

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

+ W.P. (C) No. 7019 of 2009

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Reserved on: 31<sup>st</sup> August, 2012

Decided on: 3<sup>rd</sup> December, 2012

JAI NARAIN SINGH

..... Petitioner

Through: Mr. Sanjoy Ghose, Advocate.

versus

INTER DECKER DELHI

..... Respondent

Through: Mr. A.K. Jain, Advocate.

**Coram:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

1. By the present petition the Petitioner seeks setting aside of the order dated 2<sup>nd</sup> September, 2004 passed by the Presiding Officer, Labour Court, Delhi whereby the learned court allowed the application of the Respondent under Order XIV Rule 5 read with Section 151 CPC and ordered framing of additional issues and the award dated 30<sup>th</sup> July, 2008 whereby the learned Presiding officer held that the workman Petitioner abandoned his service and thus, refused to grant him any relief.

2. Learned counsel for the Petitioner contends that in the present case no intention of abandonment of service has been made out against the Petitioner. In fact, on termination of his service on 3<sup>rd</sup> June, 1999, the workman had promptly made a representation to the Respondent/ Management vide demand notice dated 10<sup>th</sup> June, 1999 through central labour union asking them to reinstate him in service with immediate effect. To constitute abandonment there must be total or complete giving up of duties so as to indicate an intention not to resume the same. However, in the

instant case no such intention can be imputed on the workman when he was diligently pursuing his case before the Management. Reliance is placed on *G.T. Lad and others vs. Chemical and Fibers of India Ltd., 1979 (1) SCC 590*. It is further contended that the learned Labour Court has wrongly placed reliance on the call back letters dated 4<sup>th</sup> June, 1999, 12<sup>th</sup> June, 1999, 19<sup>th</sup> June, 1999 and 24<sup>th</sup> August, 1999 of the Respondent asking the workman to resume duties. The AD cards associated with the registered letters do not bear the stamps of the post office and the only AD Card which bears the postal mark is the one which was returned undelivered. Further, no adverse inference can be drawn against the workman from the fact that the letters dated 4<sup>th</sup> June, 1999 was sent by speed post and was not returned undelivered. Learned counsel contends that the learned Labour Court erred in accepting as evidence, a photocopy of an alleged response filed by the respondent before the conciliation officer despite the fact that the records of conciliation proceedings indicate that no such reply was filed and no representative of respondent was present before the conciliation officer. Also, the respondent's witness Shri B.S. Syal had for the first time in his evidence admitted that on 8<sup>th</sup> June, 1999 the Petitioner along with the labour inspector had visited the premises for the purpose of securing reinstatement of workman and also produced a joining report exhibited as MW1/5 which was not a part of conciliation file. It is lastly contended that the Petitioner would not abandon his five year old employment with the Management merely on account of an outstanding amount of Rs. 8,000/- when no case of default in making payment is made out against him.

3. Per contra learned counsel for the Respondent contends that the Petitioner had abandoned his service by not resuming on duty after 11.00 a.m. on 3<sup>rd</sup> June, 1999 and further failed to resume duty despite written communication and call back letters issued by the Management on 4<sup>th</sup> June, 1999, 12<sup>th</sup> June, 1999, 19<sup>th</sup> June, 1999 and 24<sup>th</sup> August, 1999. The Petitioner had in his cross-examination admitted his name and address on the letters. Merely due to the absence of stamp on the AD cards it cannot be presumed that the said letters are forged. It is further contended that the respondent had participated in the conciliation proceedings and had duly submitted the written statement before the labour officer at Karampura which was rightly relied on by the Labour Court. It is lastly contended that it had received a complaint from Ramesh Singh and Mukesh Sharma that the workman had abused and physically assaulted them before the other staff when they refused him permission to leave. The workman had first, on 3<sup>rd</sup> June, 1999 left the service/duty without informing anyone and also did not reply to any call back letters, thus showed no interest to continue with his duties. The conduct of the Petitioner clearly demonstrates abandonment and denunciation of duties and he cannot be permitted to take advantage of his own wrongs.

4. I have heard learned counsel for the parties and perused the records.

5. Briefly the case of the Petitioner workman is that he was appointed as checker with the Management on a consolidated last drawn wages of Rs. 2,400/- per month. On 3<sup>rd</sup> June, 1999 the Management terminated his services without complying with the principles of natural justice or provisions of the Industrial Disputes Act, 1947. Hence, the Petitioner sent a

legal demand notice dated 10<sup>th</sup> June, 1999 to the Management. However, the said notice was never replied by the Management. An industrial dispute was raised by the Petitioner which was referred for adjudication on the following terms of reference:

“Whether the services of Shri Jai Narain Singh 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?”

