

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

+ **W.P.(C) 16445/2006 and CM No.12577/2008**

% Judgment reserved on 13.04.2015  
Judgement pronounced on: 29.04.2015

M/S ASIAN RUBBER INDUSTRIES ..... Petitioner

Through: Mr S.P. Gautam and Md. Adil Rasheed,  
Advs.

versus

VAKIL & ORS ..... Respondents

Through: Mr Ashwani Kumar Sakhija and  
Mr Puneet Saini, Advs.

**CORAM:**  
**HON'BLE MS. JUSTICE DEEPA SHARMA**

**JUDGMENT**

1. Vide the present writ petition, the Management has challenged the award dated 16.10.2004 in ID No.40/98, whereby an order of reinstatement of the workman was passed along with continuity in service and 50% of back wages at the rate of last drawn wages of Rs. 1800/- per month from the date of his termination, i.e., 11.01.1997, till the date of his reinstatement.

2. The admitted facts of the case are that the workman was working as a piece rate employee with the Management. The plea of the workman before the learned Labour Court (Industrial Tribunal) was that he had verbally demanded his wages according to minimum wages of skilled worker, which annoyed and upon this, the Management, with mala fide intentions

terminated his services on 11.01.1997. He had also taken the plea that the Management was not providing any legal facilities, like appointment letter, attendance register, CL, minimum wages, festival holidays, etc. and he had raised the demand of the same on several occasions.

3. The plea of the Management was that the workman was working as a piece rate worker and the rates had been fixed with mutual consent. The production was recorded and a proper record of it was maintained and the production was the basis of payment of remuneration to the workman. The workman used to submit the bill and after checking the same, the wages used to be paid to him accordingly. The rates were varying from item to item and were reviewed and revised from time to time with mutual consent. He was not regular and so he was paid whatever work he used to do during a particular month. Care was, however, taken that the overall remuneration paid to him during the working month should be in accordance with the wages fixed by the Government from time to time. The case of the Management was that they had never terminated the services of the workman, but, he absented himself from duty and did not join despite their offer to him to join duties and also offered to take him back. It was on these facts that the Labour Court (Industrial Tribunal) had given its findings.

4. It is apparent that the lis between the parties was whether the services of the workman were terminated by the Management on 11.01.1997 when he raised the demand of payment of his wages as per the minimum wages of a skilled worker. In the case of **Shankar Chakravarti vs. Britannia Biscuit Co. Ltd. and Anr.** (1979) 3 SCC 371, a Three-Judge Bench of Supreme Court has clearly held that the Labour Court (Industrial Tribunal) exercises quasi judicial powers. The Court has observed as under:-

“29.           X           X           X

A quasi judicial decision presupposes an existing dispute between two or more parties and involves presentation of their case by the parties to the dispute and if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of arguments by or on behalf of the parties on the evidence (see Cooper v. Wilson), [1937] 2 K.B. 309”

In the supra, the Supreme Court has observed that the rules under the Industrial Disputes (Central) Rules, 1957, which governs the system to be adopted by the Labour Court, clearly confers power upon the Labour Court to admit or call for the evidence and administer oath and where the parties are at variance, for the facility of disposal, frame issues and that the Labour

Court or Industrial Tribunal can also frame an issue and dispose it of as a preliminary issue as held in **Dalmia Dadri Cement Ltd. v. Its Workmen** (1970) LAB IC 350: ILR (1969)2 Punj 7 (P&H HC). Parties have to lead evidence. Section 11C of the Industrial Disputes (Central) Rules, 1957 also confers powers of a Civil Court under the Code of Civil Procedure on the Labour Court or Industrial Tribunal. The Court in the case of **Shankar Chakravarti** (*supra*) has further observed as under:-

“31.           X                   X                   X

The Labour Court or Tribunal would then proceed to decide the lis between the parties. It has to decide the lis on the evidence adduced before it. While it may not be hide bound by the rules prescribed in the Evidence Act it is nonetheless a quasi-judicial Tribunal proceeding to adjudicate upon a lis between the parties arrayed before it and must decide the matter on the evidence produced by the parties before it. It would not be open to it to decide the lis on any extraneous considerations. Justice, equity and good conscience will inform its adjudication. Therefore, the Labour Court or the Industrial Tribunal has all the trappings of a Court.

32. If such be the duties and functions of the Industrial Tribunal or the Labour Court, any party

appearing before it must make a claim or demur the claim of the other side and when there is a burden upon it to prove or establish the fact so as to invite a decision in its favour, it has to lead evidence.

5. In the present case, the parties have duly led their evidences before the learned Labour Court and the learned Labour Court thereafter proceeded to decide the lis.

6. It is also a settled principle of law that a person who sets up a plea, burden to prove that plea would be upon him. In the case of **N.C. John v. Secretary Thodupuzha Taluk Shop and Commercial Establishment Workers' Union and Ors.** (1973)ILLJ366Ker, the Kerala High Court held:

“The burden of proof being on the workmen to establish the employer-employee relationship. An adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship.”

