

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

Date of decision: 18th March, 2011

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W.P.(C) 15953/2006

% **SH. MANSA RAM**

.... Petitioner

Through: Mr. H.K. Chaturvedi, Advocate

Versus

**THE MANAGEMENT OF M/S PELICAN
CERAMIC INDUSTRIES**

....Respondents

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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 petition impugns the award dated 30th November, 2005 of the Labour Court answering the reference:

“Whether the termination of the services of Shri Mansa Ram is illegal and / or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

against the petitioner workman.

2. Notice of the petition was issued but could not be served on the respondent employer and was returned with the endorsement that the premises to which notice was addressed had been demolished by the DDA.

3. The petitioner workman thereafter furnished a fresh address of Mr. Ravi Khullar stated to be a partner of the respondent firm and notice sent to which address was reported to have been refused by the wife of the said Sh. Ravi Khullar. This Court vide order dated 11th May, 2010 proceeded *ex parte* against the respondent employer. The record of the Labour Court has been requisitioned and the counsel for the petitioner has been heard.

4. The counsel for the petitioner workman has stated that the petitioner workman was appointed as a helper with the respondent employer with effect from 16th February, 1990 and was in the year 1993 drawing wages, according to the petitioner workman of ₹1119/- per month (and according to the respondent employer of ₹1078/- per

month). It is not in dispute, that the petitioner workman asked for and was sanctioned leave from 4th June, 1993 to 15th June, 1993 and was to report on duty from 16th June, 1993; he did not show / report for duty; that he however sent a Medical Certificate of a “Vaid” for the period 16th June, 1993 to 1st July, 1993; that he was to therefore join duty on 2nd July, 1993 but did not so join duty; he finally reported for work only on 19th July, 1993.

5. The case of the respondent employer before the Labour Court was that upon the petitioner workman not reporting for duty on 16th June, 1993, he was vide letter dated 21st June, 1993 informed that he was unauthorizedly absent from duty and asked to report for duty immediately and his attention was also invited to the Certified Standing Orders to the effect that in case he did not report for duty within eight days of expiry of his leave, he would lose lien on his post. It is the case of the respondent employer that it was only upon the receipt of the said letter of the respondent employer that the petitioner workman sent the Medical Certificate of a “Vaid” for the period 16th June, 1993 to 1st July, 1993. The respondent employer further claims that upon the

petitioner workman remaining absent after 2nd July, 1993 also, another registered letter dated 6th July, 1993 to the same effect as the letter dated 21st June, 1993 (supra) was sent to him and upon his remaining absent for eight days from 2nd July, 1993 he was in accordance with the Certified Standing Orders deemed to have left the services and his name was struck off from the rolls of the company with effect from 13th July, 1993. The respondent employer further claims that when the petitioner reported on 19th July, 1993, he did not even claim having sent any Medical Certificate for the period beyond 1st July, 1993 but merely stated that he was not in his village, to which address letter dated 6th July, 1993 was sent. It is further the case of the respondent employer that though the name of the petitioner workman was so struck off from the rolls, but the respondent employer on 19th July, 1993 offered to take him back in employment but which the petitioner workman refused. The respondent employer also claims to have sent a letter dated 26th July, 1993 to the same effect to the petitioner workman, offering to take him back in employment. The respondent employer also claims that a similar offer was made to the petitioner

workman before the Conciliation Officer also but the petitioner workman did not accept.

6. The counsel for the petitioner workman before this Court contended that the award is contrary to the ***D.K. Yadav Vs. M/s J.M.A. Industries Ltd.*** JT 1993 (3) Supreme Court 617 holding that without giving an opportunity of hearing to the workman and without holding any enquiry, the Standing Orders providing for automatic loss of lien in case of expiry of eight days absence from duty could not be enforced. The said judgment was cited by the petitioner workman before the Labour Court also. However, notwithstanding the same, the Labour Court decided against the petitioner for the reason of the respondent employer having proved / established having offered to take back the petitioner workman into employment and the petitioner workman having not accepted the same. In view of the said factual finding, a case of abandonment was held to have been made out and it was further held that there is no illegality or unjustness in the action of the respondent employer.

7. In view of the aforesaid finding of fact in the award, it has been enquired from the counsel for the petitioner workman as to how the award could be said to be perverse or contrary to law. The counsel for the petitioner workman has contended that the findings aforesaid of the Labour Court of having offered employment to the petitioner workman are contrary to the record in as much as the witnesses of the respondent employer in his cross examination before the Labour Court admitted that no such notices had been issued to the petitioner workman.

8. Ordinarily the findings of fact returned by the Labour Court / Industrial Tribunal are not to be interfered with in exercise of jurisdiction under Article 226 of the Constitution of India. However, in view of the contention raised, the record of the Labour Court has been perused to find out whether there is any perversity in the said findings. The petitioner workman in his cross examination, though denied the suggestion that on 19th July, 2003 when he admittedly visited the works of the respondent employer, he was offered employment but admitted receipt of the letter dated 26th July, 1993 of the respondent employer offering him employment; though he claimed to have been refused

work when he went to the respondent employer after two / three days of the receipt of the said letter but admitted that he had not replied to the same.

9. As far as the argument with respect to the cross examination of the respondent employer's witness is concerned, I do not find any admission as argued. The petitioner workman along with the writ petition has not even filed the copy of the cross examination with respect where to argument has been raised. From the record of the Labour Court also no part of the cross examination was highlighted. On the contrary, I find that the respondent employer has also proved before the Labour Court the copy of the reply filed before the Conciliation Officer and which is also found to contain the offer of the respondent employer to take back the petitioner workman into duty. It appears that the reference made to the Labour Court was not at all necessary and has been made mindlessly. Thus, no perversity can be found in the award of the Labour Court.

10. A perusal of the writ petition also shows that what has been argued has not been pleaded. Rather the petition is based on ***D.K. Yadav*** (supra) and on other judgments following the said judgment.

11. I have in ***Anil Chuttani Vs. The Oil & Natural Gas Corporation*** 2010 (117) DRJ 433 had the occasion to consider such provisions in the Certified Standing Order. However, in view of the facts, the legal question is not found to arise. When, notwithstanding the action under the Standing Order, even if contrary to law, the respondent employer had offered to take back the petitioner workman into employment and the petitioner workman has been held to have not availed of the said opportunity, no case for interference with the award in writ jurisdiction is made out.

The petition is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MARCH 18, 2011

‘gsr’

(Corrected and released on 18th April, 2011)