

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

Date of decision: 8th November, 2011

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LPA 913/2011

SUKHDEV SINGH

..... Appellant

Through: Mr. Anil Mittal & Mr. Amritansh
Batheja, Advs.

Versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Paramhans, Adv. for Mr. Arun
Birbal, Adv.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The appellant workman impugns the order dated 08.07.2011 of the learned Single Judge of this Court dismissing W.P.(C) No.4685/2011 preferred by the appellant against the award dated 29.07.2010 of the

Industrial Adjudicator on the following reference:

“Whether the action of the management of Superintending Engineer, Delhi Development Authority, in terminating the services of Shri Sukh Dev Singh w.e.f. 25.07.2006 is legal and justified? If not, what relief the workman is entitled to?”

and holding the appellant workman to have abandoned his service and thus not entitled to any relief.

2. The factual scenario not controverted before us is, that the appellant joined the employment of the respondent DDA as a Mate on Muster Roll Basis on 26.08.1981; he was on 06.03.1984 converted as Work Charge Mate; that he unauthorizedly absented from duty from 01.09.2004; that letters dated 06.10.2004, 20.12.2004, 08.08.2005, 15.10.2005 & 31.01.2006 were issued to him asking him to join back the duty and intimating him that if he did not so join the duty, he would be presumed to be no longer interested in continuing in service; despite service of the aforesaid letters, he did not opt to join duty; a notice dated 17.05.2006 was also published in as many as three newspapers asking him to join back the duty and again informing him that upon his failure to join, he would be deemed to be no longer interested in continuing his service; finally vide

Memorandum dated 25.07.2006 his services were terminated.

3. The appellant claims that he recovered from his illness on 08.08.2006 and upon being not allowed to join duty raised the industrial dispute in or about 2008-09 upon which reference aforesaid was made on 30.09.2009.

4. The Industrial Adjudicator in the award dated 29.07.2010 held that from the conduct of the appellant of notwithstanding repeated letters / memos aforesaid calling upon him to join back duty and informing him that on failure he would be presumed to be no longer interested, remaining unauthorizedly absent established abandonment by the appellant workman of his employment. It was further held that contract of service requires an employee to perform his duties and absence from workplace for as long as 22 months was capable of no other inference than unwillingness to perform duty. The respondent DDA was held justified in presuming so and the appellant was held not entitled to change his mind. The plea of the applicant of being ill and on medical leave from 01.09.2004 to 25.07.2006 was held not proved.

5. The learned Single Judge has noticed that though the appellant workman, before the Industrial Adjudicator set up a case of illness but had not produced / proved a single document in support thereof and that there was a complete vacuum of evidence to the effect that the appellant was ill during the period when the aforesaid notices and memos were served upon him. In the face of numerous opportunities having been given to the appellant before presuming him to have abandoned his service, the judgment of the Apex Court in *D.K. Yadav Vs. J.M.A. Industries Ltd.* (1993) 3 SCC 259 was held to be not applicable. The learned Single Judge also noticed the contention of the counsel for the respondent DDA that the appellant workman had past history also of unauthorizedly remaining absent. Accordingly, it was held that no ground for interference with the award of the Industrial Adjudicator was made out.

6. The counsel for the appellant before us has and rightly so, not controverted the factual findings aforesaid and has raised only a legal argument. It is contended that even for treating an employee to have abandoned the employment, domestic inquiry was a must and which has

admittedly not been conducted. Besides ***D.K. Yadav*** (supra) reliance is also placed on a Five Judge Bench judgment of the Apex Court in ***Jai Shankar Vs. State of Rajasthan*** AIR 1966 SC 492.

7. The rule that abandonment of employment is a misconduct and to be actionable, domestic enquiry is a must cannot be said to be of absolute nature. The Apex Court in ***Punjab & Sind Bank Vs. Sakattar Singh*** (2001) 1 SCC 214 held that in the face of the standing orders of the Bank providing a procedure for treating absentee employee to have deemed to have voluntarily retired after a particular period of unauthorized absence, no domestic inquiry was required to be conducted. Similarly, in ***V.C. Banaras Hindu University Vs. Srikant*** AIR 2006 SC 2304 a provision for deemed abandonment from service was held to be permissible in law so long as the action taken was fair and reasonable so as to satisfy the requirements of Article 14 of the Constitution of India. To the same effect is the recent dicta in the ***The Regional Manager, Central Bank of India Vs. Vijay Krishna Neema*** AIR 2009 SC 2200. Mention may also be made of the judgment of the Division Bench of this Court ***M.K. Ahuja Vs.***

Syndicate Bank (2011) 1 LLJ 325 also upholding a case of abandonment of employment and of *Viveka Nand Sethi Vs. Chairman, J & K Bank Ltd.* 2005 (5) SCC 337 also laying down that an employer can arrive at a satisfaction that the workman has no intention to join his duty and raise a legal fiction and which though is of wide import but once the action on the part of the employer is found to be fair, the onus is on the workman to prove to the contrary.

8. The judgment of the Apex Court in *Jai Shankar* (supra) relied upon by the counsel for the appellant before this Court is also to the effect that though an employer may visit the punishment of discharge or removal from service on an employee who has absented himself but not without at least telling him that it proposed to remove him and not without giving an opportunity of show cause as to why he should not be removed. The same also thus cannot be said to be coming to the rescue of the appellant workman.

9. In the present case, the appellant workman was initially engaged as a Muster Roll employee and thereafter was a Work Charge employee and the

finding of the Industrial Adjudicator of absence for 22 months without intimation and of failure to establish the case set up of illness has attained finality. Even if the domestic inquiry is held to be necessary, the failure to hold the said domestic inquiry did not prevent the respondent from establishing misconduct before the Industrial Adjudicator and which misconduct of unauthorized absence stands established. The Supreme Court in *Delhi Cloth & General Mills Co. Vs. Ludh Budh Singh* (1972) 3 SCR 29, *The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. Vs. The Management* (1973) 1 SCC 813, *The Cooper Engineering Ltd. Vs. Sh. P.P. Mundhe* (1975) 2 SCC 661, as also in *Bharat Forge Co. Ltd. Vs. A.B. Zodge* (1996) 4 SCC 374 has held that even where no domestic inquiry is held, the employer is entitled straightaway to adduce evidence to justify its action and Industrial Adjudicator is bound to consider the said evidence. For this reason also, the learned Single Judge was correct in not interfering with the Award.

10. The functioning of the public bodies as the respondent DDA is, would come to a naught if its employees were to be permitted to absent

themselves and join back at their whims and fancies. The respondent DDA by serving as many as six notices / memos on the appellant workman, gave ample opportunity to the appellant workman and the counsel for the appellant workman has not even argued that a fair opportunity was not given. Thus misconduct stood proved before the Industrial Adjudicator and the award cannot be challenged for this reason also. The appellant workman showed total callousness in the matter.

11. There is yet another aspect of the matter. Once the appellant workman is found to have without any reason having absented from duty and having not responded to the repeated memos / communications of the respondent DDA, the equities are not in his favour. The powers, while exercising jurisdiction under Article 226 of the Constitution of India, are wide and this Court to do substantial justice between the parties can decline relief even where entitlement in law is made out (see ***Chandra Singh Vs. State of Rajasthan*** 2003 (6) SCC 545 and ***ONGC Ltd. Vs. Sendhabhai Vastram Patel*** (2005) 6 SCC 454). No injustice is found to have been done to the appellant workman and rather injustice would be

done if appellant workman were to be reinstated notwithstanding his conduct aforesaid.

12. We therefore do not find any merit in the appeal. The same is dismissed. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

NOVEMBER 08, 2011
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