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

% *Judgment delivered on: 5th August, 2014*

+ W.P.(C) 4891/2014

TEJ PAL

..... Petitioner

Represented by: Mr. Piyush Sharma, Adv.

Versus

M/S AJEX & TURNER WIRE DIES CO.

..... Respondent

Represented by: NEMO.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CM. NO. 9783/2014 (Delay in re-filing)

In view of the averments made in the instant application, delay of 300 days in re-filing the instant petition is condoned.

Accordingly, instant application is allowed.

+ **W.P.(C) 4891/2014**

1. Vide the present petition, petitioner is seeking quashing of the order dated 05.09.2012 passed by the Ld. Presiding Officer, Labour Court-IX, Karkardooma Court, Delhi.

2. Further seeks direction to the respondent directing the Management to reinstate the services of the petitioner and pay all the legal dues from back date after reinstatement of the service of the petitioner.
3. Mr. Piyush Sharma, Ld. Counsel appearing on behalf of the petitioner submits that while passing the order dated 05.09.2012, Ld. Presiding Officer committed error while relying upon (i) the copy of the letter dated 16.01.2007, allegedly bearing the signatures of the petitioner thereon, (ii) copies of the salary paid details allegedly bearing the signature of the petitioner thereon and that too for the period 16.01.2007 to 30.08.2009 (iii) copies of the Attendance Register said to be maintained by the Supervisor (an employee of the respondent itself) for the period 16.01.2007 to 30.08.2009 only and without any signature thereon of the petitioner.
4. Ld. Counsel further submits that order dated 05.09.2012 suffers from the disqualification in so much as (i) the appointment letter dated 16.01.2007 relied upon by the Ld. Presiding Officer has been bearing forged signatures of the petitioner; (ii) the salary detail record relied upon by the Ld. Presiding Officer has been bearing forged signatures of the petitioner and salary details record for the period prior to the date of 16.01.2007 has not been requisitioned and examined by Ld. Presiding Officer (iii) the attendance detail record relied upon by the Ld. Presiding Officer does not bear the signatures of the petitioner. Moreover, the attendance detail record for the period prior to the date 16.01.2007 has not been requisitioned and examined.
5. I note, the Ld. Presiding Officer framed the following issues:

“1. Whether the workman was appointed on fixed term basis and as such is not covered under I.D. Act?

2. Whether the services of the workman have been terminated illegally and / or unjustifiably by the management?

3. Relief”

6. Qua issue nos. 1 and 2, the Ld. Tribunal recorded its opinion as under:

“Since the workman has no evidence with him that he had ever been working with the management prior to January, 2007 and even the workman has failed to summon the record from the management prior to 16.01.2007 and also keeping in view that the workman has relied upon his ESI card where the date of appointment is written as 16.01.2007, it stands proved that the workman had only been working with the management since 16.01.2007. When the appointment letter was put to the workman, he admitted his signatures on the same and this appointment letter dated 16.01.2007 speaks that the workman was only appointed on 16.01.2007 that too on a fixed term basis. There is cross-examination by the workman that the signatures on the appointment letter were obtained by the management fraudulently or under some misrepresentation. Although such facts were stated by the workman in his statement of claim that the Management used to get the signatures of the workman on blank papers and vouchers but in cross-examination, no such suggestion was given and even otherwise these allegations were quite vague in the statement of the claim. The appointment letter and salary register have been put to the workman and initially the workman has denied his signatures and subsequently stated that he cannot tell without seeing the original. Once the workman has admitted his signatures on the appointment letter, the court is of the pinion that irrespective of denial of his signatures on the salary Register, he is not able to succeed in this matter as what the workman claimed in the statement of claim is only that his salary for the month of August and 11 days of September, 2008 have not been given to him. For all other remaining period of employment, he has not

alleged even that his salary / earned wages have been withheld. Signatures on all the salary register from the period January, 2007 to September, 2008 appears to be identical. Although the workman claimed that he was terminated on 11.09.2008, even this fact has not been proved by him by any positive evidence. As far as the attendance register is concerned, no doubt the attendance register does not contain the signatures of the workman yet the presence of the workman has been shown on the attendance register which was being maintained by the management. MW1 although has admitted that the attendance register is being maintained by the supervisor and the signatures of workman are not obtained yet even this fact is proved that the attendance register filed by the management is not an authentic register then also the only dispute would be for the period of 16.01.2007 to 30.09.2008 and since the workman otherwise has admitted his signatures on the appointment letter, the same also is not likely to assist the workman to prove his case. Not only this, the court has already observed that the workman claimed that he was terminated on 11.09.2008 and he served the demand notice for the first time upon the management on 30.05.2011, i.e. after 32 months of his alleged termination. There is no explanation as to why the workman had remained silent for all 32 months or why he did not initiate any proceedings against the management immediately of his alleged termination. If the workman would have been aggrieved from his termination, he should have initiated the proceedings immediately and the court is observing this fact as the workman otherwise had issued the legal notice to the management with respect to payment of bonus earlier, which facts indicate that the workman appears to be well aware with respect to his legal rights and it appears that he has not come to the court with clean facts. In ordinary way, no workman whose services have been terminated would be waiting for 32 months for issuing first notice to the management thereby alleging that his services have been terminated wrongfully around 32 months back. Therefore, the court is of the opinion that the workman has failed to prove that his services have been terminated by the management illegally and the management otherwise has been

*able to prove that the workman was appointed on fixed term basis.
Both these issues are decided accordingly.”*

7. The petitioner / workman could not prove his case that he was working with the Respondent Establishment from June, 2003. He admitted his signatures on the appointment letter dated 16.01.2007. He failed to produce any witness or material before the Tribunal to rebut that he was not working with the Management w.e.f 16.01.2007 and continued up to 30.09.2008.

8. He was terminated on 11.09.2008 and served demand notice upon the Management for the first time on 30.05.2011, i.e., after 32 months of the alleged termination. He failed to explain as to why, he remained silent for about 32 months and did not initiate any proceedings against the Management for the alleged termination.

9. Ld. Tribunal further recorded that if the workman was aggrieved from his termination, he ought to have initiated the proceedings immediately. The Tribunal observed that the petitioner / workman otherwise had issued the legal notice to the management with respect to payment of bonus earlier, which established that he was well aware with respect to his legal rights, thus he has not come to the court with clean hand.

10. I am of the considered opinion, no workman whose services have been terminated would be waiting for 32 months for issuing first notice to the management thereby alleging that his services have been terminated wrongfully around 32 months back.

11. Moreover, the petitioner failed to prove that his services have been terminated by the management illegally and the management otherwise was able to prove that the workman was appointed on fixed term basis.

12. Finding no merit in the instant petition, same is accordingly dismissed with no order as to costs.

SURESH KAIT, J

AUGUST 05, 2014

jg