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HIGH COURT OF DELHI AT NEW DELHI

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RSA No.85/2012

Decided on : 23rd September, 2013

EX. CONSTABLE CHANDER MOHAN

..... Appellant

Through: Mr.R.S.Nagpal and Mr.Harpreet
S.Nagpal, Advocates.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr.R.Mishra and Mr.Mukesh Kumar
Tiwari, Advocates.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant against the judgment/order dated 22.03.3012 passed by learned ADJ, Central-08, Delhi, in RCA No.77/11. The learned ADJ set aside the judgment and decree dated 29.04.2011 passed by the learned trial court whereby the learned trial court had decreed the suit filed by the Appellant/Plaintiff.

2. I have heard the learned counsel for the appellant with regard to the formulation of the substantial question of law. It has been contended by the learned counsel for the appellant that the two substantial questions of law are arising from the present appeal.
3. Firstly, it has been contended that the resignation of the appellant from the services of the respondent was not voluntary inasmuch as on the date when the resignation is purported to have been given by the appellant i.e. 17.08.1998, he was in custody of the respondent and, therefore, the said resignation was obtained under duress. It has also been stated by the learned counsel for the appellant that the respondent in their written statement have admitted that the appellant was in custody till 16.08.1998 while as the finding which has been returned by the court below is to the effect that the appellant was never in custody with effect from 09.07.1998 and thus the finding of the court in this regard is totally perverse. Moreover, the resignation of the appellant becomes involuntary.
4. The second submission which has been made by the learned counsel for the appellant is that the respondent had filed an appeal against

the setting aside of the order of the respondent and directing the reinstatement of the appellant.

5. The respondent herein filed an appeal against the order dated 29.04.2011 which was having a delay of about 120 days. However, while allowing the appeal, the learned first appellate court did not specifically condone the delay. It has been contended by the learned counsel for the appellant that the decision of the first appellate court was without considering or allowing the delay application, which also raises a substantial question of law as to whether the appeal itself could have been considered by the first appellate court without disposing of the application seeking condonation of delay. Therefore, it is prayed that the order of the first appellate court deserves to be set aside on this ground itself and the matter be remanded back.
6. With regard to the question of non condonation of delay and the decision on the appeal, the learned counsel for the appellant has placed reliance on the following judgments: i) Raja Mechanical Company Pvt. Lt. Vs. Commissioner of Central Excise; 2012 IV AD

(Delhi) 621, ii) Ragho Singh v. Mohan Singh & Ors. (2001) 9 SCC 717 and iii) Morgan Stanley Mutual Fund v. Kartick Das; (1994) 4 SCC 225 and Municipal Committee, Hoshiarpur V. Punjab State Electricity Board & Ors., rendered by the Supreme Court in Civil Appeal No.9651/2003.

7. I have carefully considered the submissions advanced and gone through the judgments. Before dealing with the submissions, it will be pertinent to give a brief background.
8. The present appellant had filed a suit for declaration and permanent injunction praying therein that his termination from service of the appellant/plaintiff be set aside on the ground that it was illegal and further reinstatement was sought. The respondent/defendant filed the written statement and contested the claim of the appellant. The plea of the respondent was that the appellant was a habitual delinquent inasmuch as he frequently absented himself from service without availing leave. It was also stated that on account of the conduct of the appellant by absenting himself without any intimation, he was arrested and confined to quarter guard for a

certain period of time. Subsequent thereto, on 17.08.1998, the appellant himself gave in writing voluntarily to the respondent that he may be permitted to resign from its services. It was stated that the order of termination purported to have been passed by the respondent was based on the resignation letter of the appellant himself.

9. On the pleadings of the parties, the following issues were framed:
 - i) Whether the suit is barred by proviso of Section 34 of Specific Relief Act? OPD.
 - ii) Whether suit is barred under Section 41(h) of Specific Relief Act? OPD
 - iii) Whether this court has no territorial jurisdiction to try the present suit? OPD
 - iv) Whether plaintiff is entitled to decree of declaration and mandatory injunction as prayed for? OPP
 - v) Relief.
10. So far as the aforesaid issues are concerned, only issue no.5 pertaining to resignation tendered by the appellant, is the relevant issue. With regard to this issue, the learned trial court returned a finding that the resignation was not voluntary on account of the fact

that immediately prior to the date of resignation, the appellant was kept in a closed guard. The trial court also directed the reinstatement of the appellant.

