

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

+ W.P. (C) No. 21076/2005

% Reserved on: 30th November, 2012

Decided on: 5th December, 2012

SH. CHAND SINGH

..... Petitioner

Through: In person.

versus

SIGMA INDUSTRIES CORPORATION

..... Respondent

Through: Mr. Raj Rishi, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner seeks setting aside of the award dated 23rd July, 2003 passed by the Presiding Officer, Labour Court in an Industrial Dispute No. 275/1002 wherein the learned Labour Court held that the workman had abandoned his job by absenting from work and not joining despite letters written to him by the Management and he was never terminated and thus refused to grant him any relief.

2. The Petitioner, who appears in person, was asked if he wanted legal aid. However, the Petitioner specifically denied the same and stated that he would contest the case on his own. He contends that the action of the Management in not allowing the Petitioner to join the duty despite the directions of the learned Presiding Officer is illegal. The Petitioner was very much willing to join the duty however, he was neither given his proper seat and was compelled to sit at the gate of factory premises nor was he allowed to sign the attendance register. On the representation of the Petitioner on 4th November, 1993 the Labour Inspector had visited the premises and prepared

his report dated 9th November, 1993 but he did not appear before the learned Presiding Officer despite the directions and imposition of costs of Rs.500/-, as a result of which the award was passed against the Petitioner. He further contends that the action of the Respondent in terminating his service is in violation of principles of natural justice and fundamental rights. At the time of his termination the Management neither issued a charge sheet nor one month notice as provided under Section 25F of the Industrial Dispute Act, 1947 (in short the ID Act), hence the action of the Management is illegal. The Petitioner lastly contends that the averment of the Respondent Management that it has only one factory is incorrect. He has filed various documents with his affidavit to show that there are number of companies of Respondent and thus the statement of the Petitioner that he was transferred to Mayapuri factory in 1989 is correct and since the Respondent has filed a fake affidavit before this Court that it has no other sister concerns action is required to be taken against the Respondent and the Petition is liable to be allowed on this ground itself.

3. Per contra learned counsel for the Respondent Management contends that the learned Labour Court passed the award after taking into the account the material placed on record by the parties and on proper appreciation of evidence on record. The Management never disallowed the Petitioner to enter the premises. In fact the Petitioner himself abandoned his job out of his own free will. The workman started absenting himself from duty unauthorisedly w.e.f. 24th December, 1991 without any leave or information. The Respondent sent several letters dated 21st January, 1992, 28th January, 1992, 22nd February, 1992 and 16th March, 1992, to the Petitioner asking him to report on his duty however, the Petitioner never availed the opportunity to

join back. Even before the Labour Inspector the Management offered the Petitioner to join back however, the same was denied by him. Learned counsel further contends that when the workman fails to join duty, he is not entitled to any relief. Since the workman was continuously asked to report back on his duty and the Petitioner did not avail of this opportunity he cannot be permitted to take advantage of his own wrong and file the writ petition putting the entire blame on the Management. Even after his alleged termination, the workman did not find the job because of this litigation and has himself stated that he was doing agricultural job. The Labour Court is the final Court of facts and the high Court in its exercise of jurisdiction under Article 226 of the Constitution of India cannot re-appreciate evidence or interfere with the finding of facts arrived by the labour Court. Reliance is placed on *Parsu Ram Sahah vs. Government of NCT of Delhi and another, Writ Petition (Civil) No. 5986/2007 (Delhi)* decided on 3rd September, 2007. The learned counsel lastly contends that the Respondent is a partnership firm and had only one factory at the relevant time. M/s Right Guard Rubber Pvt. Ltd. was a different entity under the Companies Act. All other companies, details of which are provided by the Petitioner were non-existent at the time when the Petitioner claims he was transferred and were incorporated much later.

4. I have heard the Petitioner and learned counsel for the Respondent and perused the record.

5. Briefly the case of the Petitioner workman is that he was appointed with the Management in the first week of April, 1977 as a clerk with initial pay/wages at Rs. 350/- p.m. At the time of his appointment no appointment letter was issued to him. He was a beneficiary of ESI, PF and was paid

wages on wage register. The workman was in the continuous service of the Management however, he was transferred for 15 days in the other unit of Management M/s Right Guard Rubber Pvt. Ltd., B-33, Phase-I, Mayapuri, New Delhi. However, after completion of 15 days, he was not re-transferred to the original place of his posting. He was neither paid his earned wage in a proper manner nor was he paid bonus for the years 1988-89 and 1990-91, his annual increment, his leave due and DA. The workman protested orally for his illegal transfer beyond 15 days to which the Management get annoyed and he was orally directed to work at Phase-II, A-80 Industrial Area, Badli, Delhi from Mayapuri and from there at B-1, Sardar Nagar, Delhi-110033 and shop No. 8 at Gokhle Market and lastly he was transferred back at A-63/3, GT Karnal Road, Delhi since September, 1991. The Management however, ordered the workman to sit at the gate w.e.f. 28th September, 1991 and was not even allowed to put his signature on the attendance register and was asked to submit his resignation. The Petitioner reported the matter to the Labour Inspector vide letter dated 14th September, 1991, 30th September, 1991, 21st October, 1991 and 7th October, 1991. On 4th November, 1991 even the Labour Inspector had visited the establishment of the Management but was of no avail and his services were terminated by the Management on that day after Labour Inspector had left the premises. Thereafter the workman filed his statement of claim before the conciliation officer leading finally to the reference of the industrial dispute. During the pendency of the industrial dispute on 14th September, 1993 the learned Labour Court had passed an order in which the workman was directed to join his duties with the Management on 20th September, 1993. The Petitioner joined the duty w.e.f. 20th September, 1993 however, he was asked by the Management to sit

at the gate and he was not allowed to enter the premises nor was he allowed to put his signature in the attendance register. The workman informed the Labour Inspector on 21st September, 1993, 22nd September, 1993, 23rd September, 1993, 25th September, 1993, 1st October, 1993, 8th October, 1993, 14th October, 1993 and 22nd October, 1993. Before the Labour Court witnesses were examined and cross-examined leading finally to the passing of the impugned award.

