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

+ LPA 6/2014

SH BALRAM

..... Appellant

Through: None.

versus

M/S GULF OIL INDIA LTD

..... Respondent

Through: Mr Ajay K. Dutta and Mr Pradyumna
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **21.03.2016**

None for the appellant. Even on the previous date of hearing, there was no appearance on behalf of the appellant.

1. The appellant is aggrieved by an order of the learned Single Judge which upheld an award of the Labour Court. The Labour Court was called upon to answer a reference; firstly as to whether the appellant was a workman and secondly if he was entitled to the relief of reinstatement. The respondent-employer M/s Gulf Oil India Ltd., had contended that since the appellant had abandoned his services, the question of reinstatement did not arise. The facts of the case are that the appellant was working with respondent/employer as EDP Assistant. He alleged that on 26.04.2001, his services were illegally terminated and that he was reinstated on 28.05.2001, but, again

terminated on 29.05.2001 on the “false plea of transfer from Delhi to Chennai”. The appellant further alleged that no employee of Assistant level would be transferred outside Delhi and contended that the transfer order dated 16.04.2001 was allegedly served on him on 04.06.2001 in order to create a false plea. In reality, he was terminated from the services of his employer. The employer contended firstly that the appellant was not a workman since his annual emoluments were in excess of Rs.1.2 lakhs. It was contended that his service conditions were governed by a contract dated 02.06.1995. The terms of appointment according to the employer clearly stipulated that he could be transferred anywhere within India. The appellant workman joined on 12.06.1995 as Data Entry Operator and at the time of leaving the services of the respondent, he was working as EDP Assistant. The employer further submitted that on 23.01.2001, the workman was transferred to Chennai—a letter which was served on him on 27.01.2001. He sought three months’ time to join his service in Chennai by letter of 31.01.2001. This was granted by the employer through a letter dated 01.02.2001 to the extent of one month. The time was subsequently extended to 04.06.2001 on sympathetic grounds. However, there was a review since there was shortage of staff. The appellant was asked to join Chennai on 16.04.2001, but he did not do so and sought leave on one pretext or other and even contended that he joined his duty in Delhi on 21.05.2001. The respondent-employer referred to exchange of letters between itself and the appellant to demonstrate that he was lawfully transferred and that contrary to the instructions, he did not report to

Chennai.

2. The Labour Court in its award considered the materials on record—the transfer order of 23.01.2001 (Ex. WW1/M5), the correspondence between the parties as well as the terms and conditions embodied in the appointment letter issued to the appellant (Ex.WW1/M4). After considering these and the contentions of the parties, it was held that the transfer was legal and within the terms of the appellant's conditions of service. The Labour Court also found that the appellant was a workman. Having regard to the merits of transfer, it was held that he was not entitled to the relief of reinstatement.

3. Thereafter, the learned Single Judge on an appreciation of the entirety of circumstances, upheld the award of the Tribunal stating as follows:-

“7. It is trite law that findings of fact returned by the Industrial Tribunal or Labour Court, on appreciation of evidence, cannot be interfered with by High Court in exercise of its power of judicial review under Article 226 of the Constitution of India by re-appreciating the evidence. This Court can interfere with the Award in case it is shown that same is based on no evidence or is perverse or suffers from any manifest error of law. In the instant case, findings of fact returned by the Industrial Adjudicator on appreciation of evidence cannot be said to be based on no evidence nor the same can be termed as perverse. Findings of facts have been returned upon critical scrutiny of evidence adduced by the parties. Ocular as well as documentary evidence has been considered by the Industrial Adjudicator to conclude that petitioner had abandoned his job, since he did not join at

Chennai despite several opportunities granted to him by respondent no. 1.”

4. The appellant submits that the proceedings before the Labour Court were vitiated with respect to violation of mandatory provision under Section 36(3). The appeal relies upon an order made by the learned Single Judge at the time of entertaining the writ petition on 13.07.2012 which had recorded *inter alia* that Section 36(3) had been followed and that the petitioner's services were terminated even before the joining time had lapsed. The appellant further urges in his the grounds before this Court that he preferred an application on 14.10.2003 under Section 36 of the Industrial Disputes Act to prevent the appearance of a legal practitioner on behalf of the respondent, but no order was made. Reliance is placed upon Section 36(3) which is to the following effect:-

“36(3):- No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.”

5. It is submitted in the pleadings of the appeal that the learned Single Judge committed an error in not appreciating the overall circumstances, particularly that after permitting joining time till 04.01.2001, the employer could not have curtailed it and proceeded to treat the appellant as having been terminated with effect from 26.04.2001.

6. The appointment letter issued to the appellant on 03.06.1995 *inter alia* states as follows:-

“Transferability: Your services are liable to be transferred by the Company at its discretion to any of its establishments in any place in India.”

7. The Labour Court has found that the transfer order was made on 23.01.2001; the appellant received it on 27.01.2001 and sought extension by his letter of 31.01.2001 (Ex.WW1/M6). The Management granted the time through its letter dated 01.02.2001 (Ex.WW1/M7) up to 01.03.2001. Later, by letter dated 27.02.2001 (Ex. WW1/M8), the time was extended to 04.06.2001. The petitioner apparently wrote several letters/communications seeking relief. Ultimately by letter of 02.04.2001, the Management because of the dearth of staff and since it urgently required the appellant's services required him to report for duties at Chennai on 16.04.2001 instead of 04.06.2001. A copy of this letter was placed on record as mark 'M-1'. The Management further addressed a letter dated 25.05.2001 (Ex.WW1/M11). The Management directed him to report immediately to Chennai failing which necessary action would be taken. Yet another letter Ex. WW1/M12 was issued on 26.06.2001. Despite these, the appellant did not report for duties. All these circumstances persuaded the Labour Court to uphold the Management's contention that the workman had consciously and wilfully abandoned the services. These are findings of fact; all that the learned Single Judge did was to adhere to established principles in holding that in the absence of patent error or glaring misappropriation of the circumstances, findings of fact referred by competent tribunal would not be interfered with in writ proceedings. In view of such

finding, this Court sees no reason to interfere in exercise of its appellate jurisdiction.

8. As far as the submission with respect to violation of Section 36(3) goes, although the appellant urges that this ground was expressly taken in the writ petition, there is nothing on the record to show that it was in fact urged during hearing. Furthermore, there is nothing on the record to show that the application though made in 2003 was ever pressed seriously. By all accounts, the findings and decision of the award of the Labour Court are based on the documentary evidence of the parties—to some extent by oral testimony of the witnesses. Having regard to these, it is difficult to perceive that in the absence of any decision on Section 36(3), the appellant would have prejudiced the ultimate findings of the Labour Court in the award.

9. For the above reasons, this Court is of the opinion that there is no merit in the appeal and the same is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 21, 2016

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