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

Date of Decision: 30th October, 2015

+ **W.P.(C) 7446/2011**

SH. HARI PRAKASH

..... Petitioner

Through:

Mr.Ashok Thaval and Mr.Vishal
Chaudhary, Advs. alongwith petitioner in
person.

versus

SH. VIPIN KUMAR AGGARWAL & ANR.

..... Respondents

Through:

Mr.V.K.Tandon, Adv.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. By way of this writ petition under Article 226 of the Constitution of India, the petitioner impugns the award dated 24.02.2011 passed by the learned Presiding Officer, Labour Court XIX, (East) Karkardooma Courts, Delhi in LIR D No.154/08 whereby the claim petition filed by the petitioner was dismissed without granting him any relief.
2. Brief facts of the case, as borne out from the petition are that the petitioner filed a claim under Section 10(4A) of the Industrial Disputes Act, 1947 (hereinafter referred as 'ID Act') against the management *inter alia* on the allegations that he was employed with the management since 01.10.1987 as Feeder Man on last drawn wages of Rs.4900 per month and performed his duty honestly and diligently to the satisfaction of the management without any complaint, however, the management was not providing him the statutory benefits and instead the management was looking for an opportunity to oust him from service. On 01.12.2007 while he was on duty, he was called in the office and was suddenly asked to resign from service but he refused. Even then his services were terminated without assigning any reason and without payment of wages for the month of

November, 2007. A legal notice of demand was sent through union on 13.12.2007 to which the management did not respond. The workman claimed to be jobless since the date of his alleged termination as such, sought a direction to the management to reinstate him back in service with continuity of service and consequential benefits.

3. The claim was contested by the management on the ground that initially the workman was recruited as a Helper and lastly he was working as a Feeder Man. The workman was issued letter of appointment but he pleaded a false cause of action against the management. In fact, he himself wanted to leave the employment. He even resigned on 21.05.1997 which was not accepted as the management cooperated in settling his home problem. It was denied that the workman was demanding legal benefits or the management was looking for an opportunity to oust him from service. In fact the workman absented himself on 01.12.2007, therefore, the allegation that he was asked to resign and on his refusal his services were terminated was false. It was admitted that the workman has not received the salary for the month of November, 2007 but the management was ready to pay the same. The receipt of demand notice was admitted and it was claimed that a reply to the said notice was duly sent but the workman did not comply with the directions contained therein.

4. After perusing the oral as well as documentary evidence led by both the parties, the Labour Court returned a finding that Sh.Vipin Kumar examined as MW1 by the management had testified that management did not terminate the service of the workman on 01.12.2007, rather he absented himself from 01.12.2007. The management thereafter sent letters dated 07.12.2007, 14.12.2007, 17.12.2007, 27.12.2007, 17.01.2008, 13.02.2008 and 21.07.2008 but the workman neither joined nor replied to the said letters. Pursuant to the legal demand notice, the reply was sent wherein also, the workman was asked to resume his duties but he did not join. Pursuant to the order of the Court, on 04.08.2008 he joined the duties but after joining duty, he did not work at all rather kept on sitting on a stool in the establishment disturbing other workmen also. A letter was sent by the management to the authorised representative of the workman apprising him about the correct facts but no reply was received and the workman did not report for duty with effect from 10.08.2008. The workman admitted in his cross-examination that he did not work with the management from 01.12.2007 till he reported back under direction of the

court. He, however, pleaded his ignorance about receiving of various letters sent by the management or reply to the legal notice. He admitted that after 10.08.2008, he did not file any application in the court informing that management was not taking him on duty. The learned Labour Court observed that the letters dated 07.12.2007 Ex.MW1/2 and 14.12.2007 Ex.MW1/5 were sent by the management to the workman at A-47, Poorvi Jawahar Nagar, Loni, Ghaziabad (U.P.) which was the address given by the workman on his ESI Card Ex.WW1/M2. The other letters were also sent by U.P.C and registered AD and, therefore, it was proved that management had taken immediate steps to inform the workman that he was absenting from duty with effect from 01.12.2007 without intimation to the management and he was directed to report for duty immediately. The reply dated 17.12.2007 Ex.MW1/7 pursuant to the demand notice dated 13.12.2007 sent by the workman through Sh.Suresh Gupta, authorised representative was sent wherein also it was disclosed that the workman was absenting from duty without intimation to the management and he was directed to explain the reasons for his absence and was also asked to resume duty. Under the circumstances, it was observed that the workman was absenting from duty with effect from 01.12.2007 without intimation to the management and did not resume duty despite various letters sent by the management including the reply to the demand notice whereby the management called him to report for duty without delay. The workman admitted having received the wages for the period from 04.08.2008 to 09.08.2008 on 29.09.2008 from the management vide payment voucher Ex.WW1/M4. He also admitted having received the salary for the month of November, 2007 vide payment voucher Ex.WW1/M5. There was no circumstance suggesting that the management even attempted to terminate his service. In fact, the workman at one point of time wanted to resign but due to family problems, the management accommodated him and did not accept his resignation. That being so, it was not a case of termination of service of workman rather the workman himself abandoned his duties, therefore, he was not entitled for any relief.

