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

+ W.P.(C) 5235/2012

JAGROOP RAM AND ORS.

..... Petitioner

Through: Mr.Javed Khan, Adv.

versus

THE SECRETARY (LABOUR) GOVT. OF NCT OF DELHI AND
ORS.

..... Respondents

Through: Mr.Daljinder Singh, Adv. for R2 and
R3

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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29.07.2016

1. The present petition has been filed by the three persons namely Jagroop Ram, Bhagwan Dass and Sat Narain, challenging the award dated June 5, 2010 of the Industrial Adjudicator on the following terms of reference made with regard to 11 persons:

“Whether Sh. Jagroop Ram, Satya Narain, Josh Mathyu, Bhagwan Dass, Ravinder Singh, Somnath, Jamil Khan, Surender Singh, Lallan Gupta, Sunil Chaudhary, Sarwan Kumar Vishwakarma and Amar Singh have been paid their dues in full and final or their services have been terminated illegally and/or unjustifiably by the management and if so, to what relief are they entitled and what directions are necessary in this respect?”

2. It was the case of the three petitioners that they have been working

with both the managements; i.e. (1) M/s. Hydro-Tech Engg. Company; (2) M/s. Anupam Industries, the respondents herein. It was their case that they were not provided with basic benefits which resulted in a general demand made vide the demand notice dated February 18, 1997 to the Labour Commissioner's office. It was their case that, due to this, the respondents got annoyed and refused to take them on duty on February 24, 1997 and terminated their services without notice, without enquiry and without payment of compensation. The petitioners made a complaint to the Labour Commissioner for their illegal termination and despite the best efforts of the Labour Inspector, the respondent-management did not take them back. A further demand notice dated June 2, 1997 was sent but the respondent-management did not give any reply. The petitioners filed a complaint before the Conciliation Officer. The proceedings before the Conciliation Officer failed and hence, reference was made by the Government. The claim was that the direction be given to the respondents to reinstate them in service with continuity of service and full back wages and all benefits as per law. Initially an ex parte award dated July 21, 2003 was passed by the Industrial Adjudicator. It is noted from the award that pursuant to the orders in LPA No. 1085-86 filed by the respondent No. 1, which was allowed vide order

dated February 16, 2006, the ex parte award dated July 21, 2003 was set aside.

3. The respondents have filed their reply, wherein, they have challenged the maintainability of the claim petition. It was stated that Jagroop Ram and Sat Narain have settled their disputes with the respondent-management. The third petitioner Bhagwan Dass had abandoned his services. It was also stated that they have not completed 240 days in the preceding year. It was also stated that Jagroop Ram, Sat Narain and Bhagwan Dass were employed with the respondent No. 1 M/s. Hydro Tech Engineering Company, which is a partnership firm. Jagroop Ram was appointed on April 11, 1996 as Turner and his last drawn salary was Rs. 2101/-, who left his job by taking a settlement amount of Rs. 4500/- on February 21, 1997. He had not completed 240 days. Bhagwan Dass was appointed on December 30, 1996 as Welder. His last drawn salary was Rs. 1843 and he left the respondent No. 1 without information and without intimation on February 2, 1997. He has not completed 240 days. Sat Narain was appointed on May 19, 1996 as Randa Man. His last drawn salary was Rs. 2101/-. He resigned his services on February 16, 1997 after taking a sum of Rs. 4500/- from the respondent.

4. On the pleadings of the parties, the following issues were framed:

- (i) Whether the claimant/claimants had completed 240 days with the management in the preceding year of alleged date of termination?*
- (ii) Whether the workman have settled their claims as claimed by the management its effect?*
- (iii) Whether the services of workman were terminated by the management illegally and/or unjustifiably?*
- (iv) Relief in terms of reference.*

5. It is noted that the petitioners have examined themselves before the Industrial Adjudicator. They have filed their affidavits and 27 documents exhibited as WW1/1 to WW1/27 and were cross examined by the respondents. The respondent No. 1-management examined one witness MW1 and had relied upon Ex.MW1/1, Ex.MW1/2, Ex.MW1/A and Ex.WW1/M4.

