

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

% *Judgment Reserved on: July 01, 2015*
Judgment Delivered on: July 06, 2015

+ **LPA 616/2008**

OM PRAKASH SHARMA Appellant
Represented by: Mr.Vinay Sabharwal and
Ms.Neha Sabharwal, Advs.
versus

ONIDA SAVAK LTD. AND ANR. Respondent
Represented by: None

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The appellant Om Prakash Sharma while working with the respondent No.1 Onida Savak Ltd. (in short the Onida) as a supervisor was transferred from Delhi office to Guwahati. Om Prakash wrote letters to the management of Onida on December 18 and 19, 1996 requesting not to transfer his services to Guwahati taking the plea that his wife was unwell and he would not be able to go to Guwahati. Management of Onida declined the request to withdraw the transfer order vide its letter dated December 21, 1996. It is the case of Om Prakash that on December 22, 1996 he fell ill and remained under treatment till January 12, 1997. It is claimed by Om Prakash that he sent the information regarding his illness to the management vide fax letter dated December 29, 1996 and reported to duty on January 13, 1997

with a fitness certificate dated January 06, 1997 but he was not allowed to join the duty. It is further claimed that to make a false claim of non-resumption of duties against Om Prakash, the management of Onida sent him letters dated January 31, 1997, February 12, 1997 and February 20, 1997 asking him to resume duties. Om Prakash again tried to resume duties, however he was not allowed. The management struck his name off the rolls on account of his absence from duty from December 23, 1996 and according to Om Prakash the same amounted to retrenchment which was done without complying with the requirements under Section 25F of the Industrial Dispute Act (in short the ID Act). It is thus claimed that the termination was illegal.

2. In the claim petition Om Prakash also stated that though he was designated as supervisor he never performed supervisory, managerial and administrative duties and only performed the duties of workman such as maintaining statutory record, PF, ESIC, medical insurance, bill processing and other personal matters. Om Prakash further claimed that since he was not relieved from his duty at Delhi, thus he could not have joined at Guwahati and the delay in going to Guwahati was on account of his sickness due to which he remained under treatment till January 12, 1997.

3. Vide the award dated August 27, 2007 it was held that the duties of Om Prakash were that of a workman, however the second issue was decided against Om Prakash that he failed to prove that his services were terminated illegally by the management and thus he was not entitled to any relief. Aggrieved by the award dated August 27, 2007 Om Prakash filed W.P.(C) 8729/2007 which was dismissed vide the impugned order dated January 08, 2008. Hence the present appeal.

4. Learned counsel for the appellant before this Court argues that the

inference of abandonment could not have been legally drawn by the management in view of the repeated request and protest by Om Prakash against the transfer order and for the reason that he reported for duty after his illness on January 13, 1997 and thereafter each time when he received a call letter from the management. Reliance is placed on AIR 1979 SC 582 G.T. Lad and Ors. Vs. Chemicals and Fibres India Ltd. It is contended that assuming though not admitting that Om Prakash was to report for duty at Guwahati and instead he reported for duty at Delhi, however in view of the various request letters and leave application no inference with regard to abandonment could have been drawn. The action open to the respondent was to take disciplinary action for alleged disobedience of transfer order and not to raise an inference of abandonment.

5. Heard learned counsel for the appellant at length. In G.T. Lad (supra) Supreme Court noted that the expression “abandonment of service” is not defined in the ID Act. Thus to constitute abandonment there must be a total or complete giving up of duties so as to indicate an intention not to resume the same. Referring to AIR 1964 SC 1272 Buckingham Co. Vs. Venkatiah it was noted that under common law an inference that an employee has abandoned or relinquished service is not to be drawn easily unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. It was further held that abandonment or relinquishment of service is always a question of intention and normally such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be

determined in the light of surrounding circumstances of each case.

6. Thus in view of the decision in G.T. Lad (supra) cited by the learned counsel for Om Prakash the Labour Court was required to go into the facts to see whether there was any intention to abandon the service or not. The learned Labour Court noted that though Om Prakash pleads that he was unwell and under treatment of the doctor till January 12, 1997 from December 22, 1996 which intimation he sent through fax on December 29, 1996 and had gone to join the duty on January 13, 1997 along with medical certificate, however the management led evidence to show that Om Prakash had taken ₹8000/- as an advance for joining his duty at Guwahati even then he did not join at Guwahati. Further, Om Prakash admitted having received letters dated January 31, 1997, February 12, 1997 and February 20, 1997 and admittedly he did not join the duties at Guwahati.

7. Faced with this situation before the Presiding Officer, Labour Court, Writ Court and this Court learned counsel for the appellant took the plea that since he was not relieved from his duty at Delhi he could not have joined the duty at Guwahati. However, the said argument got negated by the conduct of Om Prakash having obtained ₹8000/- in advance from the management for joining duty at Guwahati. The transfer order was with immediate effect and there was no need of any formal relieving order. As a matter of fact vide letter Ex.MW-1/10 Om Prakash was required to join at Guwahati within 48 hours. Similarly, vide the other letters i.e. Ex.MW-1/11 and Ex.MW-1/12 he was asked to join duty at Guwahati. The receipts of these letters are admitted by Om Prakash and thus the plea that since he was not relieved from Delhi he could not have joined at Guwahati deserves to be rejected out rightly, which has been done by the Presiding Officer and the

Writ Court. We find no reason to take any contrary view. Consequently, the appeal is dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 06, 2015
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