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

Judgment delivered on: 6th August, 2014

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W.P.(C) 4094/2014

SHREE GOVIND PLASTICS

..... Petitioner

Represented by: Mr.Ashok Babu and
Mr. Dharmendra Kumar,
Advocates.

Versus

SONU PRAJAPATI AND ANR.

..... Respondents

Represented by: Mr. Pramod K. Tiwary and
Ms.Sonal K. Singh,
Advocates for Respondent
No.2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CM No.8206/2014 (for exemption)

Exemptions allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 4094/2014

1. By way of the present petition, the petitioner is seeking setting aside of the impugned award dated 03.10.2013 passed by the learned Presiding Officer, Labour Court No. IX, Karkardooma Courts, Delhi, in I.D. No.433/2012, titled as '*Sonu Prajapati Vs. Shree Govind Plastics*'.
2. Leaned counsel appearing on behalf of the petitioner submits that

the learned Labour Court failed to appreciate that the petitioner Management had not terminated the services of the workman respondent, but it was the workman himself, who had abandoned his services by remaining absent unauthorizedly without sanctioning any leave.

3. I note, vide order dated 13.02.2013, learned Labour Court framed the following issues:-

“1. *Whether the workman has been running absent from the duty w.e.f. 31.05.11 and has taken Rs.8000/- on 5.06.11 as advance, if so, its effect? OPM.*

2. *In terms of reference? OPW.*

3. *Relief.”*

4. Aforenoted issue No.1 is important to adjudicate upon the instant petition. Thus onus of proving of the same was upon the Management, who had to prove that the workman was running absent from the duty w.e.f. 31.05.2011 and had taken an advance of Rs.8,000/-.

5. Learned Labour Court in the impugned order recorded that the workman in his statement of claim stated that his services were terminated on 03.04.2011, which fact was denied by the Management stating that the workman had been attending the duty of the Management upto 30.05.2011. Whereafter, he started running absent. He had visited the petitioner Management on 05.06.2011. He demanded advance of Rs.10,000/-, however, the petitioner Management had given Rs.8,000/- as advance on very that day.

6. To prove this fact, during the cross-examination of the workman, the Management suggested him that he had worked with the Management

upto 30.05.2011, which fact had been denied by him. He also denied that he started absenting *w.e.f.* 31.05.2011 or that he received salary for the months of April and May, 2011, after putting his signatures on the Wages Register. Though, he admitted that he demanded advance of Rs.10,000/- from the Management for getting his house repaired at his native place, but denied that on 05.06.2011, the Management had given him advance of Rs.8,000/- towards the same.

7. To prove this fact, the Management also deposed on the same lines and MW1 was cross-examined at length by ARW. In his cross-examination, MW1 deposed that Sh. Babu Lal was their Accountant and denied the suggestion that as and when any full and final settlement was to be made to any of the worker, the petitioner used to call their part-time Accountant, who prepares the details of the settlement and then the settled amount was to be given to such worker.

8. As far as advance payment to any worker was concerned, MW1 deposed that the Management never paid any advance money to any of the worker. MW1 further denied the suggestion that the workman worked with the Management upto 03.04.2011 or that his services were terminated on 03.04.2011 itself. He volunteered that the workman worked only upto 30.04.2011 and denied the suggestion that earned wages of the workman from 01.03.2011 to 03.04.2011 were still due. MW1 further deposed that the workman never turned upon asking for the job after 03.04.2011 or even after 30.04.2011 as stated above. He further deposed that he had brought the ESI contribution returns for the period from 01.04.2010 to 31.03.2011, which had been collectively exhibited as Ex.MW1/XW1 running into four pages.

9. The learned Labour Court recorded in the impugned order that claim of the workman was that he was terminated on 03.04.2011, whereas defence of the petitioner Management was that he worked upto 30.05.2011. However, evidence which has come on record from the Management side was not consistent and corroborating with its written statement, wherein it was stated that the workman had worked with the Management upto 30.05.2011, whereas in the cross-examination, MW1 deposed that he worked only upto 30.04.2011. The Management had even filed its Attendance Registers for the period from April to August 2011, December 2011 to April 2012 and November 2011 to January 2012, Ex.MW1/5 (collectively) and Wages Register for the months of April, 2011 and May, 2011, Ex.MW1/6. Neither these documents, i.e., Ex.MW1/5 and 1/6, nor his signatures appended thereon were confronted to the workman during his cross-examination.

10. In view of the above, veracity and authenticity of these documents have not been relied upon by the learned Labour Court as MW1 himself deposed that the workman worked with the Management upto 30.04.2011 and not upto 30.05.2011.

11. The learned Labour Court while considering the letters dated 16.06.2011, 25.07.2011 and 29.08.2011 and the fact that the same can be fabricated at any time, opined that since these letters have been supported with the postal receipts thereof, therefore, the contention of the workman was not well founded in view of the settled law regarding sending the letter in terms of the judgment titled *M/s Trina Engineering Company Pvt. Ltd. Vs. The Secretary (Labour), 2006, LLR, P.51*, wherein held that:-

“If a letter has been posted at the correct address by the other party, then the formal requirement of proving the same through post office is not required in industrial dispute.”

12. Accordingly, opined that three letters mentioned above have been duly proved by the petitioner Management. Accordingly, the learned Labour Court recorded that in the case of ***Rameshwar Dayal Vs. Presiding Officer Labour Court No. VI, Delhi & Anr. 2007 (3) LLJ 729 (DHC)***, this Court came to the conclusion that:-

“a lump-sum amount of Rs.50000/- as compensation in lieu of reinstatement and back wages towards full and final settlement of all claims of the workman was an appropriate relief.”

13. In ***Kishan Lal & Ors. Vs. Govt. Of NCT of Delhi & Ors. 2007 VI AD (Delhi) 13***, this Court held that:-

“In lieu of grant of relief of reinstatement and full back wages, the management was directed to pay to each of the workmen a lump-sum compensation of Rs.40,000/- towards full and final settlement of all claims of each of such workman.
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14. In ***Indian Railway Construction Company Ltd. Vs. Ajay Kumar, AIR 2003 SC 1843***, the Hon’ble Supreme Court of India awarded one time lump-sum compensation to the workman in this case towards full and final settlement of all his claims.

15. In view of the above discussion, the learned Labour Court recorded in its order that the Management admitted that no enquiry had been initiated against the workman. If the workman had taken an advance of Rs.8,000/- from the petitioner Management then, apart from the call back notices, some legal procedure should have been initiated by the petitioner

Management for recovery of that advance amount, however, the Management had not taken any such steps. It established that the Management had been waiting for the opportunity that if the workman would file any proceedings against it, the defence will be taken accordingly.

16. No other issue has been argued by the learned counsel for the petitioner Management.

17. In view of the above noted facts and settled law discussed above, finding no merits in the instant petition, the same is dismissed with no order as to costs.

CM No. 8207/2014 (for stay)

With the dismissal of the petition itself, the instant application has become *infructuous*. The same is accordingly dismissed.

**SURESH KAIT
(JUDGE)**

AUGUST 06, 2014
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