5. Learned counsel for the petitioner submits that the award is contrary to law as the evidence has not been appreciated by the Labour Court in accordance with law. It was not a case of abandonment rather the petitioner was not allowed to join his duties. No enquiry was conducted while terminating his services. As such, the impugned award

deserves to be set aside and respondent be directed to reinstate the petitioner with backwages with continuity of service and consequential benefits.

6. Per contra, learned counsel for the respondent submits that it was a case where the petitioner himself abandoned the services of the management. The relation between the management and the workman were cordial. That being so, when the workman earlier wanted to resign on 21.05.1997 on personal grounds, his resignation was not accepted by the management and the workman was allowed to continue the services. Thereafter, the workman on his own did not report for duty on 01.12.2007, and thereafter various letters were sent to him calling upon him to join duties but in vain. Even in reply to the legal notice, he was asked to join but he did not do so. Reference was also made to the court proceedings whereby the workman was directed to report for duty on 31.07.2008. Instead of joining on the said date he joined his duties on 04.08.2008 but did not do any work and again started absenting himself with effect from 10.08.2008. He did not even intimate the court that he was not being allowed to perform his duties by the management. It was submitted that the impugned award does not suffer from any perversity which calls for interference. As such, the petition deserves to be dismissed.

7. The settled position of law in respect of interference by the writ courts under Article 226 of the Constitution of India in matters of this nature is that a writ court exercises its power of judicial review well within certain parameters. A series of judgments rendered by the Supreme Court in this context are mentioned below:

1. ***Sadhu Ram v. Delhi Transport Corporation*** : (1983)ILLJ383SC.
2. ***Harbans Lal v. Jagmohan Saran*** MANU/SC/0382/1985 : AIR1986SC302.
3. ***Calcutta Port Shramik Union v. Calcutta River Transport Association and Ors.*** (1989)ILLJ223SC.
4. ***Indian Overseas Bank v. Indian Overseas Bank Staff Canteen Worker's Union and Anr.*** AIR 2000 SC 1508.
5. ***New Age Advertising & Printers v. Rajender Kumar*** 2015 SCC Online Del 6678
6. ***K.V.S.Ram v. Bangalore Metropolitan Transport Corporation*** AIR 2015 SC 998.
8. From a conspectus of the above judgments, the following legal position emerges. The High Courts should not interfere with the awards of Industrial Tribunal on mere

technicalities. Interference is permissible only if the order of the Industrial Adjudicator suffers from an error of jurisdiction, breach of principles of natural justice or is vitiated by a manifest or apparent error of law. Reappraisal of evidence without sufficient reason in law to arrive at a finding contrary to that arrived at by the Industrial adjudicator is not the intent of exercising judicial review.

9. This Court under Article 226 of the Constitution of India cannot undertake the exercise of liberally re-appreciating the evidence and drawing conclusions of its own on pure questions of fact. The findings of fact recorded by a fact-finding authority duly constituted for the purpose cannot be interfered with as long as they are based upon some material relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken.

10. In the instant case, there was sufficient material before the Industrial Adjudicator for recording its finding. Not only are the findings reasonable but the same have been arrived at after proper appreciation of the evidence on record. It is not in dispute that the petitioner was employed with the management since 01.10.1987. According to the workman, the management was not providing him with statutory benefits and when the same were demanded, the management got annoyed and was looking for an opportunity to oust him from service. As such, on 01.12.2007 he was called in the office and was asked to resign to which he declined. Thereupon, his services were terminated without assigning any reason and without payment of wages for the month of November, 2007. This plea is without any substance as when the workman wanted to resign of his own on 21.05.1997, then nothing prevented the management from accepting his resignation if it was willing to terminate the services of the workman. Rather, the case of the management is that due to cordial relation, his resignation was not accepted and he was allowed to continue in service. The material on record reflects that the workman of his own stopped working with effect from 01.12.2007. Thereafter various letters were sent to him asking him to report for duty but in vain. Not only that, in reply to the legal notice of demand also he was asked to explain the reason for his absence and was again called upon to join but the workman did not report for duty and rather filed the claim after a considerable delay. During the pendency of the proceedings, an effort was again made and the workman was asked to join duties on 31.07.2008. Instead of joining on the said

date, he reported for duties on 04.08.2008 but did not work and did not report for duty with effect from 10.08.2008. If his plea that the management did not allow him to work is accepted then nothing prevented him to bring this fact to the notice of the Labour Court who was seized of the matter. All this goes to show that the petitioner had failed to prove that his services were terminated by the management. That being so, there was no question of issuing of any show cause notice or initiating any enquiry against him.

11. The findings of the Labour Court are based on appreciation of evidence produced before it. The said findings cannot be said to be based on no evidence at all, so as to warrant re-appreciation of evidence by this Court. As stated above, the scope of interference in the writ petition is well settled. A writ in the nature of certiorari may be issued only if the findings of the Industrial Adjudicator suffers from any error or jurisdiction or from a breach of principles of natural justice or is vitiated by a manifest or apparent error of law. No such issue has been established in the instant case on behalf of the petitioner.

12. For the foregoing reasons, the award does not suffer from infirmity so as to warrant interference by this Court. As a result the writ petition fails and is accordingly dismissed but with no order as to cost.

(SUNITA GUPTA)
JUDGE

OCTOBER 30, 2015
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