

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

Date of decision: 12th September, 2011

+

W.P.(C) 4059/2008

HARSHA INDUSTRIES

..... Petitioner

Through: Ms. Rashmi B. Singh, Adv.

Versus

MAHESH CHAND SHARMA

..... Respondent

Through: Ms. Deepali Gupta, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the award dated 19th May, 2007 of the Industrial Adjudicator on the following reference:-

“Whether the services of Shri Mahesh Chand Sharma have been terminated illegally and/or unjustifiably by the management, and if so, to what relief is he entitled

and what directions are necessary in this respect?”

and holding the respondent workman: i) to have been in employment of the petitioner w.e.f. 13th April, 1996; ii) to be last drawing a salary of ₹2,900/- per month; and, iii) having not been employed anywhere since his termination on 29th August, 1999, and directing the petitioner employer to reinstate the respondent workman with 75% back wages and continuity of service with all legal benefits.

2. Notice of the petition was issued and subject to the petitioner employer depositing ₹50,000/- in this Court besides litigation expenses, the operation of the award stayed. Litigation expenses have been released to the respondent workman.

3. CM No.2083/2009 was filed by the respondent workman under Section 17B of the ID Act. The petitioner employer in reply thereto has stated that the respondent workman is working in the Court only along with some Advocate in as much as whenever the proprietor of the petitioner employer has visited the Court he has found the respondent workman in the Court. The respondent workman denies being employed anywhere. On 17th May, 2010, it was directed that the respondent workman

be reinstated without prejudice to the respective rights and contentions. CM No.12762/2010 has been filed by the respondent workman stating that he was not allowed to join work. CM No.12707/2010 has been filed by the petitioner employer stating that the respondent workman did not join duty. As such, Section 17B application is also pending consideration.

4. The possibilities of amicable settlement have been explored. It is felt that in view of the acrimonious relationship, reinstatement is not a viable alternative. Even if the writ petition were to be dismissed, there is likely to be further dispute/litigation. The counsel for the respondent workman, who appears through legal aid however states that notwithstanding efforts she has not been able to make the respondent workman understand the nuances.

5. In the aforesaid circumstances, particularly when in furtherance to Section 17B, the parties had agreed to reinstatement without prejudice, it is not felt necessary to now hear Section 17B application and the parties have been heard on merits of the petition.

6. It was the case of the respondent workman before the Industrial Adjudicator that he was employed as a skilled workman for the work as a

Cable Drawer in the factory of the petitioner employer; that he was not paid minimum wages; that he remained sick from 13th May, 1999 to 28th August, 1999; that on 29th August, 1999 he reported for duty but was not taken back on duty. It was the case of the petitioner employer that it was the respondent workman himself who had of his own volition failed to report for duty w.e.f. 13th May, 1999 and had accepted full and final settlement of account by receiving ₹6,000/- and as such there was no dispute.

7. The Industrial Adjudicator *inter alia* found that the petitioner employer had failed to produce the relevant attendance register; that the petitioner employer had failed to establish that it was the respondent workman who had failed to turn up for duty and had not even issued a single letter calling upon the respondent workman to report for duty. It was further held that receipt by the respondent workman, who was without work and salary, of ₹6,000/- would not tantamount to the respondent workman giving up his right. Accordingly, it was held that it was the petitioner employer who had illegally terminated the services of the respondent workman.

8. The findings aforesaid of the Industrial Adjudicator are findings of fact not ordinarily interferable in exercise of powers of judicial review unless shown to be perverse i.e. based on no evidence at all or such which no reasonable person on the basis of evidence on record could have reached. No such case of perversity is made out. The counsel for the petitioner employer has however invited attention to the cross examination of the respondent workman where the respondent workman admitted that he performed duty on 29th August, 1999. It is argued that the said admission is contrary to the case in the claim of having not been allowed to join duty w.e.f. 29th August, 1999. Attention is further invited to the admission in the cross examination of having received a letter to join duty. It is contended that the Industrial Adjudicator has wrongly held that no such letter was issued. I may however notice that the respondent workman has in continuation to the alleged admission further stated that after receiving the letter he visited the petitioner employer but was not allowed to join duty. It has been enquired from the counsel for the petitioner whether the petitioner employer has placed the said letter on record. The counsel for the petitioner employer states that since the respondent

workman had admitted receipt of the letter, need was not felt to prove the same.

9. I am unable to accept the aforesaid contentions. Reference to the letter is quite vague. It could very well be the letter during the time when the petitioner was ill and not working for the petitioner employer. If the petitioner employer wanted to rely upon any letter written after 29th August, 1999, should have proved the same before the Industrial Adjudicator.

10. The counsel for the petitioner employer has further contended that the attendance register for the month of August, 1999 was produced and need was not felt to produce the attendance register for the subsequent dates during which the respondent workman also had stated that he was not working. It is contended that no purpose would have been served. The said contention also has no merit. The attendance register would have shown as to how the absence of the workman was being treated/considered.

11. If it was the case of the petitioner employer that the respondent workman had of his own stopped reporting for work, the petitioner employer as per the settled position in *Anil Chuttani v. ONGC* 2010 (117)

DRJ 433, was required to conduct an inquiry; no such inquiry is stated to have been conducted. Without conducting such an inquiry, the petitioner employer could not attribute misconduct of abandonment to the respondent workman. Similarly a small discrepancy i.e. whether on 29th August, 1999 the workman was refused work or performed duty cannot be said to make the award perverse. The view taken by the Industrial Adjudicator is a plausible view.

12. Similarly no error is found in the view taken by the Industrial Adjudicator with respect to the receipt of ₹6,000/-. The said receipt is purportedly dated 31st March, 2000. The receipt does not bear any date under signatures of the workman and such payment after long delay cannot be said to be full and final settlement of all claims of the respondent workman.

13. I am however in agreement to the counsel for the petitioner employer that especially in the facts as has transpired before this Court, the present is not a case where reinstatement is a viable alternative. In view of the parties having been unable to even without prejudice their rights and contentions and during the pendency of the present petition work together,

even if the writ petition is to be dismissed, it is felt that the litigation would continue. It is therefore felt that the compensation in lieu of reinstatement is the only plausible solution.

14. On enquiry, it is informed that a sum of approximately ₹1,20,000/- was due under the award at the time of filing the petition. Considering the said aspect and the payments which would have been received under Section 17B of the ID Act and further considering the time of about three years only for which the respondent workman had worked for the petitioner employer and yet further considering that the respondent workman is informed to be forty six years of age, a compensation of ₹ 3 lacs payable within two weeks of today is deemed to be appropriate, in lieu of back wages, reinstatement, 17B wages etc.

15. The petition is therefore disposed of dismissing the challenge to the award as far as the findings in the award are concerned but modifying the relief granted from that of reinstatement with 75% back wages to that of payment of lump sum compensation of ₹3 lacs within two weeks of today. For any delay in payment of compensation, the respondent workman besides other remedies shall be entitled to interest thereon at 12% per

annum till the date of payment. Litigation costs have already been paid. Subject to the payment of ₹3 lacs as aforesaid, the amount deposited by the petitioner employer in this Court together with interest accrued thereon be refunded to the petitioner employer.

**RAJIV SAHAI ENDLAW
(JUDGE)**

September 12 , 2011
pp