sic) that the workman had in fact abandoned job of her own and had no intention for joining. Consequently, the termination of workman Smt. Suman is illegal and unlawful. However, having held that the onus of proving abandonment was on the management and that it had failed to discharge the same and therefore the case of the ‘workmen’ stands proved, the trial court for some unfathomable reason records in paragraph 17 that “Smt. Ganga has not been able to prove her case and as such no relief can be granted to her.”*

10. There appears to be an error on the face of the record insofar as the order observes that the workmen’s case is proved and then goes on to award compensation of Rs. 1 lac to one of them and not to the other. The said finding also summarily dismisses the case of the

petitioner as having been unable to prove her case without according nay discussion/ reason/ explanation of the same. I find force in the submissions of the petitioner as admittedly, there seems to be discrepancy and arbitrariness in the order dated 05.03.2008 and therefore, I allow the petition and set aside the impugned award dated 05.03.2008. In view thereof, I remand the matter back to the Labour Court- XVIII to be considered afresh. No costs.

MANMOHAN SINGH, J.

APRIL 16, 2010
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