

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

Judgment Reserved on: August 06, 2015

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Judgment Delivered on: August 12, 2015

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LPA 222/2015

DHARMENDRA MISHRA

..... Appellant

Represented by: Ms.Monica Kapoor, Advocate
with Appellant in person.

versus

M/S ECONOMIC TRANSPORT ORGANISATION..... Respondent

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order dated May 07, 2014 allowing the writ petition filed by the Respondent against the award dated July 08, 1999 wherein the Labour Court held that Dharmendra Mishra, the Appellant herein had not abandoned the job and thus he was directed to be provided duty in Delhi with full back wages and continuity in service, Dharmendra Mishra prefers the present appeal. By the impugned judgment though the learned Single Judge held that Dharmendra Mishra had not abandoned the job however, instead of duties at Delhi with full back wages the learned Single Judge directed payment of lump sum compensation of ₹5 lakhs.

2. Dharmendra Mishra joined as a Clerk on September 01, 1969 with the Respondent which is a partnership firm carrying its business of transportation throughout India, thus having branches all over the country. On August 10, 1984 Dharmendra Mishra was transferred to Allahabad whereafter he was retransferred to Delhi on May 10, 1987. Since some of

the employees of the Respondent were misappropriating the funds an FIR was registered on the complaint of Dharmendra Mishra as Inspector wherein one of the accused was his brother-in-law who was ultimately declared a proclaimed offender in the year 1985. On December 07, 1987 Dharmendra Mishra was transferred as Inspector to Bangalore however, he requested for postponement twice which was allowed. In August 1988 Dharmendra Mishra reported for duty at Bangalore but came back to Delhi ostensibly for some clarification on September 17, 1988 and did not join back at Bangalore. Thereafter Dharmendra Mishra wrote various letters and filed a complaint wherein conciliation proceedings started. Finally a reference was made to the Labour Court on the following terms:-

“Whether Sh. Dharmendra Mishra has abandoned his job or refusal of duties by the management at Delhi Office amount to illegal and unjustified termination of his services and if so, to what relief including consequential benefits is he entitled and what directions are necessary in this respect?”

3. In the statement of claim Dharmendra Mishra pleaded that since he exposed the illegal activity of the Management and a fraud of ₹68 lakhs was detected and reported to the police thus he was being victimised. He claimed to be in continuous employment with the Management at Delhi working as Accounts Clerk and that he had no independent work and his entire work was controlled and supervised by the Supervisor Officer. Dharmendra Mishra's claimed that he was sent to Bangalore where he was given a transfer letter to Delhi. Thus he was to report to Delhi office and he was prohibited to go to the office at Bangalore. In his evidence he also pointed out that when he went to Bangalore he was given beatings and

maltreated. Though he was assured security if he joined the duties in Bangalore however, he was not given adequate protection. The termination of Dharmendra Mishra amounted to retrenchment and was in violation of the statutory provisions. Thus he claimed duty in Delhi with full back wages and consequential benefits including damages.

4. In reply the Management stated that Dharmendra Mishra was not a workman since he performed the duties of an accountant and supervised the work of sub-accountants, ledger writers and cashiers. Thus he was not covered under the Industrial Dispute Act, 1947. Further while working as Inspector he was carrying out the duties of inspection of various branches of the Management and thus visited the various branches for clarification and information etc. It was stated that he was transferred to Bangalore in December 1987 where he joined in August, 1988. In September, 1988 he came to Delhi to discuss the FIR registered on a complaint and he was never transferred to Delhi. Even the Labour Court asked him to go and join his duties in Bangalore however, he did not go.

5. Vide award dated July 08, 1999 the learned Labour Court held that considering the facts and circumstances of the case and the letters written by the workman Dharmendra Mishra, it can safely be said that it was not a case of abandonment of service but the workman was prevented from performing his duties fearlessly. He rightly came to Delhi where he was refused to perform the duties. In the absence of the rebuttal evidence, version of Dharmendra Mishra cannot be disbelieved and thus the present case was one where the Management refused him duties at Delhi which amounted to illegal and unjustified termination. Thus an award was passed in favour of Dharmendra Mishra directing the Management to provide him duties at

Delhi and to pay full back wages with continuity of service.

6. The Management/Respondent challenged the award before the learned Single Judge of this Court in W.P.(C) No.6353/1999 wherein vide the impugned order the learned Single Judge held that since the Management has expressed its willingness to take Dharmendra Mishra on rolls on several occasions but in Bangalore which he was not inclined to join thus in the interest of justice and to put quietus to the litigation the learned Single Judge directed that an amount of ₹5 lakhs be paid to Dharmendra Mishra in full and final settlement of all his claims relating to service put in by Dharmendra Mishra since 1969 and the order of the Labour Court was set aside. The learned Single Judge also held that the Respondent/Management had not terminated the services of Dharmendra Mishra and that the award of the Labour Court directing the Management to give duties to Dharmendra Mishra in Delhi was bad. It was also held that the abandonment had not been proved since the same amounts to misconduct however, after September, 1988 differences have cropped up between the parties and they are litigating since then. Thus the present appeal by Dharmendra Mishra.

7. Assailing the impugned order passed by the learned Single Judge learned counsel for Dharmendra Mishra contends that the learned Single Judge awarded a meagre amount as compensation and did not allow the Appellant to join the job with the full back wages and consequential benefits. Since Dharmendra Mishra received constant threats from the Management he was constrained to make a police complaint on July 01, 1987. Though he was transferred to Bangalore office from April 01, 1988 but he could not go there till August 02, 1988 as he was not in a position to travel due to deterioration in Appellant's health due to constant threats from

the Management/Respondent.

8. A perusal of the material on record would reveal that the FIR was got registered by Dharmendra Mishra in the year 1985 and he was transferred to Bangalore on December 07, 1987. He sought postponement of joining Bangalore twice firstly on the pretext that his son was studying in 10th standard and his wife was ill and thereafter his ill health, the said ailment being cervical spondylitis as stated by the learned counsel for the Appellant though no material in this regard was placed. Though Dharmendra Mishra alleges having received threats when he went to Bangalore in August, 1988 however, the letters written to the partners of the Management were of September 17, 1988 after returning from Bangalore to Delhi. The conclusion of the Labour Court was on the basis of the letters Ex.WW-1/41 and Ex.PW-1/42 which shows that they were written on October 04, 1988 and October 18, 1988.

9. The learned Single Judge rightly came to the conclusion that it can be safely inferred that the same was an afterthought after coming to Delhi, if the incident of physical attack had taken place the same was a serious matter and any prudent person would immediately report to the police authority. No material has been placed by Dharmendra Mishra to show that pursuant to physical attack he made complaint at Bangalore. Thus the intention of Dharmendra Mishra was clear to create evidence and not to work at Bangalore which he had been postponing. The learned Single Judge rightly held that despite this material it cannot be held that he abandoned the job in the absence of an inquiry on this count. However the present being a case of loss of confidence of the employer qua the employee in the year 1988 the learned Single Judge, to draw curtains on the issue, directed the Respondent/

Management to pay lump sum compensation of ₹5 lakhs and in the facts and circumstances of the case we concur with the impugned order finding no infirmity therein.

10. Consequently, the appeal is dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 12, 2015
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