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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on : 25.08.2022**Pronounced on: 12.09.2022*+ W.P.(C) 12951/2006

D.D.A.

..... Petitioner

Through: Mr. Arun Birbal and Mr. Sanjay
Singh, Advocates.

versus

RAM MEHAR

..... Respondent

Through: Ms. Latika Choudhary, Advocate.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T**GAURANG KANTH, J.**

1. The Petitioner, in the present Writ Petition has challenged the Award dated 27.10.2005 passed by the learned Presiding Officer, Labour Court-X, Karkardooma, Delhi in Industrial Dispute No. 274/1996 titled as the *Management of Delhi Development Authority Vs its Workman Sh. Ram Mehar* ("Impugned Award"). Vide the said Impugned Award, the learned Presiding Officer was pleased to decide the terms of reference in favour of the Respondent/Workman and directed the Petitioner/Management to reinstate the Respondent/Workman without any back wages. The learned Tribunal was also pleased to award



Rs.10,000/- towards cost of litigation in favour of the Respondent/Workman.

The facts relevant for the consideration of the present Writ Petition are as follows:

2. The Respondent/Workman was employed by the Petitioner/Management since 01.09.1983. Initially, he was posted in the Horticulture Department as JE (Electrical), Division No. 2 and worked there from 01.09.1983 to 07.08.1991. Vide office order no. 1032 dated 08.08.1991, he was transferred to the Horticulture Department, Division No. 5, Rohini. Vide office order No.1630 dated 29.08.1991, he joined his duty at Division No. 5 and was instructed to report to the Assistant Engineer (Electrical). It is the case of the Respondent/Workman that Mr. M.C. Gupta, Assistant Engineer (Electrical) did not allow the Respondent/Workman to join duties nor was he assigned any work. The Respondent/Workman was also not allowed to mark his attendance and as a consequence, the Respondent/Workman's name was struck off from the rolls of the Petitioner/Management.

3. The Respondent/Workman, after 3 years of the alleged termination, served a demand notice dated 14.12.1994 upon the Petitioner/Management through the Municipal Employees' Union for his reinstatement.

4. Industrial dispute was thereafter, raised by the Respondent/Workman before the Conciliation Officer on 12.01.1995. However, the said Conciliation proceedings resulted in failure as no settlement was arrived at between the parties.



5. During the pendency of the Conciliation proceedings, the Petitioner/Management, served two legal notices dated 24.04.1996 and 23.05.1996 on the Respondent/Workman and asked him to resume his duty with the Petitioner/Management. Despite the receipt of the legal notices, the Respondent/Workman failed to resume his duties.

6. The Appropriate Government on being satisfied about the existence of Industrial Disputes between the parties made a reference to the Labour Court for adjudication under Section 10(1) (c) and Section 12(5) of the Industrial Disputes Act, 1947 vide order dated 28.10.1996 with the following term of reference :

“Whether Sh. Ram Meher has abandoned his job or his services have been terminated illegally and/or unjustifiably by the management, and if so, to what relief is he entitled and what directions are necessary in this respect?”

7. The Respondent/Workman filed his Statement of Claim highlighting his case as stated above. The Petitioner/Management filed their Written Statement stating that the Respondent/Workman was posted to the JE (Electrical), Division No.2 from 31.08.1987 to 07.08.1991. Thereafter, he was transferred to Division No. 5, Rohini on 08.08.1991 and joined the Horticulture Division-5 vide letter dated 29.08.1991. He was reporting to the Assistant Engineer (Electrical) Mr. M.C. Gupta and he never reported to duty after his transfer. The Respondent/Workman abandoned his service and never intimated any one about the reason for his unauthorised absence. After 3 years, the Respondent/Workman initiated conciliation proceedings. The Petitioner/Management through their counsel served two legal notices dated 24.04.1996 and 22.05.1996



on the Respondent/Workman and asked him to join back on duty. However, the Respondent/Workman never joined back duty and hence he abandoned his service with the Petitioner/Management.

8. The learned Labour Court framed the issue based on the term of reference received from the Appropriate Government. The Respondent/Workman examined himself as WW-1 and produced Documents Ex.WW-1/A to Ex.WW-1/16. The Petitioner examined Sh.J.P. Sharma, Dy. Director of Horticulture Division-V as MW-1.

9. The learned Labour Court, after examining the documents in detail, passed the Impugned Award dated 27.10.2005 whereby, the learned Tribunal was pleased to decide the issue in favour of the Respondent/Workman. The learned Tribunal accordingly, directed reinstatement of the Respondent/Workman without any back wages along with Rs.10,000/- to be payable to the Respondent/Workman towards litigation expenses.

