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

*Judgment delivered on: 24<sup>th</sup> September, 2014*

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**W.P.(C) No.3493/2012**

SHIVJI BHAGAT

..... Petitioner

Represented by: Mr.Anil Kumar Chandel,  
Advocate.

Versus

M/S BHAGWAT RUBBER

..... Respondent

Represented by: Mr.Abhishek Kishore, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J. (Oral)**

1. By way of the present petition, petitioner has assailed the award dated 06.04.2010 passed by the learned Presiding Officer, Labour Court No.IX, Karkardooma Courts, Delhi, in I.D. No.207 of 2008.
2. Briefly, facts of the case are that it was noticed in January, 2003, workman was stealing material from the respondent Management premises. The Management got secret information about involvement of the petitioner/workman. Subsequently, the Management through their personnel started keeping secret vigil on the movement of the workers and the material therein.
3. On 04.05.2003, the Management caught workman while stealing the goods. Accordingly, the Management enquired from the workman,

who admitted his guilt. The Management wanted to lodge a complaint and hand over the workman to the police, however, workman confessed his misdeeds and guilt in writing on 04.05.2003 and pleaded leniency and mercy. He also stated therein that he caught while stealing in the premises, it was his mistake and apologized for the same. Further confessed that earlier two-three times he had stolen raw material from the premises because he had some family problems and he was in need of money. Further stated, due to the misdemeanour, he was unable to work further and sought settlement of his dues.

4. Accordingly, settlement amount was paid and vide order dated 05.05.2003, the workman was removed from services.

5. Being aggrieved, the workman approached the Labour Court, which, accordingly, framed the following issues on 04.05.2007:-

*“1. Whether the claimant entered full and final settlement with the management as alleged in the preliminary objection no. 1 in the WS?*

*2. As per terms of reference.*

*3. Relief.”*

6. Mr. Anil Kumar Chandel, learned counsel appearing on behalf of the petitioner submits that the petitioner in his cross-examination stated that he had seen the Wages Register for the months of March and April, 2003. Both bears his signatures at point-A, copy of which is Ex.WW1/M3. However, submitted that documents marked as WW1/M1 and WW1/M2 does not bear his signatures at point-A and denied the suggestion to this effect. He denied the suggestions that in the year 2003,

Management noticed the theft of raw material from the premises or that the workman was caught red handed while committing a theft of raw material on 04.05.2003 or at that time he apologised for his act vide letter dated 04.05.2003 which is marked as WW1/M1. Also denied the suggestion that on that day after adjustment of Rs.10,000/- as workman had taken in advance, a sum of Rs.5000/- was given to him pursuant to which he entered into full and final settlement with the Management. Further denied, at that time he executed a voucher marked as WW1/M2. However, admitted that the workman with the Management from 1987 to 2003.

7. While deciding the aforementioned issues, the learned Labour Court recorded in its order that the primary burden of proving issue No.1 and issue No.2 was upon the Management and the workman respectively.

8. Accordingly, while relying upon the judgments of ***UCO Bank Vs. Presiding Officer & Another 1999 V AD (Delhi) 514*** and ***Canara Bank Lucknow Vs. Union of India & Ors. 1998 LAB.I.C. 2923*** (Allahabad High Court), the learned Labour Court dealt with the evidence that the workman himself admitted in the cross-examination that it was correct that his attendance was being marked on the Attendance Register; he used to sign the Wages Register after receiving the salary; he was extended the facilities of ESI during the course of his employment and that he had not made any written complaint to any authorities regarding non-providing of legal facilities to him by the Management. However, he denied the suggestion that he was caught red handed while committing theft of raw material of the Management and he apologised for the act vide his letter marked as WW1/M1, but had not added anything further as to on what

basis he denied this suggestion.

9. It is further recorded that the petitioner workman denied the suggestion that he entered into full and final settlement with the Management after receiving Rs. 15000/- from the Management but again he had not added anything further as to on what basis he denied this suggestion.

10. Accordingly, the learned Labour Court while relying upon the aforesaid documents, which had already been denied by the workman, held that the petitioner entered into full and final settlement with the Management by receiving the full and final settled dues from the Management. Hence, the question regarding illegal termination of petitioner's services did not arise. Accordingly, the learned Labour Court decided the issues against the workman and in favour of the Management.

11. On the other hand, Mr. Abhishek Kishore, learned counsel appearing on behalf of the respondent Management submits that the workman himself admitted his guilt vide letter dated 04.05.2003 marked as WW1/M1. He received full and final payment. He himself stated that he was unable to remain in the employment due to the feeling of humiliation by committing theft in the premises, therefore, he himself left the services of the respondent. There was neither retrenchment nor termination of the petitioner workman, however, he himself left the service. Since, the respondent Management has proved his case before the Labour Court, thus, the issues have been rightly decided in its favour.

12. Mr. Kishore, Learned counsel fairly admitted that no documentary evidence was placed on record before the learned Labour Court by the Management regarding theft committed by the workman.

13. Learned counsel further submitted that though the petitioner had taken Rs.15,000/- as full and final settlement, however, denied the same with the well intention to have more money through the Labour Court.

14. I have heard the learned counsel for the parties.

15. The fact remains that the document relied upon by the respondent Management and the learned Labour Court is letter dated 04.05.2003, mark WW1/M1, whereby the petitioner workman admitted his guilt. In the said letter, petitioner even stated that earlier also he was caught two-three times, however, the record of the same is not with the respondent Management. If the petitioner had committed such type of offences earlier and frequently, the petitioner would have been thrown out from the services by the respondent Management, if not, at least record of the same should have been maintained by the Management.

16. Learned counsel for the respondent has fairly conceded that the theft earlier committed by the petitioner workman had been admitted by him, but the respondent did not have any record thereof.

17. Moreover, no complaint has been made by the respondent Management to the police regarding the thefts committed by the petitioner in the past or the theft in question. Even if it is believed that the petitioner workman had taken his full and final amount and resigned from the job of his own, in that situation also, the full and final amount could not have been just Rs.15,000/- in all probabilities.

18. The learned Labour Court has relied upon the document which had been denied by the petitioner workman. Moreover, the respondent Management did not cross-examine the petitioner workman further as to why he denied the basic foundation of the case, i.e., letter dated

04.05.2003, mark WW1/M1, upon which the whole case of the Management rests.

19. In view of the facts recorded above, the impugned Award dated 06.04.2010 is hereby set aside.

20. Consequently, the petitioner workman is reinstated in service with 50% back wages.

21. The instant petition is allowed with no order as to costs.

**SURESH KAIT  
(JUDGE)**

**SEPTEMBER 24, 2014**  
Sb/RS