

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5163/2002**

Judgment reserved on: 19.03.2015
Judgement pronounced on: 16.04.2015

MANAGEMENT OF M/S SURAJ CINEMA Petitioner

Through: Mr.Ashok Kashyap, Advocate along
with Mr Anand Prakash, Manager,
M/s Suraj Cinema

versus

PRESIDING OFFICER (LABOUR COURT NO.7) & ORS.

.....Respondents

Through: Ms.Ripu Adlakha, Advocate

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide the present writ petition the petitioner has assailed the award dated 20.09.2001 passed by the Presiding Officer, Labour Court No.VII in I.D.No.685/91 whereby the Labour Court held that the services of the workman were illegally terminated and ordered for the reinstatement of the workman with full back wages and continuity of service.

2. It is the management who has challenged the said award. The petitioner has submitted that the award of the labour court is illegal and the error is apparent on the face of the award. It is submitted that the facts and the evidences have also not been properly appreciated by the Labour Court.

It is submitted that the case of the petitioner in written statement was that the workman had left the services on his own and did not report for duty and the petitioner had sent notices asking him to join the duties, but instead of joining duties the workman had settled his accounts and abandoned his services. It is submitted that the petitioner had never terminated the services of the workman. It is submitted that the alleged settlement which the labour court had put emphasis upon, was not the settlement of the dispute between them but it was the settlement of the accounts. It is further submitted that there were certain admissions made by the respondent and contradiction in the evidence of the respondent yet those were not considered by the learned labour court. It is submitted that the findings suffer with illegality and the impugned award is liable to be set aside.

3. In the counter affidavit filed by the respondent no.4/workman, it is alleged that the findings of the labour court does not suffer with any illegality. It is submitted that it was only in the cross examination before the labour court that the management had come out with the false plea that it had paid Rs.3,250/- through the alleged voucher and that the voucher was fake and fabricated document and had no relevancy and there was no such settlement of accounts and there was no other settlement between them at

any point of time. It is submitted that the petition is liable to be dismissed.

4. I have heard the arguments of the learned counsels for the parties.

5. In the present case admittedly there was a relationship of the employer and employee between the petitioner and respondent no.4 and the respondent no.4 was working with the management since 1982 as a lineman at the monthly salary of Rs.500/- per month.

6. As per the contention of the respondent no.4/workman his services were terminated on 23.01.1990 without any rhyme or reason and he, thus, had challenged his alleged termination of services on 23.01.1990 by raising the dispute.

7. The management in his written statement had taken the plea that the workman had abandoned the service on his own and stopped reporting on job and the petitioner had written letters dated 03.02.1990 and 06.02.1990 asking him to join his duties but he did not join his duties and subsequently, he informed them that he was not interested to continue in the job and sought settlement of his accounts vide a voucher.

8. The Secretary, Labour, Government of NCT of Delhi had referred the following industrial dispute for adjudication: (page 71)

“Whether Shri Ved Pal Singh has left his job after full and final settlement of his accounts 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?”

9. The reference has two parts (a) whether Ved Pal Singh had left his job after full and final settlement of his accounts and/or (b) his services were terminated illegally or unjustifiably. The plea of the management was that the workman left his job and did not come to join the duties despite their letters dated 03.02.1990 and 06.02.1990 and subsequently, he came and settled his accounts. The voucher by which the accounts were settled by the workman has been proved as Ex.MW-1/1 before the labour court. The workman had flatly denied his signatures on this voucher Ex.MW1/1. The management called the handwriting expert opinion who gave his expert opinion and proved that the voucher bore the signatures of the workman.

10. English translated copy of voucher Ex.MW1/1 is reproduced as under:

SURAJ CINEMA

Debit voucher No.

New Delhi 21.4.1990

Dr. Arrear Payment a/c

<i>Paid Ved Pal due to full and final settlement clearing full payment</i>	<i>3250/-</i>
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Paid by cash

<i>Rupees 3250.00/-</i>	<i>Total</i>	<i>3250/-</i>
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sd/-
Accountant

sd/-
Partner/Manager
21.4.90

Recd Rupees 3250/-
on account of arrear payment

sd/-
(Ved Pal Singh)

11. From perusal of this voucher it is clear that it is a debit voucher relating to “arrear payment account”. Workman Ved Pal vide this voucher received the amount on account of “arrear payment”. The voucher thus does not show that the workman and management had settled their dispute vide this voucher.

12. Even otherwise, the terms of reference does not speak of full and final settlement of “dispute” by the parties. None of the party had contended at any stage that there was a settlement of dispute. The plea of petitioner all along had been that the workman had abandoned his job and settled his accounts and this is reflected in reference as ***“Whether Shri Ved Pal Singh has left his job after full and final settlement of his accounts....”***. Thus, there was neither a reference nor a plea before labour court that the parties had settled their disputes.

13. The dispute between the parties relates to termination of the employment (as per contention of the workman) or abandonment of service by workman (as per contention of the management) and despite that the labour court had proceeded by framing the question in para 15 of its award in the following manner:

“15. The short question now to be answered is whether the kind of settlement which is before the court in the form of voucher is in accordance with provisions of the Industrial Dispute Act”.

14. It is apparent that the labour court without application of mind and contrary to the terms of reference and pleadings of the parties proceeded to deal with the matter as if there was settlement of dispute by the parties. The award is contrary to the facts, pleas and contentions of the parties. It is also apparent that the labour court has not answered the reference which related to questions whether there was abandonment of the service by the workman or whether his services were terminated. The labour court has concluded his award with the remark ***“In view of the above discussion, I am of the opinion that there was no valid settlement in the eye of law on the basis of which services of the workman were terminated”***, failing to appreciate the fact that none of the party before him had raised the contention that the services were terminated on the basis of settlement. The main issue between

the parties have not been even touched or discussed by the labour court. There is total absence of application of mind by the labour court on the real issue between the parties. The findings are based on conjectures and presumption of facts, neither raised by parties nor referred for adjudication.

15. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court.

16. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in the writ proceedings. An error of law which is apparent on the face of the record can however be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced his finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

17. Section 10 (4) of the I.D.Act requires that when by an order while

referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and the matters incidental thereto. The issue of settlement of dispute was neither referred to nor included in main dispute.

18. The award of the labour court, thus, suffers with patent illegality on the face of it and is hereby set aside.

19. Since the labour court has not recorded any finding on the facts of the case, the matter is remanded back to the labour court with direction to rehear the arguments of the parties and give its findings preferably within two months from the receipt of this order.

20. The writ petition stands disposed of with the above directions.

**DEEPA SHARMA
(JUDGE)**

APRIL 16, 2015

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