10. Aggrieved by the said Impugned Award, the Petitioner/Management has preferred the present Writ Petition.

Submission on behalf of the Petitioner

11. Mr. Arun Birbal, learned Counsel for the Petitioner submitted that the Respondent/Workman abandoned his service. On transfer to Division -5, Rohini, the Respondent/Workman never reported for duty. He never made any complaint regarding the fact that he was not allowed to join back on his duties. The Respondent/Workman raised the industrial dispute 3 years after his alleged termination. This itself shows that the



Respondent/Workman was never interested in working with the Petitioner/Management. Learned Counsel for the Petitioner/Management further pointed out that during the conciliation proceedings, the Petitioner/Management through their counsel issued legal notices and asked the Respondent/Workman to join back his duties. However, he chose not to join back despite the receipt of such legal notices. Hence, these facts show that the Respondent/Workman abandoned the job of the Petitioner/Management. Learned Counsel further submitted that the Respondent/Workman has been receiving the benefit of Section 17-B of the Industrial Disputes Act, 1947 for a substantial period and has received lakhs of rupees pursuant to the said provision.

12. Learned Counsel for the Petitioner relies upon judgments delivered by the Supreme Court and co-ordinate bench of this Court in *Manju Saxena vs. Union of India and Others* [(2019) 2 SCC 628], *Engineering Laghu Udyog Employees Union vs. Labour Court* [2003 (12) SCC 1], *Sukhdev Singh vs. DDA* [2011 SCC OnLine Del 4680], *MCD vs. Chatarbhuj Bhushan Sharma* [2006 SCC OnLine Del 1265].

13. With these submissions, the learned Counsel prays for setting aside of the Impugned Award.

Submissions on behalf of the Respondent

14. Ms. Latika Chaudhary, learned Counsel for the Respondent submits that the foundation of the dispute is the allegation made by Respondent/Workman that official of the Petitioner, i.e. Assistant Engineer, Shri M.C. Gupta, did not permit Respondent/Workman to join the duty on 29.08.1991. The Respondent/Workman was subsequently on

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a day-to-day basis not allowed to join work. It is alleged that no work was allotted to him, his attendance was not marked in attendance register and after 29.08.1991, his name was struck off from the rolls of the Petitioner/Management. The Respondent/Workman further alleged that such action was taken without intimation of any reason or by providing any opportunity to represent his case and therefore, such acts were in clear violation of Section 25-F of the Industrial Disputes, Act, 1947 and the principles of natural justice.

15. Learned Counsel for the Respondent in support of her arguments presented before this Court judgements pronounced in ***GT Lad and Ors Vs. Chemical and Fibres of India Ltd.*** [1979 (1) SCC 590], ***HD Singh Vs Reserve Bank of India*** [29(1986) DTL77], ***Mohan Lal Vs. Management of M/s Bharat Electronics Ltd*** [1981 SCC (3) 225], ***Hindustan Times Ltd. Vs. Arun Kumar & Ors*** [231 (2016) DLT 194 (DB)], ***MCD Vs. Nirankar Singh & Ors*** [2013] and ***M/s Sentinels Security (P) Ltd. Vs. Smt. Sudha Singh*** [2020 LawPack (Del) 76054].

16. Learned Counsel for the Respondent further argued that after receiving the letter dated 24.04.1996 from the Petitioner/Management, the Respondent/Workman approached the office of the Petitioner/Management. However, he was not allowed to join duty by the then Deputy Director.

17. Further, it has been submitted by counsel for Respondent that Respondent/Workman has been unemployed since 29.08.1991 due to which he is facing hardships in supporting himself and his dependents.



With these submissions, learned Counsel for the Respondent prays for the dismissal of the Writ Petition.

Legal analysis

18. I have heard learned counsels for the parties and perused the material available on record.

19. The issue to be decided in the present Petition is whether the Respondent/Workman abandoned his service or his services have been terminated illegally and unjustifiably by the Petitioner/Management. In order to decide the said issue, this Court examined the complete Labour Court records and noted the following facts:

(vi) The Petitioner/Management issued transfer order dated 08.08.1991 to the Respondent/Workman. Pursuant to the said transfer order the Respondent/Workman joined the Division-5 on 09.08.1991 and this fact is mentioned in the letter dated 29.08.1991 (Ex. WW1/14).

(ii) As per WW1/14, the Respondent/Workman was directed to report to the Assistant Engineer (Electrical).

(iii) The Respondent/Workman placed on record WW1/15, to show that he reported to the Assistant Engineer (Electrical) for duty. This is a handwritten letter dated 29.08.1991. However, the said letter does not contain any endorsement from the Petitioner/Management.

