

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 01.08.2013

+ **LPA 83/2013**

M/S INTER DECKOR

..... Appellant

versus

JAI NARAIN SINGH

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr A.K. Jain.

For the Respondent : Mr Sanjoy Ghose & Mohd. Farrukh.

CORAM:-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED, ACTING
CHIEF JUSTICE**

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. This appeal is directed against the judgment dated 03.12.2012 passed by a learned Single Judge of this Court in writ petition being W.P.(C) 7019/2009. By the impugned judgment, the learned Single Judge has set aside the award dated 30.07.2008 passed by the Labour Tribunal in favour of the appellant and as a consequential relief, directed the appellant to pay the respondent a sum of ₹1,00,000/- in lieu of reinstatement with back wages.

2. The controversy in the present case revolves around the question whether the respondent abandoned his employment with the appellant or not. It is the case of the appellant that the respondent, who was employed as a checker at a salary of ₹2,400/- per month, voluntarily abandoned his

services by not reporting on his duty on 03.06.1999. The appellant claims to have sent several letters dated 04.06.1999, 12.06.1999, 19.06.1999 and 24.08.1999 asking the respondent to join back on his duties but it is contended that the respondent failed and neglected to do so. The respondent on the other hand has contended that he did not abandon the services, on the contrary, he was physically assaulted and driven out of his work place on 03.06.1999. The report of the incident is also stated to have been made with the police authorities. The respondent has asserted that he reported on his duties on 04.06.1999 but the management of the appellant did not allow him to join work. The respondent thereafter caused a legal demand notice to be sent to the appellant through his trade union. Thereafter, the respondent raised an industrial dispute which was referred to the Labour Tribunal in the following terms:-

“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?”

3. A statement of claim was filed before the Tribunal and after completion of pleadings both the parties filed their evidence by way of affidavits and the witnesses were also cross examined. The Tribunal passed the final award on 30.07.2008 holding that the respondent had abandoned his services and, therefore, was not entitled to any relief as claimed. Aggrieved by the award, the respondent preferred a writ petition which has been disposed of by the impugned judgment.

4. The question whether the respondent had voluntarily abandoned services or not is a question of fact which has to be determined on the basis

of the available evidence and the surrounding circumstances of the case. The learned Single Judge considered the evidence available on record and held as under:-

“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 10th 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 21st June, 1999 was filed before the office of Assistant Labour Commissioner on 25th June, 1999 in response to their letter No. 2853 dated 11th 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 8th 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 4th 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.11lakh 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.”

5. It has been contended by the learned counsel for the appellant that the letters sent to the respondent calling upon him to join his duties stand proved as the same have been sent at the correct addresses, which are not disputed. It is further contended that it is evident from the said letters that the services of the respondent were not terminated and the respondent had voluntarily abandoned his employment. We are unable to accept this contention that the *factum* of the letters having been dispatched, by itself, proves that the respondent had abandoned his services. Each case has to be viewed in the context of its facts and surrounding circumstances. The

affidavit of the respondent that he reported for work on 4.6.1999 and fact that the respondent had made a representation through his union on 10.6.1999 cannot be ignored. The learned Single Judge has considered the entire evidence in coming to the conclusion that respondent had not abandoned work but his services were terminated by the appellant.

6. Having heard the learned counsel for the parties, we do not find any reason to interfere with the impugned judgment passed by the learned Single Judge. The learned Single Judge has examined the evidence and in our view rightly concluded that the respondent had not abandoned his duties and thus the award dated 30.07.2008 was liable to be set aside. We are also in agreement with the relief granted by the learned Single Judge. We find no infirmity in the impugned judgment dated 03.12.2012 and accordingly dismiss the present appeal.

7. The parties are left to bear their own costs.

VIBHU BAKHRU, J

BADAR DURREZ AHMED, ACJ

AUGUST 01, 2013
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