7. Again, in the case of **Swapan das Gupta and Ors. v. The First Labour Court of West Bengal and Ors.** 1975 Lab. I.C. 202 it has been held:

“Where a person asserts that he was a workmen of the company, and it is denied by the Company, it is for him to prove the fact. It is not for the Company to prove that he was not an employee of the company but of some other person.”

8. The ratio of the above decisions is that the burden is upon the person who has put up his case before the Labour Court to prove his/her case in order to succeed and the Labour Court has to proceed to decide the lis of the case. The case of the workman before Labour Court was that his services were terminated by the Management when he demanded minimum wages of skilled worker on 11.01.1997. So, the lis/issue before the Labour Court was “whether the services of the workman were terminated on 11.01.1997 when he demanded payment of his wages as that of minimum wages payable to skilled worker.” The award is silent. There are no findings on this issue. On the other hand, in para 10 of its award, the learned Labour Court proceeded to observe the following lis/issue between the parties:-

“10. Now the only question at this stage remain to be answered as to whether the services of the workman were terminated or not or the workman was absenting as claimed by the Management.”

9. Although the Labour Court has correctly recorded the dispute or the issue between the parties, but, instead of answering the same, the learned Labour Court had proceeded as further:-

“11. In view of persistent efforts made by the workman to join the duties but refusal of the

Management to allow him to join the duties tantamount to termination of his duties. Reliance is placed upon G.T. Lad vs. Chemicals Fibres of India Ltd. 1979(38)95 (SC). In contrast to this the Management has failed to prove on record that he was offered to rejoin the duties unconditionally. The conditions imposed were onerous and arbitrary. The workman thus was justified in not joining the duties riddled with arbitrary terms. From the above it stands established that the services of the workman as claimed by him were terminated w.e.f. 11.01.1997 in violation of provisions of Section 25F and G read with Section 2(oo)(bb) ID Act.”

10. It therefore is clear that no findings are returned by learned Labour Court on the issue “whether the services of the workman were terminated by the Management on 11.01.1997 when he raised the demand of payment of his wages as per the minimum wages of the skilled workman.” The findings of the learned Labour Court are based on the premise that the Management did not allow the workman to join his duties and it tantamount to termination of his services. As per settled proposition of law, the initial burden was upon the workman to prove his termination as the law puts the burden upon him. Termination is a question of facts, needs to be proved and not presumed.

Also, despite the fact that the Management had nowhere disputed the fact that the claimant was their employee, the learned Labour Court harped upon this question whether the workman/claimant was covered under the definition of 'workman'.

11. In the present case, Labour Court has not returned any findings on the issue "whether the services of workman were terminated as alleged by him" rather proceeded to determine the issue whether there was an abandonment of services by the workman, that is how the Labour Court has relied on the findings of Supreme Court in **G.T. Lad vs. Chemicals Fibres of India Ltd.** 1979 (38) 95 (SC) case which deals with the nature and meaning of abandonment of service.

12. In the **Heinz India (P) Ltd. v. Union of India:** (2012) 5 SCC 443, the Supreme Court on the issue of power of High Court for judicial review under Article 226 held as under:-

"60. The power of judicial review is neither unqualified nor unlimited. It has its own limitations. The scope and extent of the power that is so very often invoked has been the subject-matter of several judicial pronouncements within and outside the country. When one talks of 'judicial review' one is instantly reminded of the classic and oft quoted passage from Council of Civil Service Unions (CCSU) v. Minister for the Civil Service (1984) 3 All ER 935, where Lord

Diplock summed up the permissible grounds of judicial review thus:

Judicial Review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.

By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the State is exercisable.

By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer or else there would be something badly wrong with our judicial system....

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because

susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.”

13. In the case of **Swaran Singh vs. State of Punjab** (1976) 2 SCC 868, the Supreme Court reiterating the limitation of certiorari jurisdiction indicated by it in **Syed Yakoob vs. Radhakrishnan** AIR (1964) SC 477 has observed as under:-

“In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice.”

14. Also in the case of **Bhuvnesh Kumar Dwivedi vs. Hindalco**

**Industries Ltd.** (2014) 2 SCC (LS) 437: AIR 2014 SC 2258, the Supreme

Court has held as under:-

“18. A careful reading of the judgments reveals that the High Court can interfere with an Order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts.”

From the above discussion, it is apparent that the award has been passed in violation of settled principles of law. There is an error apparent on record, which needs to be corrected.

15. Since the issue “whether the services of the workman were terminated on demand of the minimum wages as per the skilled worker” requires the appreciation of the evidences already on record, I feel that it would be appropriate in the given circumstances, to remand the matter back to the Labour Court, to return its findings afresh. The matter is thus remanded to the Labour Court for disposal of the matter as per law. It is also desired that

the matter be disposed of within two months from receipt of this order.

16. With these directions, the writ petition stands disposed of with no order as to costs.

17. In view of the above, CM No.12577/2008 also stands disposed of being infructuous.

**DEEPA SHARMA  
(JUDGE)**

**APRIL 29, 2015**  
*BG*