

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

+ **W.P.(C) No. 1780/2002**

% Judgement reserved on: 29.01.2015
Judgement pronounced on: 05.02.2015

THE MAGT. OF M/S CENTRAL CHEMIST Petitioner

Through: Mr.Rajesh Srivastava, Advocate
alongwith Ms.Rachna Gandhi,
Advocate.

versus

ITS WORKMEN DEEN DAYAL Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide the present writ petition, the petitioner, Management has assailed the award of Labour court dated 28th April, 2001.
2. Admittedly there was a relationship of employer and employee between the petitioner and the respondent/workman and he served the petitioner till 31st May, 1991. The case of the workman before labour court was that his services were terminated by the petitioner w.e.f. 01.06.1991 while the defence of the petitioner was that the workman had abandoned his services w.e.f. 01.06.1991.
3. The appropriate authority had made the following reference to the

Labour court.

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

4. Before the Labour court both the parties had led their evidences. After consideration of the evidences on record, the Labour court gave its findings whereby it has concluded that the services of the workman were terminated by the petitioner w.e.f. 01.06.1991 and that the workman had not abandoned his services and an order of reinstatement of the workman as Assistant with full back wages since May, 1991 till date @ Rs.1272/- or at the rate of minimum wages whichever was higher, was passed.

5. This order has been assailed by the petitioner on the ground that it was not an industrial dispute and that petitioner's firm was not running an industry within the meaning of Section 2 (j) of the Industrial Disputes Act and therefore the dispute if any between the petitioner and the respondent does not fall within the purview of Section 2 (k) of the Industrial Disputes Act and therefore the court had no jurisdiction to entertain the same.

6. It is further submitted that despite the fact that the respondent had admitted that he had been gainfully employed during the pendency of the proceedings, in his cross-examination, the Labour court reached to the

conclusion that he had not abandoned his services. It is argued that the admission by workman that he had joined the services of other employer from 01.06.1991 clearly establishes the fact that he had abandoned his services and therefore findings of the Labour court is bad in law.

7. It is further argued that the Labour court had failed to take into consideration the documents on record which show that shop was open on the days workman had gone to join services with the respondent, under the interim award and his plea that he could not join it since the shop was closed, is wrong.

8. It is further submitted that since the award was published beyond the period of 30 days as specified in Section 17 of the Industrial Disputes Act, the award is a nullity, unenforceable in a court of law. It is submitted that the award is based on the false testimony of the workman. It is further submitted that Labour Court has wrongly presumed that the management was not in good terms with the workman on the basis of the letter written by the petitioner to Labour Commissioner wherein it had stated that the workman was causing loss to the management. On these contentions, it is submitted that petition is liable to be dismissed.

9. In the counter affidavit, it is submitted by the workman that the

contentions raised by the petitioner are not tenable because the same was not raised before the Labour Court. It is submitted that no objection to the jurisdiction of the Labour Court had been raised by the petitioner before the Labour Court and he has unconditionally submitted himself to the jurisdiction of the Labour court and thus he cannot raise these contentions for the first time before this court.

10. It is further submitted that no letter had been written by the petitioner/management to the respondent/workman calling upon him to join the duties when he absented himself and this fact is admitted by the partner, Sh. B.S. Verma, in his cross-examination when he had stated that address of the workman was not available with the Management and he had not written any letter to report for duty after 01.06.1991. It is further submitted that the petitioner had not allowed the workman to join his duty and that he had not made any false statement on affidavits and that he was never gainfully employed. It is submitted that the bills which had been relied upon by the petitioner were fabricated documents and were not proved on record.

11. On these facts, it is submitted that the petition is liable to be rejected. In the rejoinder, the petitioner has stated that the issue of jurisdiction was raised by him by way of an affidavit in evidence. All the other contentions

in the counter affidavit had been denied and incorrect.

12. In this case, the arguments have been heard on behalf of the petitioner. None for the respondent however have been attending the court.

13. The petitioner has assailed the findings that the workman had not abandoned his services but his services were terminated.