6. The workman has in his evidence by way of an affidavit stated that he joined the Management in the year 1977 and had worked continuously with the Management till his illegal termination on 4th November, 1991. During his entire tenure he was performing his duties with due diligence however, he was transferred by the Management for a period of 15 days to M/s Right Guard Industries Ltd., Mayapuri thereafter to Phase-II, A-80, Badli then to Sardar Nagar later at Shop No.8, Gokhale Market and finally to A-63/2, GTK Road. Thereafter he was never allowed to enter the premises of the Management and was always asked to sit at the gate by the Respondent. In his cross-examination the workman has denied that he had stopped coming from 14th December, 1991 without any intimation to the Management or that he stopped attending his duties without sanctioned leave. The workman has however, admitted that he received the letter recalling him to join the duties to which he had reported on duties with the letter but he was ousted from the premises and the letter was kept by the Management. He has further stated that after 20th September, 1993 when he rejoined on service the Management took his signature on the paper and thereafter he was asked to sit at the gate for a period of 1½ month. The workman has also stated that he was pressurized to tender resignation and that since 1999 he has been

unemployed and has been doing agricultural work since then. He did not look for an alternative job as he was busy in litigation.

7. MW1 Shri R.S. Bhatia has in his evidence by way of affidavit stated that the services of workman were never terminated by the Management and that he was never transferred over to other units. He was never asked to sit at the gate of the industry at any point of time or pressurized to tender his resignation by Shri Ram Prakash, Jagdip Singh and Shri Taranjit Singh. The workman was asked even before the Conciliation Officer to report for his duties and the Management is even ready to take him back on duty. In his cross-examination he has reiterated his stand and further stated that the workman has started absenting himself from duties w.e.f. 24th December, 1991 and has worked only from 20th September, 1993 till 14th October, 1993. He has denied that the Management withheld his legal dues or that he has any knowledge of the fact that the workman has written complaint against the Management to the Labour Officer.

8. Further, the workman has exhibited various documents i.e. letter dated 14th September, 1993 addressed to the Management Ex. WW1/2 in which he has stated that he is ready to report on duty with the Management on 20th September, 1993, letter dated 21st September, 1993 addressed to Labour Inspector informing about his reporting on duties Ex. WW1/3 and thereafter letters dated 22nd September, 1993, 23rd September, 1992/93, 24th September, 1993, 25th September, 1993 and 1st October, 1993, 8th October, 1993, 14th October, 1993 and 22nd October, 1993 exhibited as Ex. WW1/4 to WW1/11 wherein the workman has complained to the Labour Inspector about the Management not providing him with proper seat as well as the Management not allowing him to report back on his duties despite the

directions of the Court. On the other hand the Management has produced various call back letters dated 26th December, 1991 exhibited as Ex. MW1/1 and letters dated 21st January, 1992, 28th January, 1992, 22nd February, 1992 and 16th March, 1992 along with the postal receipt which were exhibited as Ex. MW1/2 to Ex. MW1/9. A perusal of the documents show that despite several call back letters sent by the Management the workman had not reported on duty and only on the directions of the Tribunal he had joined back on 20th September, 1993. The claim of the workman is that in the year 1991 and 1992 his services were transferred by the Management to other sister concerns and he was forced to sit at the gate of the factory and was never allowed to sign the attendance register. Further that he made a request to the Labour Inspector to inspect the premises and to persuade the Management to let him resume his duties. He has also annexed the report of the Labour Inspector dated 11th November, 1991 wherein it is stated that despite talks the Management has refused to take the workman back on his duties. However, this report was never placed before the learned Trial Court nor has the workman produced the said Labour Inspector as a witness before the Trial Court to prove his case. Clearly the writ court cannot look into the documents produced before it for the first time which were never part of the record before the learned Labour Court. Besides this, the other documents exhibited as Ex. WW1/1 to WW1/11 are letters addressed after the workman had joined back on duty. On the other hand the Management has produced call back letters exhibited as Ex. MW1/1 to MW1/9 which bear the postal receipts on letters dated 21st January, 1992, 28th January, 1992, 22nd February, 1992 and 16th March, 1992 showing that the said letters were duly received. The onus to prove that the services of the Petitioner were

terminated by the Management was on the workman which he has failed to discharge. He has not produced any witness or any other document which can prove that the Management removed him from the service.

9. During arguments the entire thrust of the Petitioner was on the alleged false affidavit filed by the Respondent. In the cross-examination the management witness stated before the Trial Court that it had one factory and one office at the time of conversion of the management from partnership to company. The Petitioner by way of additional affidavit has placed on record the order of Income Tax Appellate Tribunal regarding assessment year 2007-2008 of Sigma Corporation India Ltd. which states that the Respondent had made advances to its group companies as well as 100% subsidiaries, which inter alia includes M/s Right Guard Rubber Pvt. Ltd. The Respondent has filed an affidavit in response that the Respondent was a partnership firm and had one factory at the relevant time. M/s Right Guard Rubber Pvt. Ltd. was a separate entity under the Company's Act. It is clarified that all other companies were non-existent at the relevant time. It is further clarified that M/s Right Guard Rollers & Casters (P) Ltd. had been operating in Ludhiana and Mohali. Thus apparently no false averment has been made by the Respondent.

10. The Petitioner not being able to discharge the onus on him, I find no infirmity in the impugned award. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

DECEMBER 05, 2012
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