6. Insofar as the issue No. 1 is concerned, the finding of the Industrial Adjudicator was that the petitioners had not summoned any records from the management or from any other office to show that they were in service with the respondent No. 1-management for about 3-4 years and they had completed 240 days of their work preceding year from the date of their termination. The Industrial Adjudicator has held that they could have proved the fact that they were in the services of the respondent No. 1-management by producing appointment letter by showing some written agreement or circumstantial evidence or incidental records in the nature of

attendance register, salary register, leave records, deposit of provident fund contribution and employee State contribution etc. The same could have been produced by the respective departments on the application of the workmen. He had observed that their affidavits/claim petitions cannot be considered as sufficient evidence in view of the judgment in the case of ***Range Forest Officer Vs. S.D.Hadimani, 2002 II S.L.T. 154.*** He also noted the admission on the part of the petitioners that they do not possess any documentary evidence to show, they have worked with the respondent-management for 3/4 years prior to the date of termination.

7. The plea on behalf of the petitioners that the respondent No. 1-management had not produced the attendance register or payment register in the Court, hence, adverse view be taken against the respondent No. 1-management, was rejected by the Industrial Adjudicator by relying upon on the judgment of the Supreme Court in the case of ***Manager, Reserve Bank of India Vs. S. Muni and Ors., 2005 (5) SCC 100,*** wherein, the Supreme Court has held, an adverse inference can be drawn against the respondent-management for non-production of the register and other relevant documents if the respondent-management is asked to produce the same but failed to produce. In other words, the Industrial Adjudicator has primarily noted that

in the absence of an application, no order for summoning the record was passed so no adverse inference could be taken against the respondent-management.

8. Further, the Industrial Adjudicator by referring to the record of E.S.I., the date of appointment of the petitioners being April 11, 1996, December 30, 1996 and May 19, 1996, has held that they have failed to show from the records, they were working with the respondent-management for 3/4 years and had completed 240 days of service prior to the date of termination. He decided the issue No. 1 against the petitioners.

9. On the issue No. 2, it was the finding of the Industrial Adjudicator that the respondent-management has able to prove the documents Ex.MW1/M3 and Ex.MW1/M4, wherein, the petitioners Sat Narain and Jagroop have admitted their signatures on the same, which suggest, they have taken the settlement amount from the respondent-management. He has also given a finding that Bhagwan Dass has left his services. He decided the issue with regard to the three petitioners, in favour of the respondent-management.

10. On the issue No. 3, the Industrial Adjudicator, noting that the workmen have failed to prove that they have worked with the respondent-

management for 240 days prior to February 24, 1997, the date of termination, decided the issue against the petitioners and denied the reliefs.

11. The only submission which has been urged by the learned counsel for the petitioners is that the Industrial Adjudicator should have drawn an adverse inference against the respondent-management when the witness of the respondent-management MW1 Dinesh Garg in his deposition, has said that the attendance register and payment register are not available with the management being an old record, approximately more than 10 years. It is his submission, that, the non-filing of the application by the petitioners for summoning the records from the respondent-management could not have been fatal in view of the deposition of the management witness. I am unable to agree with this submission of the learned counsel for the petitioners for the reasons that; (1) the obligation to summon the record was on the petitioners; (2) the plea is afterthought as, the petitioners could not have foreseen, such a statement shall be made by the witness of the respondent-management during his evidence; (3) there is no order of the Court against the management to produce the records. In the absence of any application, there was no order of the Court against the management for summoning the record. Adverse inference could be taken only if there is an order to the

management to produce the record and the same was not produced. I note for benefit, the judgment of the Supreme Court in the case of ***Manager, Reserve Bank of India Vs. S. Muni and Ors. (supra)***, wherein, in para 24, the Supreme Court, by relying upon its earlier judgment in ***Municipal Corporation Vs. Siri Niwas, (2004) 8 SCC 195***, has held as under:

“24. The question came up for consideration before this Court recently in Siri Niwas wherein it was held: (SCC p. 198, para 15)

15. A Court of law even in a case where provisions of the Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be unjustifiable on some reasonable grounds.”

12. I also note for benefit, the judgment of the Supreme Court in ***Range Forest Officer Vs. S.D.Hadimani (supra)***, wherein, in para 3, the Supreme

Court has held as under:

“3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an “industry” or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratamsingh Narsinh Parmar. In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr. Hegde appearing for the Department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months

from today”.

On a consideration of the facts, it is clear, that Sat Narain and Jagroop have left the management after settling their dues. It has also come on record that Bhagwan Dass has left his services. Further, it is also proved, that, they have not put in 240 days of engagement before termination.

13. In view of the above, I do not see any merit in the writ petition. The petition is dismissed.

V. KAMESWAR RAO, J

JULY 29, 2016/akb