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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 25th October, 2016

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W.P.(C) 9701/2016 & CM No.38833/2016

BALWAN SINGH

..... Petitioner

Through: Mr. Vivek Kumar, Advocate with
Petitioner in person.

Versus

M/S HARISH CHANDRA (I) LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM No.38833/2016 (for exemption)

Allowed subject to all just exceptions

The application stands disposed off.

W.P.(C) 9701/2016

1. This petition impugns the Award dated 01.04.2016 passed in LIR No.4192/16 (Old I.D. No.129/2010). It is the petitioner's case that he had not resigned from service, instead, his services were illegally terminated and he was not allowed to resume the duties. The impugned order records that the petitioner had challenged his termination from service by way of a legal notice dated 29.12.2009, which was replied to by the management vide Ex.MW1/5 dated 29.01.2010. Admittedly, the workman did not resume the

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duties as suggested and invited by the management. Accordingly, the impugned order concluded that the claimant has voluntarily left the services of the management and held that the petitioner was not entitled to the relief claimed.

2. The relevant paragraphs 24, 25 and 26 of the impugned order read as under:-

"24. A perusal of the legal notice dated 6.01.2010 Mark B given on behalf of claimant shows that there is no such averment regarding issuance of one month notice dt. 29.12.2009 by the management to the claimant. There is no such averment in the Statement of Claim or Rejoinder filed by the claimant before this court. An affidavit was filed by the claimant on 03.12.10 and even in the said affidavit there is no such averment. Thereafter, another affidavit was filed by the claimant on 18.08.2011 wherein the claimant enclosed a copy of one month notice dated 29.12.2009, without making any averment regarding the said one month Notice in the affidavit.

25. The claimant has claimed that his services were terminated on 30.12.09 and thereafter, he had got served a Legal Notice through his Advocate on 06.01.2010 on the management. If the claimant had been served with one month notice on 29.12.09, it was but natural for the claimant to have stated the factum of issuance of said Notice to him at the first available opportunity i.e. in the Legal Notice dated 06.01.2010 which he got issued to the management through his Advocate. Thereafter, Statement of Claim and Rejoinder was filed by the claimant but even these two documents were sans any pleadings to this effect that one month Notice was served upon the management to the claimant on 29.12.09. In fact, in the entire file, there is no averment by the claimant as to how the Notice dated 29.12.09 was served upon him by the management. There is no pleading as to whether the said Notice was served to

him by hand or by any other means like post etc. There is no pleadings that in case the said notice was served to him by hand, then who served that Notice to him. There are also no pleadings that as to what steps were taken by the claimant after receipt of said notice. No suggestion was given by the claimant to the Management witness that Management had also given the said one month notice Ex.WWI/6 to the claimant on 29.12.2009. In this background, it is hard to believe that any such Notice was served on the claimant by the management.

26. The management has claimed that it was the claimant himself who abandoned his services on 30.12.09 when he visited the office of the management at Okhla and told the Manager HR there that he does not want to continue in the employment of the management and that he would send his resignation. The said stand of the management finds mention even in the reply sent by the management to the claimant on 29.01.2010 (Ex.MW1/5) in response to the Legal Notice dated 06.01.2010 got issued by the claimant to the management. It is also stated in this reply dated 29.01.2010 (Ex.MW1/5) that the claimant may be advised to join the services immediately after receiving this notice. Receipt of this Notice has not been denied by the claimant. When the management has clearly stated in letter dated 29.01.2010 (Ex.MW1/5) that the claimant should come and join services immediately, it was incumbent upon the claimant to have joined his services as according to the claimant, the management had terminated his services. However, by not joining the services of the management and not giving any plausible explanation for not joining the services of the management in pursuance to their letter dated 29.01.2010, the only inference which can be drawn is that it was the claimant who voluntarily left the services of the management and that his services were never terminated by the management on 30.12.09, unlike claimed by the claimant. This issue is, therefore, decided against the claimant and in favour of the management."

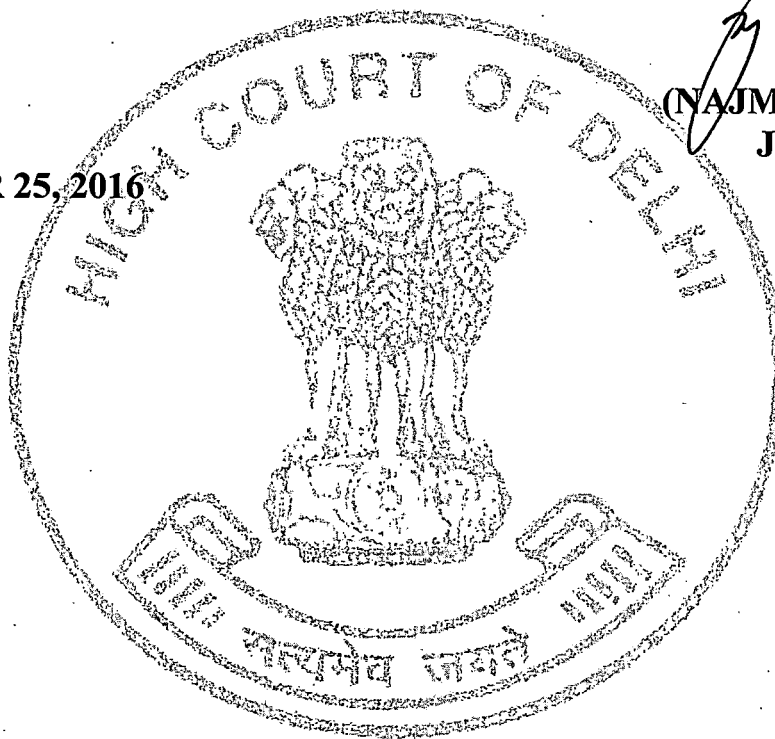
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3. The learned counsel for the petitioner states that the workman was prevented from resuming his duty. However, there is nothing on record to substantiate this claim nor was any evidence was led in this regard. In the circumstances, the Court is of the view that there is no reason for interference in the impugned Award dated 01.04.2016.

4. The writ petition is without merits and accordingly is dismissed.

OCTOBER 25, 2016

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(NAJMI WAZIRI)
JUDGE