14. The abandonment requires voluntary relinquishment of office by employee. His intention to abandon his services/duties has to be complete and total. The circumstances should be such which points towards one fact that an employee had abandoned his services and that he had such an intention. The plea of the petitioner before the Labour Court was that since the workman had joined the employment of other employers from the next date of his alleged date of termination i.e. 01.06.1991, this fact clearly shows his intention to abandon the services of the petitioner. The workman in his cross-examination had admitted that since the date of termination of the services till date, he had gone to work at other places but had qualified it by saying that those workplaces belonged to his friends and that he had just assisted them in their job. The learned Presiding Officer of the Labour court formulated the question *“Can this admission of workman be treated as circumstances showing that he had abandoned his job?”* The learned

Presiding Officer of the Labour court had reached to the conclusion that the workman had not abandoned the job and had relied on the following evidences:-

- (a) That the workman within 11 days of its alleged termination, had sent the letter of demand dated 12.06.1991 Ex. WW1/1 through UPC (Ex. WW1/3) and by Registered cover (Ex. WW1/4).
- (b) That the management refused to receive it.
- (c) That the workman immediately on 2nd July, 1991 filed his statement of claim which is Ex. WW1/5 before the Labour department.
- (d) That the Labour Inspector alongwith the workman went to the management on 15.10.1991 for reinstatement of workman with the management. The workman again wrote letter dated 19.10.1991 to the management alongwith the copy to Labour Department. This letter Ex. WW1/6 was duly received by management vide acknowledgement Ex.WW1/8.
- (e) That the workman by virtue of his affidavit had stated that on passing of interim award, he had reported for duty on many days w.e.f 06.12.1991 but was not allowed to join his duties till he agreed to withdraw the industrial dispute.

- (f) The letters of the management dated 20.06.1991, 22.08.1991 and 07.11.1991 to the Labour Commissioner, show that the relationship between the management and the workman was tense.
- (g) Admission by the management witness in his cross-examination that he had not sent any letter to the workman asking him the reason of his absence and also asking him to resume his duty. The plea that the address of the workman was not available with the management was found incorrect in view of the fact that the appointment letters issued to the workman were carrying his address.

15. It was on these proved facts that learned Presiding Officer of the Labour Court reached to the conclusion that the workman had not abandoned his services. The Labour court has also held that merely because the workman had sought alternate job to earn money for his livelihood, this fact itself does not show intention to abandon the services of the petitioner specially when the management had not produce any evidence to show that the workman was gainfully employed and was earning better salary than what he was getting with the petitioner.

16. From the above, it is apparent that the findings of the Tribunal are based on the cogent evidence on record. Simply because the

conclusion of Labour court is not the desired conclusion of the petitioner, and does not suit him, does make the findings of the Labour Court illegal or contrary to law.

17. It is an established principle of law that in exercise of the jurisdiction under Article 226 of the Constitution, an order of subordinate court can be interfered with only when there is some error apparent on the face of it or it is perverse or against any law or against the principles of natural justice. No such eventuality exists in this case.

18. This court certainly does not sit as an appellate court in its writ jurisdiction. Court is not required to re-assess and re-appreciate the evidences. Findings of facts cannot be disturbed in exercise of writ jurisdiction

19. The plea raised before this court relating to applicability of Section 2(j), which deals with the question whether the petitioner is an industry, cannot be decided in this petition as this can only be decided on the basis of evidences as it is a question of fact. This contention was not raised before the Labour Court. During course of arguments, plea that award is nullity since published beyond 30 days, was not pressed and dropped.

There exists no ground to set aside the impugned order.

20. It is also contended by the petitioner that the proprietor of the petitioner shop has since died and his wife has also died and that the business has come to a close and that drug license for running the chemist shop was also surrendered. The petitioner has also filed an affidavit wherein he has clearly stated that the drug license of the firm has not been renewed after 31st December, 2000 and also placed the copy of the letter issued by the Assistant Drugs Controller and Licensing Authority stating therein that the license of the petitioner firm stands cancelled and was valid only upto 31st December, 2000. It is also stated in the affidavit that the firm was being run in a rented premise and the said premise had been returned to the landlord in the year 2003 and that the firm had not carried out any business since 30th June, 2000 and as on date has no bank account. It is submitted that in these circumstances the workman cannot be reinstated.

21. In this case, the services were terminated in the year 1991. The last drawn wages were Rs. 1050/- and the respondent has also been engaged in some or other work since date of termination.

22. Keeping in view all these facts and circumstances of the case, I

am of the view that justice would be done to the workman if the compensation be awarded to him. The workman had served the respondent from the year 1973 till 1991 i.e. for almost 18 years.

23. Therefore, I award a compensation of Rs. 25,000/- to the workman in view of the reinstatement and back wages.

**DEEPA SHARMA
(JUDGE)**

FEBRUARY 05, 2015/sapna