Statement of claim was filed by the workman, reply by the Management and finally a rejoinder by the Petitioner. Thereafter issues were framed on 24<sup>th</sup> May, 2001, evidence by way of affidavit was filed by the workman and management witness Mr. Syal and the witnesses were crossed examined. On 22<sup>nd</sup> August, 2003 an application was filed by the Management under order XIV Rule 5 read with Section 151 CPC for framing of additional issues which was allowed by the learned Labour Court vide order dated 2<sup>nd</sup> September, 2004 leading to framing of two additional issues on the said dispute reference. The workman filed a writ petition against this order being W.P. (C) No. 11122/2005. Meanwhile, the workman and the Management witness Shri Sharat Syal were subjected to cross-examination. Finally the proceedings concluded, leading to the passing of the final award on 30<sup>th</sup> July, 2008 wherein the learned Labour Court held that since the workman had abandoned his services there could be no question of his termination and hence refused to grant him any relief. The workman on 18<sup>th</sup> September, 2008 withdrew the W.P. (C) No. 11122/2005 with a liberty to challenge the final award on all grounds available under law.

6. In *G.T. Lad and others* (supra) their Lordships have held:

“5a. Re. Question No. 1: In the Act, we do not find any definition of the expression 'abandonment of service'. In the absence of any clue as to the meaning of the said expression, we have to depend on meaning assigned to it in the dictionary of English language. In the unabridged edition of the Random House Dictionary, the word 'abandon' has been explained as meaning 'to leave completely and finally; forsake utterly; to relinquish, renounce; to give up all concern in something'. According to the Dictionary of English Law by Earl Jowitt (1959 edition) 'abandonment' means 'relinquishment of an interest or claim'. According to Blacks Law Dictionary 'abandonment' when used in relation to an office means 'voluntary relinquishment. It must be total and under such circumstances as clearly to indicate an absolute relinquishment. The failure to perform the duties pertaining to the office must be with actual or imputed intention, on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Temporary absence is not ordinarily sufficient to constitute an abandonment of office'.

6. From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In *Buckingham Co. v. Venkatiah and Ors.* (1963) IILLJ 638SC it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus, whether there has been a voluntary abandonment of service or not is a question of fact which has to be

determined in the light of the surrounding circumstances of each case.”

7. The Petitioner has in his evidence by way of affidavit before the Labour Court submitted that the management was not providing him with any kind of legal facilities such as appointment letter, attendance card, leave book, casual leave, with pay leave, minimum wages etc. On 3<sup>rd</sup> June, 1999 when his services were terminated he was beaten up by Ramesh Singh, Mukesh Sharma and Tara Chand and was driven out of the work place. Complaint against the said incident was made to the police vide letter dated 3<sup>rd</sup> June, 1999 exhibited as Ex. WW1/7. He has further in his cross-examination submitted that after the incident he reported to his work on 4<sup>th</sup> June, 1999 however, the management did not take him back on his duties. After that date also he went to his work on several occasions but was not allowed to join back. In fact on 4<sup>th</sup> June, 1991 he went three times to the management with the labour inspector to work however, he was not allowed to join. The petitioner further admitted that the letter dated 4<sup>th</sup> June, 1999 bears his two different addresses correctly and further that these addresses were given by him to the management. He has further admitted that exhibited Ex. WW1/M6, that is, letter of the management dated 12<sup>th</sup> June, 1999 and its AD cards Ex. WW1/M/7 and Ex. WW1/M/8 also bear correct addresses. He has also admitted that Ex.WW1/M/17, that is, postal receipt of letter dated 24<sup>th</sup> August, 1999 and Ex. WW1/M9 which is letter dated 4<sup>th</sup> June, 1999 also bears his address correctly. However, at no point of time a question was put to the workman about the receipt of such call back letters by him. The workman has further stated in his cross-examination that he was accompanied by the Labour Inspector thrice to his workplace.

However, he was not allowed to join his duties. The workman has denied the fact that the labour inspector wrote down his report dated 8<sup>th</sup> June, 1999 Ex. MW1/5 in his presence.

