

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

Date of decision: 3rd August, 2011

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W.P.(C) 239/2009

SANJAY ENTERPRISES

..... Petitioner

Through: Mr. R.K. Jain, Adv.

versus

SHRI SITA RAM

..... Respondent

Through: Mr. Brahmanand Gupta, Adv.for R-2

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 writ petition impugns the award dated 29th August, 2008 of the Industrial Adjudicator awarding to the respondent workman ₹60,000/- as lump sum compensation in lieu of reinstatement.
2. Notice of the petition was issued and subject to the petitioner employer depositing the award amount in this Court, the operation of the award was stayed. The counsels for the parties have been heard.

3. The claim of the respondent workman before the Industrial Adjudicator was that he had been employed with the petitioner employer as a Coiling man at a salary of ₹2,700/- per month for six years prior to his termination; that he was however not issued any appointment letter or given other benefits and not even paid the minimum wages; that he could not attend to his duties from 27th September, 2005 to 9th December, 2005 on account of illness; that on 10th December, 2005 when he returned for duty, though the petitioner employer obtained his signatures on several documents but did not pay wages for the month of November, 2005 and instead terminated his service without any reason whatsoever; that though he approached the Labour Commissioner on 20th December, 2005 but inspite of the recommendation of the Labour Commissioner he was not reinstated; that he got issued demand notice dated 3rd January, 2006 but to no avail.

4. The petitioner employer contested the aforesaid claim by pleading that the respondent workman had himself settled the account and left the job of his own volition as he was unable to continue to work; that the respondent workman had received the entire amount and nothing remained

due to him; that in fact it was the respondent workman who had not come forward to join the work and had left the employment of his own volition and had failed to join inspite of offers made before the Labour Commissioner.

5. The Industrial Adjudicator on the pleadings of the parties framed the following issues:-

- “1. Whether the workman has himself abandoned the service after taking his dues in full and final settlement?*
- 2. Whether the services of the workman have been terminated illegally and if so, to what relief he is entitled?”*

6. The Industrial Adjudicator held that the stand of the petitioner employer of the respondent workman having abandoned his job after 29th November, 2005 and also of having settled his account was mutually contradictory; that the plea of the petitioner employer of settlement could not be accepted as the settlement was not effected in terms of Section 2(p) of the Industrial Disputes Act; that the onus to prove abandonment was on the petitioner employer and which had not been discharged; no muster roll to show the respondent workman having remained absent from duty had

been produced; no letters were written calling upon the respondent workman to join back duty; that temporary absence in any case could not be abandonment. It was further held that the petitioner employer had also not made out a case of termination in accordance with Section 25F of the Act.

7. The findings aforesaid are findings of fact, ordinarily not interfereable in exercise of powers of judicial review unless perverse or without any basis whatsoever.

8. As far as the contention of the counsel for the petitioner employer of the respondent workman having left with full and final settlement of accounts is concerned, the counsel for the petitioner employer upon being called upon to show the documents proved before the Industrial Tribunal of full and final settlement, has invited attention to pages 55&56 of the paper book which are copies of the Employment and Remuneration Register and a voucher. While the Employment and Remuneration Register shows the attendance of the respondent workman for the month of November, 2005 with salary of the respondent workman as ₹2,950/- per month and payment of ₹2,852/-, the voucher dated 10th December, 2005 is

of ₹2,690/- towards wages, arrears difference from March, 2005 to November, 2005. The voucher does not contain any endorsement of settlement. The Register does contain an endorsement of full and final settlement but not under the signatures of the respondent workman but made by somebody else at a different place from the place where the respondent workman has signed. Neither of the said two documents can be said to be of full and final settlement to enable this Court to infer that there is any perversity in the award to the said extent.

9. As far as the case of abandonment is concerned, the counsel for the petitioner has referred to ***Raju Sankar Poojary v. Chembur Warehouse Company*** 2003 LLR 1150 & ***Sonal Garments v. Trimbak Shankar Karve*** 2003 LLR 5 of the Bombay High Court and has also invited attention to the letters written to the Labour Commissioner.

10. The petitioner employer in the letters to the Labour Commissioner did not make unconditional offer for the respondent workman to join but contended that the respondent workman was free to join back without being entitled to any back wages.

11. I am also of the view that once the Labour Commissioner had admittedly been approached by the respondent workman had there been any genuine attempt by the petitioner employer to make the respondent workman join, the dispute would not have gone to the Labour Court. Similarly it was open to the petitioner employer to inform the Labour Court that the dispute ought not to be entertained since the petitioner employer was willing to take back the respondent workman.

12. The counsel for the respondent workman has also invited attention to the cross examination of the petitioner employer where the petitioner employer has admitted that he was not interested in taking back the respondent workman owing to the eye sight of the respondent workman being affected.

13. As far as the judgments of the Bombay High Court are concerned, I have in *Mount Carmel School v. The Presiding Officer, Labour Court* MANU/DE/1988/2011 dealt with the same and held the view of this Court to be as in *Anil Chuttani v. The Oil & Natural Gas Corporation* 2010 (117) DRJ 433 where on a conspectus of the case law in this regard it was concluded that abandonment is a facet of misconduct and to be actionable,

a domestic enquiry is necessary. No domestic enquiry in the present case has admittedly been conducted. Moreover as aforesaid the termination is of November/December, 2005 and admittedly the Labour Commissioner was approached immediately and the dispute raised before the Industrial Adjudicator thereafter without any delay. Had the respondent workman been not interested in continuing with the employment, he would not have immediately approached the Labour Commissioner or the Industrial Adjudicator.

14. There is thus no merit in the petition; the same is dismissed. The amount deposited in this Court together with interest accrued thereon be released in favour of the respondent workman in full and final settlement of the award amount. Litigation costs have already been paid.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**AUGUST 3, 2011
PP..**