(iv) It is the case of the Respondent/Workman that Mr. M.C. Gupta, Assistant Engineer (Electrical) did not allow him to join the duties.



However, the Respondent/Workman did not report this fact to any senior officer.

(v) The Petitioner/Management through their counsel issued a legal notice dated 22.05.1996 to the Respondent/Workman and asked him to join back on duty. Respondent/Workman admitted the receipt of the said legal notice. In the rejoinder he stated that he did not join back on duty as per the advice of the Union. However, during his cross examination, he deposed that in pursuance of the letter dated 22.05.1996, he went to the Petitioner/Management office but Mr. Ranvir Singh, Deputy Director (Horticulture) did not allow him to join duties.

(vi) The Respondent/Workman approached the Management for his reinstatement after 3 years of his alleged termination.

20. The burden is on the Respondent/Workman to prove that Mr. M.C. Gupta, Assistant Engineer (Electrical) did not allow him to join duty. There is no material on record to substantiate the said fact. In addition, the conduct of the Respondent/Workman does not support his version. If an employee is not allowed to join duty, it is the natural tendency that he will approach other senior officers and will make complaints. In the present case, the Assistant Engineer (Electrical) did not allow the Respondent/Workman to join his duties and he went back home without raising any question. He woke up from his slumber after 3 years and then raised an industrial dispute. During conciliation proceedings, the Petitioner/Management asked him to join his duties, however, he failed to join back. The stand of the Workman in the Rejoinder and during the cross-examination is contradictory to each other and the same casts doubt



on the credibility of the evidence of the Respondent/Workman. Hence, from the circumstances, this Court is of the view that the Respondent/Workman failed to prove that he was not allowed to join back duty by Mr. M.C. Gupta, Assistant Engineer (Electrical).

21. It is an admitted position that no termination order was issued against the Respondent/Workman. From the totality of the events as narrated herein above, it is evident that the Petitioner/Management was ready and willing to take the Respondent/Workman on duty. However, the Respondent/Workman was not ready to join back the service. It is the case of the Petitioner/Management that the Respondent/Workman abandoned the services of the Petitioner. Since the Respondent/Workman failed to prove that he was prevented by the Assistant Engineer (Electrical) from joining back on duty, the natural conclusion which can be drawn is that the Respondent/Workman abandoned the work of the Petitioner. An unexplained delay of 3 years on the part of the Respondent/Workman in approaching for reinstatement also persuades this Court to think that the Respondent/Workman abandoned the service of the Petitioner/Management.

22. The learned Tribunal in the Impugned Award specifically noted that while the Respondent/Workman in the claim petition mentioned that he is unemployed, he did not specifically claim that he is not gainfully employed. The learned Tribunal further observes that *'it may be possible that he may be gainfully doing somewhere else so he was not interested in joining the Management'*. After making these observations, the learned



Tribunal recorded the below finding with respect to the Petitioner/Management:

“.....In any case, since the Management has failed to prove that why a notice was not issued to the workman immediately after 1991 when he stopped appearing nor any enquiry was conducted by the Management against the workman. In these circumstances, the reference is answered against the Management and in favour of the Workman.

23. This Court finds no reason to accept such finding. Learned Tribunal also accepted the fact that the Respondent/Workman was not interested in the job with the Petitioner/Management. Merely because the Petitioner/Management failed to issue letters to the Respondent/Workman, illegal termination of the Respondent/Workman cannot be imputed to the Petitioner/Management.

24. In view of the detailed discussion herein above, this Court is of the considered view that the Respondent/Workman abandoned the service of the Petitioner/Management. Hence the Impugned Award is set aside.

25. This Court notes that the Respondent Workman received payments under Section 17-B of the Industrial Disputes Act, 1947. As held by the Hon'ble Supreme Court in ***Dilip Mani Dubey Vs M/s SIEL Limited & Anr*** reported as **2019(4) SCC 534**, the proceedings under Section 17-B of the Industrial Disputes Act, 1947 are independent in nature and not dependent upon the final order passed in the main proceedings. It is a well settled principle of law that even if the termination order is upheld by the Court/Tribunal, the employer will have no right to recover the amount already disbursed to the delinquent workman pursuant to the order passed under Section 17-B of the Industrial Disputes Act, 1947 during the
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pendency of the proceedings. Therefore, in view of the aforesaid settled position, it is clarified that the payment already made by the Petitioner/Management to the Respondent/Workman under Section 17-B of the Industrial Disputes Act, 1947 is neither recoverable nor adjustable.

26. The present Writ Petition is allowed. No order as to costs.

SEPTEMBER 12, 2022

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GAURANG KANTH, J.

