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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P.(C) 6105/2016 & CMs 25010-11/2016**

M/S JAINS THE PRINTING PEOPLE ..... Petitioner  
Through: Mr.Jaskaran Singh, Adv.

versus

MOHD NIZAM ..... Respondent  
Through:

**CORAM:**  
**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**ORDER**  
% **18.07.2016**  
**CM 25011/2016**

Exemption allowed, subject to all just exceptions.

Application is disposed of.

**WP(C) 6105/2016 & CM 25010/2016(stay)**

1. The challenge in this writ petition is to an award dated 14<sup>th</sup> May, 2016 passed by the Industrial Adjudicator on the following reference made by the appropriate Government:-

*“Whether service of Md. Nizam, S/o Md.Zukruddin Khan has been terminated illegally and /or unjustifiably by the Management, and if so, what relief is he entitled and what directions are necessary in this respects?”*

2. Suffice to state that the reference has been answered by the Industrial Adjudicator holding that the respondent was engaged by the

petitioner in the year 1999 and the respondent never left the services of the petitioner and his services were terminated without enquiry, which is illegal and unjustified and thereby granting an amount of Rs.80,000/- as retrenchment compensation in lieu of reinstatement, back wages and all other consequential benefits/dues. The case of the respondent before the Tribunal was that he was appointed in January, 1999 as a 'Printer Operator' and his last drawn salary was Rs.5,500/- per month. According to him, the petitioner had not provided any legal facilities such as appointment letter, casual leave, minimum wages/double overtime etc. He had also stated that the petitioner had not paid wages for the month of November-December, 2012 and ten days of January, 2013, which resulted in a complaint to the Asstt. Labour Commissioner/Labour Inspector, who visited the premises of the petitioner and directed the petitioner to produce the record, which the petitioner failed to produce. He has stated that legal notice dated 11<sup>th</sup> January, 2013 was sent through registered A.D/speed post with a request of reinstatement with all other dues. The said demand letter was not replied to by the petitioner.

3. The petitioner in its reply had stated that it had never

terminated the services of the respondent but it was the respondent who left the services voluntarily without any prior information, in the month of January, 2013. It is further stated that the respondent used to take advance from the petitioner and at the time when he left his services, an amount of Rs.19,000/- was due towards the respondent. It is also stated that the respondent is gainfully employed as he is doing his own business identical to the business of the petitioner.

4. The Industrial Adjudicator framed the three questions, which are as follows:-

- (i) Whether the workman jointed the service of the Management in the year 1999;
- (ii) Whether the workman was absent from duty from December, 2012 without any intimation and thus voluntarily left the job in December, 2012 on his own;
- (iii) As per the terms of reference;
- (iv) Relief.

5. On issue no.1, the Industrial Adjudicator held that the respondent in his claim statement as well as in his evidence by way of an affidavit has claimed that he was employed with the petitioner

in 1999 and no appointment letter, I-card were issued to him. It has also come in evidence that the petitioner has not issued any salary slip, ESI and PF documents. He has denied the suggestion that he was employed with the petitioner in the year 2009 and not in 1999. On the other hand, the proprietor of the petitioner had produced himself as Management witness and has stated that the workman was absorbed in service in the year 2009. He admitted that no appointment letter was issued to the respondent. The Industrial Adjudicator on this issue in paragraphs 10, 11 and 13 has held as under:-

*“10) It is contended by the Ld. ARW that since the workman has claimed himself in the employment with management and alleged that he was not given any appointment letter or any documents showing employment. Undoubtedly, the onus is upon the workman to prove that he was employed with management in the year 1999 but if the workman has alleged that he was not given any documents showing his employment by management itself.*

*11) On the other hand, management has simply denied that workman was working only since 2009 but no documents has been proved by management to support its contention neither the wages register, muster role, attendance register etc. or any other document was proved by the MW-1 in his testimony to prove that workman's name was not mentioned in their documents. To this effect, I will turn to section 114 of Evidence Act, 1872 wherein it is held that : **Court may presume existence of certain fact:***

*“the Court may presume the existence of any fact which it thinks likely to have happened regard being had to the common*

