

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

Date of decision: 4th May, 2011.

+ **W.P.(C) 2931/2011 & CM No.6292/2011 (for stay)**

% **M/S MVL INDUSTRIES LTD. Petitioner**
Through: Mr. Deepak Sabharwal, Adv.

Versus

HARENDRA SINGH & ANR Respondents
Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The writ petition impugns the award dated 3rd December, 2010 of the Industrial Adjudicator on the following reference:

“Whether the services of Sh. Harender Singh s/o Late Sh. Banwari Singh have been terminated illegally and/or unjustifiably by the Management, if so, to what relief is he entitled and what directions are necessary in this respect?”

in favour of the respondent workman and against the petitioner employer but granting the relief only of ₹1 lac by way of lump-sum compensation to the respondent workman and against the petitioner employer.

2. The respondent no.1 workman was employed as a driver with the petitioner employer at the last drawn salary of ₹3,850/- per month for four years when in December, 2002, according to the respondent workman, his services were illegally terminated and according to the petitioner employer, the respondent workman started absenting from duty and failed to resume duty despite various letters sent to him. It was also the case of the petitioner employer that the respondent workman had got employment elsewhere and that is why left the employment of the petitioner employer though it was pleaded that the salary being paid to the respondent workman was far above the minimum wages payable to a driver.

3. The Industrial Adjudicator on the basis of the evidence led before him held that the conduct of the petitioner employer did not inspire confidence and found that the petitioner employer had not acted *bona fide* in inviting the

respondent workman to resume duty. It was also held that the onus to prove that the respondent workman had abandoned his employment was on the petitioner employer and which the petitioner employer had failed to discharge. Accordingly, it was held that the petitioner employer had illegally terminated the services of the respondent workman. However, the Industrial Adjudicator further held that in view of the disputes and the conduct, it would not be appropriate to direct reinstatement and awarded compensation for illegal termination computed at ₹1 lac, being approximately 50% of the four years of wages of the respondent workman.

4. The findings returned by the Industrial Adjudicator, of the case for abandonment having not been made out and of the petitioner having illegally terminated the services of the respondent workman are findings of fact. The Legislature having not provided for any appeal against the order of the Industrial Adjudicator, this Court in exercise of powers of judicial review under Article 226 of the Constitution of India cannot deal with the award as an appellate court. Such findings of fact would be interfered with only if

shown to be perverse or totally unreasonable or being not borne out from the record.

5. The counsel for the petitioner employer, with reference to the letters claimed to have been sent by the petitioner employer to the respondent workman, has sought to challenge the aforesaid findings.

6. The Industrial Adjudicator has with reference to the said letters held that there were inconsistencies therein, making the same suspicious. It was also held that the petitioner employer had failed to prove delivery of the said letters to the respondent workman.

7. Re-appreciation of evidence is also beyond the scope of Article 226.

8. The counsel for the petitioner employer has contended that the mistakes in the letters noticed by the Industrial Adjudicator ought not to have created any doubt as to the authenticity thereof. However such arguments are in the realm of appreciation of evidence and which as aforesaid is not permitted. See:

(i) ***Govt. of A.P. Vs. Mohd. Narsullah Khan*** (2006) 2 SCC 373.

- (ii) ***Sub-Divisional Officer, Konch Vs. Maharaj Singh*** (2003) 9 SCC 191.
- (iii) ***Union of India Vs. M/s Mustafa and Najibai Trading Co.*** (1998) 6 SCC 79.
- (iv) ***B.C. Chaturvedi Vs. UOI*** (1996) 1 LLJ 1231 SC.
- (v) ***Poorna Singh Kain Vs. UOI*** MANU/DE/1292/2008.
- (vi) ***Suresh Kumar Vs. the Management of Monsanto Enterprise Pvt. Ltd.*** MANU/DE/8303/2007.
- (vii) ***Ram Narain Jha Vs. T.M. Apartments Pvt. Ltd.*** 2007 (99) DRJ 724.
- (viii) ***MCD Vs. Satish Kumar*** (2005) 81 DRJ 344 (DB)

A finding of fact even if erroneous, would not form a basis for judicial review (see ***Kirloskar Brothers Ltd. Vs. The Presiding Officer, Labour Court*** ILR (1976) 1 Del 565, ***DTC Vs. Delhi Administration*** ILR (1973) 1 Del 838, ***Jawahar Singh Vs. Financial Commissioner*** MANU/DE/8396/2007 & ***Kishan Chand Bhatia Vs. UOI*** MANU/DE/0265/2005.

9. A perusal of the record in the present case shows that the respondent workman in the present case in January, 2003 itself got a letter issued to the petitioner employer through the Union complaining of illegal termination. The respondent workman approached the Conciliation Officer also within the month of January, 2003 i.e. within a month or two of the dispute aforesaid. In fact reference of the dispute itself was made in September, 2003. The petitioner employer admittedly appeared before the Conciliation Officer and paid the dues of salary etc. of the respondent workman to the respondent workman before the Conciliation Officer.

10. I have enquired from the counsel for the petitioner employer that if it was the case of the petitioner employer that it had not terminated the services and it was the respondent workman who had abandoned the employment, than why such stand was not taken before the Conciliation Officer and why the dispute was allowed to be referred to the Industrial Adjudicator. It may be noticed that the petitioner employer claimed to have been writing letters in December, 2002 and January, 2003 to the respondent workman asking the respondent workman to join back. If it was so, the

natural thing for the petitioner employer upon receipt of notice from the Conciliation Officer was to state before the Conciliation Officer that there was no dispute and they were willing to take back the respondent workman. No such steps are shown to have been taken. No explanation also is coming forth from the counsel for the petitioner employer. In the circumstances, the view taken by the Industrial Adjudicator of the letters purportedly sent by the petitioner employer being not worthy all credit is found to be reasonable.

11. There is another aspect of the matter. I have in *Anil Chuttani Vs. The Oil and Natural Gas Corporation* 2010 (117) DRJ 433 and in *Hindustan Associates Engineer Pvt. Ltd. Vs. Sh. K.K. Aggarwal* 2010 LLR 312 on consideration of the case law on the subject held that abandonment of employment is also a misconduct requiring inquiry before terminating the employer for the reason thereof. No such inquiry has been done in the present case. Had the petitioner employer conducted any such inquiry as required in law and furnished notice thereof to the respondent workman, the respondent workman would have joined back the employment.

12. As far as the quantum of compensation awarded is concerned, the Industrial Adjudicator has given the reasons/basis therefor. No ground for the interference in the same is also made out.

13. The writ petition is accordingly dismissed *in limine*. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MAY 04, 2011
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