

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

% W.P. (C) 14695-96/2006

+ Date of Decision: 30th July, 2012

**# M/S AMBICA RUBBER
INDUSTRIES & ANR. Petitioners**

! Through: Mr. M.C. Dhingra, Advocate

Versus

\$ RAJENDER YADAV & ANR. ...Respondents
Through: None

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J:

By way of this writ petition the petitioner-employer had challenged the award dated 24-01-2005 whereby the relief of re-instatement in service with 50%back wages was granted to the respondent-workman by the Labour Court as also the order dated 3.4.2006 whereby review petition filed by it for recalling the award on the ground that it was passed without hearing any arguments from its side was also dismissed.

2. The respondent-workman, as per his case, had been employed with the petitioner as Head Mistry for ten years and

his salary was ₹ 1520/- per month and his services were illegally terminated w.e.f. 9.11.96 after he demanded certain legal facilities. He had then approached the competent authorities for his re-instatement in service but since he could not get that relief the dispute between him and the petitioner was referred for adjudication to the Labour Court with the following term of reference:-

“Whether the services of Sh. Rajender Yadav 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?”

3. The respondent-workman had filed his statement of claim whereby he claimed the termination of his services to be illegal. The petitioner-management had filed its written statement denying the allegations of illegal termination of the services of the respondent and pleaded that he had himself abandoned his services w.e.f. 1.11.96 after collecting his wages for the month of October 1996 and also that he was already in receipt of Rs. 8000/- in advance and he had raised the dispute to avoid its repayment and since the petitioner was to get that much money from him there was no question of petitioner terminating his services.

4. Thereafter, the respondent-workman filed a rejoinder denying the contentions of the petitioner made in its reply to the claim statement and further reasserted his contentions made in the claim statement.

5. Following issues were framed by the Labour Court for trial:-

(1) Whether the workman had abandoned his job, if so, its effect?

(2) As per terms of reference.

(3) Relief.

6. The Labour Court vide its award under challenge came to the conclusion that the services of the respondent-workman were terminated illegally as the petitioner-management had not complied with the provision of Section 25(F) of Industrial Disputes Act and consequently relief of reinstatement in service with 50% back wages from 10.12.96 was granted to him and from 1.1.2006 till 9.11.96 wages @ ₹ 1520/- per month were also ordered to be paid to him.

7. Thereafter, an application was filed by the petitioner-management for setting aside the award dated 24.1.2005 on the ground that it was given without any arguments having been advanced from its side but the same was dismissed by

the Labour Court vide order dated 3.4.2006, which has also been challenged in this petition.

8. The petitioner–management felt aggrieved by the award of the Labour Court granting the relief of reinstatement and 50% back wages to the respondent-workman and thus filed this writ petition.

9. The learned counsel for the petitioner-management contended that the award of the Labour Court is not at all sustainable as the management had proved some vouchers through its witness (MW-1) showing that advance money of ₹ 8020/- had been taken by the respondent-workman on three different dates and he had not claimed that he had re-paid that money and, therefore, it was clear that only in order to avoid repayment of money the respondent-workman had abandoned his job by not reporting for duty after 1/11/2006. It was also contended that the Labour Court had disbelieved the vouchers on the flimsy grounds that the vouchers did not carry any date of payment of advance and also because the management in its written statement had pleaded that ₹ 8000/- was advanced to the workman while as per the vouchers proved by the management a sum of ₹ 8020/- was paid to him. The Labour Court did not even look at the affidavit filed by the

petitioner's witness wherein it had been stated that ₹ 8020/- were received in advance by the workman. Learned counsel also contended that since the respondent had already received ₹ 8020/- from the petitioner as an advance, which amount was much more than his entitlement under Section 25-F the termination of his services in any event could not be said to be illegal. Learned counsel also submitted that since the petitioner firm had closed its business long time back when the Government had initiated a drive to close down polluting Units after the decision of the Supreme Court in M.C. Mehta's case the respondent-workman in any event could not be reinstated now. It was also argued that the Labour Court has granted the relief of payment of wages to the respondent-workman from January, 2006 to 9th December, 2006 when that relief was not even claimed by him and he was not even claiming that he had not been paid his wages from January, 2006 onwards.

10. None had appeared on behalf of the respondent-workman to argue on three consecutive dates when this petition was taken up for hearing and therefore counsel for the petitioner alone was heard.

11. After having gone through the impugned award and the arguments made on behalf of the petitioner I find myself unable to agree with the learned counsel for the petitioner. The Labour Court has after proper appreciation of evidence adduced from both the sides come to the conclusion that this is not a case of abandonment of job by the respondent. This Court does not find any perversity in that conclusion. Just because the respondent-workman had taken some advance and not returned, though he had denied having received any advance, it could not be inferred from that that he had abandoned his job. He had worked for more than ten years and so it cannot be expected that suddenly he would leave the job only to avoid payment of some money to his employer. He had in fact immediately in December, 1996 written to the petitioner that he had been illegally removed from service. Then he had approached the Labour Authorities also claiming reinstatement. That conduct of the respondent negatives any intention on his part to abandon his 10 years old job and even because of his alleged absence from 1.11.96 it could not be inferred that he did not want to work with the petitioner any more. The petitioner did not even call upon her to resume his duties which it would have done in case it had not terminated his services. So, no fault can be found with the findings of the

Labour Court that the services of the respondent was terminated by the petitioner illegally. Compliance of Section 25-F had to be done by the petitioner even if some money was to be taken by it from the respondent and particularly when the petitioner is not claiming that that amount was allowed to be retained by the respondent as compensation etc. payable under Section 25-F. The submission of the learned counsel for the petitioner that since its Unit stands closed since long and so reinstatement is not possible now, cannot be entertained since it was not taken before the Labour Court even though its case now is that its Unit had already been shut down when the respondent had raised the dispute. However, as far as the direction given to the management to pay to the respondent-workman wages from January, 2006 till 9-11-96 is concerned the same appears to be a typing mistake and actually the wages were intended to be given from 1/11/2006 onwards and that mistake is corrected here. To that extent the award would stand corrected but otherwise the writ petition is dismissed.

P.K. BHASIN, J

JULY 30, 2012