11. The respondent herein, feeling aggrieved by the aforesaid order, preferred an appeal. The appellate court arrived at a finding to the contrary. It was noted by the first appellate court that the appellant at the time of tendering his resignation was not in custody and, therefore, the question of resignation having been tendered under duress or pressure could not be believed. Further, the appellant was found to be frequently absenting himself from duty and respondent was well within its rights to terminate the services of the appellant.
12. Para 12 of the judgment of the first appellate court dealt with this issue of voluntariness of the resignation of the appellant, which is reproduced as under :-

“After hearing the arguments and going through the record, I found that there is no dispute so far as the fact of his joining the BSF is concerned and also his absence from the duty, his termination of the service and re-instatement which is accepted by the plaintiff during his cross examination. There is also no dispute

about the fact that he left the unit after availing 25 days earned leave on account of death of his sister. This was so in December, 1997 according to the defendant. Thereafter on 03.04.1998, he was taken to the Psychiatric Specialist for treatment but according to him he was asked by Sh. Dharmender Singh, Dy. Commandant to go home but he deserted the unit on 05.04.1998 without any information and thereafter he was apprehended from his village on 14.04.1998 and brought to the unit on 15.07.1998. There is no explanation as to where he remained during this period and why he did not report in the unit. Though, he alleges that he was asked by Sh. Dharmender Singh to go home but no such suggestion was put to the witnesses that he did not desert the unit, but he was asked by the Dy. Commandant to go home. It is further important to note that immediately after he was brought to the unit as according to the documents and the orders he was handed over to Chhawla Camp in 25 Bn BSF and kept under their custody for 21 days. His leave was regularised which clearly shows on the part of the appellant that there was no ill-will against plaintiff/respondent but his leave was regularised and he was on his duty from thereafter. There is nothing on record even after 15.07.1998 that he was in custody or in quarter arrest. It was on 17.08.1998 that he resigned from the service on domestic grounds. It is important to note here that the authority even interviewed him and noted that the respondent had some pressing problem which appeared to be genuine and thereafter accepted the resignation. It was done on 18.08.1998 and thereafter he returned home with the constable. There was period of almost one month when his absence period was regularised and taken on roles and the date when he resigned. This time was sufficient for him to come out of impression of custody of police in which he was. Therefore, I do not find any

merit in the submission that his signature on resignation were obtained under pressure. Even otherwise this all happened in August, 1998. The present suit was filed on 30.06.2001 i.e. almost after three years. In between he gave notice under Section 80 CCP but that also after more than 2 ½ years of acceptance of his resignation. The onus was upon the plaintiff to show that he is coming to the court with clean hands. During arguments he was specifically asked as to why he did not take any action immediately thereafter as according to him his signatures on the resignation letter were obtained under duress but no explanation was coming forward. Even otherwise from the evidence on record there is nothing that his signatures were obtained under duress particularly when it is clear from the evidence of the plaintiff itself that the custody of the plaintiff/respondent was handed over to the Battalion only on 15.07.1998 and on the same date his 102 days absence was regularised and he was taken on the roles. Under the circumstances, the conclusion arrived at by the learned Trial Court that the record shows that the signatures of the respondent/plaintiff were obtained under duress while he was in custody is not sustainable. Even the conduct of the appellant/respondent shows that earlier also he absented himself and his services were also terminated but the authorities took the lenient view and passed order of his re-instatement with all the benefits. Again after re-instatement, he absented and this time also tendered his resignation and after three years thereafter he woke up coming with the plea that his resignation was taken under duress and pressure which cannot be believed under the facts and circumstance of the present case.”

13. On the basis of the aforesaid analysis of the facts and evidence, the first appellate court set aside the judgment and decree passed by the trial court wherein the learned SCJ-cum-RC had directed the reinstatement with full back wages after setting aside the dismissal order of the appellant.
14. The appellant feeling aggrieved by the said judgment has preferred the present regular second appeal. I do not find any question of law is arising from this factual background. No question of law has been formulated even by the appellant, much less a substantial question of law, which would warrant the admission of the matter for hearing. Therefore, the appeal is dismissed.

V.K. SHALI, J.

SEPTEMBER 23, 2013
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