8. Learned counsel for the Respondent has placed reliance on the call back letters dated 4<sup>th</sup> June, 1999 Ex. WW1/M9, 12<sup>th</sup> June, 1999 Ex. WW1/M6 and its AD cards as Ex. WW1/M7 and Ex. WW1/M8, 19<sup>th</sup> June, 1999 Ex. WW1/M10, its AD card Ex. WW1/M11 and letter dated 24<sup>th</sup> August, 1999 Ex. WW1/M12 its AD card Ex. WW1/M13, UPCs Ex. WW1/M14 and Ex. WW1/M15 and speed post cover Ex. WW1/M17 to contend that despite several call letters the workman has failed to report back on duty after he abandoned his services on 3<sup>rd</sup> June, 1999. It is further contended that the workman has in his cross-examination admitted that the letters and respective AD cards bear his correct postal addresses of both R.K. Puram and Pandav Nagar. AD cards have been received by the Respondent hence the workman cannot deny the delivery of these call back letters to him. Despite that the workman has neither joined the duties nor has he replied to these letters, clearly the workman has abandoned his services. This contention does not find favour with me. A perusal of the record show that although the workman has admitted that the letters and AD cards were correctly addressed however, at no point of time a question was put to the workman about the delivery of these call back letters. Even if it is to be presumed that the said letters were delivered to the workman and that he had never replied to them that in itself would not be sufficient to impute an intention to abandon his services on the workman. As held in *G.T. Lad and others* (supra), whether there has been a voluntary abandonment of

service or not is a question of fact which has to be determined, in the light of surrounding circumstances of each case. Further abandonment means an absolute relinquishment of duties, which is to be inferred from the acts and conduct of the party. Temporary absence is not ordinarily sufficient to constitute an 'abandonment of office'.

9. In the present case the conduct of the petitioner workman does not indicate an intention of relinquishment of duties or to denounce his job. The workman has in fact within seven days of his removal from his services got issued a demand notice dated 10<sup>th</sup> June, 1999 Ex. WW1/5 to Central Labour Union asking the management to take him back on duties. Further the workman has also filed his statement of claim before the conciliation officer praying that the management representative be called before the conciliation officer so that the dispute can be amicably resolved. Here also the workman has demonstrated his willingness to join his duties back with the management. However, the management failed to appear before the conciliation officer and the officer submitted a failure report under the observation that the management neither appeared before him nor filed any reply in the conciliation proceedings. The management respondent however contends that a reply dated 21<sup>st</sup> June, 1999 was filed before the office of Assistant Labour Commissioner on 25<sup>th</sup> June, 1999 in response to their letter No. 2853 dated 11<sup>th</sup> June, 1999. It was further contended by the management that in the said reply also the workman was asked to join back the duties however, he did not reply to the same. However, in the light of the observation of the conciliation officer in his failure report and a perusal of the record of the proceeding before him Ex. WW1/2 (colly) it is seen that

the said reply does not form part of the record of the conciliation proceedings and cannot be looked at to substantiate management's claim that the workman was reluctant to join his duties back and that he voluntarily abandoned his duties.

10. The management has placed on record a copy of report of the labour inspector dated 8<sup>th</sup> June, 1999 Ex. MW1/5 to contend that in this report the labour inspector has stated that the management was ready and willing to take the workman back on duties and if the workman was not willing to continue with his services it is ready to talk with him and pay him all his dues. A perusal of the report would show that although it is signed by the management it does not bear the signature of the workman. Further the workman has in his cross-examination denied that such a report was made in his presence or that he was accompanied by Labour Inspector to his workplace on that date. Lastly the said Labour Inspector was not produced as a witness to verify the authenticity of this report. Hence this report also cannot be looked at this stage.

11. In the light of the above discussions, the impugned award is set aside. As regards the consequential relief it may be noted that the Petitioner is not in the employment of the Respondent since 4<sup>th</sup> June, 1999. The last drawn salary of the Petitioner was Rs.2400/-. He had admittedly worked with the Respondent for four years. Thus, the appropriate relief in the present case would be to direct the Respondent to pay a lump sum compensation to the Petitioner instead of reinstatement with back wages as held in *Jagbir Singh v. Haryana State Agriculture Marketing Board and another*, (2009)15 SCC 327. The Respondent is thus directed to pay to the

Petitioner compensation of Rs.1lakh in lieu of reinstatement with back wages. The amount be paid to the Petitioner within 8 weeks from today failing which the same will entail an interest at the rate of 9% per annum.

12. Petition is disposed of.

**(MUKTA GUPTA)**  
**JUDGE**

**DECEMBER 03, 2012**  
**‘vn’**