*course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”*

*(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.:*

*13) Now reverting back to the case, the workman has deposed that he is employee of the management since 1999 and that he was not given any appointment letter. The management to produce document in rebuttal of contention of workman but management has failed to produce the same, therefore, I decide the issue no.1 in favour of the workman.”*

6. From the above, it is noted that the Tribunal has primarily considered the fact that the Management has not produced documents to support its contention that the respondent was working since 2009. It relied upon the judgment of this Court in WP(C) no.7267/2012 decided on 21<sup>st</sup> May, 2015 in *M/s Shree Ji Sarees Through its Proprietor Sh.Pankaj Jain vs. Ved Prakash Sharma*. No doubt, that the workman had not produced any evidence to show that he was engaged in the year 1999 despite having onus and the judgment relied upon would not help the case of the workman, it is also noted that the Management had also not produced any evidence with regard to the fact that the respondent was absorbed in the year 2009. The Industrial Adjudicator has drawn a presumption in favour of the respondent. On issue nos.2 and 3, the following are the findings: -

*“14) The management in written statement has stated that management never terminated the service of workman but the workman himself left the service voluntarily of his own without any prior information in the month of January, 2013. It is further stated that the workman used to take advance from management and at the time when he left the service Rs.19,000/- was due towards the workman.*

*15) On the other hand, the workman in his testimony has deposed that he was terminated illegally and/or unjustifiably by the management without any notice/charge sheet nor any domestic inquiry conducted by management.*

*16) The workman in the cross examination has also denied that he left the job. On the direction of court the workman went to join duty but he was not reinstated in service. He further deposed that he was asked to go to the house of employee but he denied that he did not go to the house of management despite direction of Sh.Dinesh Kumar. He denied the suggestion that he was asked to sign on attendance register with mentioning time of his arrival but he refused to sign on the same. He voluntarily stated that he was asked to sign on blank papers which he denied to sign.*

*17) The contention of management that workman had remained absent from duty from 10<sup>th</sup> January, 2013, under such circumstances, it was the duty of management to issue notice to workman asking him to resume duty. If a permanent worker working for a long time with the management remained absent unauthorizedly/one notice of absenteeism is minimum requirement before his termination. The management in written statement as well as through testimony of MW1 has deposed that no letter was ever sent by management directing the workman to join duty. Even management failed to produce document pertaining to service record of workman stating that the same including the balance sheet of the relevant period were lost. However, despite directions of the court other documents including the balance sheet were not produced clarifying on subsequent date that no balance sheet was being prepared by the company, thus the contrary stands are taken by the management on different days*

*only highlighting the falsity of averment. Further in the absence of documentary evidence, oral evidence of co-worker could have been produced which management failed to prove that workman had voluntarily left the job in the year 2013. It is admitted fact that management had not conducted any domestic enquiry against the workman for his absence. Termination of a permanent workman even if he is absent unauthorizedly without holding domestic enquiry is illegal. In case **Hindustan Associates Engineer Pvt. Ltd. Vs. Sh. K.K.Aggarwal & Ors.2011-LLR-312**, it has held that:*

*“Plea of the management that the workman has abandoned the job of his own accord would not be tenable since no evidence was led and also in response, the management did not send offer to the workman to resume his duty. Even in the case of abandonment of employment by a workman, holding of enquiry is imperative.”*

7. As noted above, the relief which has been granted by the Industrial Adjudicator is a compensation of Rs.80,000/- and on failure to pay the sum within 30 days to pay an interest at 8% per annum, on a finding that the respondent is claiming back wages for the period between 1999 to 2012 and the fact that the respondent is engaged in his own business. Assuming that, the respondent was engaged by the petitioner in the year 2009 and continued to be engaged till 2013 and thereafter raised an industrial dispute, which was finally decided in 2016, still for three years of employment and four years of litigation has resulted in compensation of Rs.80,000/- this Court is of the view that the ultimate relief granted be not interfered with in exercise of its

power under Article 226 of the Constitution, as the same is reasonable.

8. The petition as well as the applications are dismissed.

**V. KAMESWAR RAO, J**

**JULY 18, 2016**  
**RN**