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

% Judgment delivered on: 29.09.2016

+ **W.P.(C) 8823/2014**

RAKESH KUMAR Petitioner
Through: Mr. Vineet Sharma and Mr. Puneet
Sharma, Advocates.
Versus

MANAGEMENT OF M/S. D.K. GARMENTS Respondent
Through: Mr. Rohit Singha, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This petition impugns the order dated 23.08.2013 passed by the learned Labour Court-XIX, Karkardooma Courts, Delhi in LIR No.01/2009, whereby the petitioner was held guilty of misconduct and abandonment of service. Hence, his claim for reinstatement in service and back wages was dismissed.

2. The petitioner claims to have been worked with the respondent from 1988 till 2006, when his services were terminated. The following four issues were framed on 29.05.2009:-

- “1. Whether the workman has been employed continuously for a period of 240 days with the management in the preceding year of his termination? OPW
2. Whether the services of the workman have been illegally terminated? If yes, to what relief the workman is entitled? OPW

3. Whether the workman has indulged in unfair labour practice and as such not entitled for any relief?
4. Whether the workman himself did not report for duty with the management and was not interested to work for the management? OPM”

3. Issue No.1 was determined in favour of the petitioner.

4. Issue No.3 was determined against the petitioner on the ground that the documents, which were given by the Management to the petitioner, should have been returned promptly. However, the same have not been returned despite the Management asking for it. The workman admitted that he was in possession of the said documents but denied that they were stolen by him. The impugned order discussed this issue and came to the conclusion that insofar as the documents pertaining to the Management, it was the duty of the workman to return the documents as soon as possible and he could not have retained their custody for an endless period. Even till date, the said documents have not been returned by the workman.

5. On issue No.4, as to whether the workman had himself not reported for duty and that he was not interested in working for the Management, the impugned order decided against the workman on the ground that despite him being invited by the Management to join the duty on 13.03.2009, the workman failed to do so. Indeed, on the basis of the deposition of the Labour Inspector in this regard, the Court observed that:-

“11. In the cross-examination the workman submitted that he reported for duty at 2 PM on 13.3.2009 whereas the area Labour Inspector examined by the workman as WW3 in his cross-examination, deposed that he went with the workman to the management between 10 and 10.30 AM and stayed there for about half an hour and got his attendance marked. He further

deposed that no incident of rebuke or abuse by the management to the workman took place in his presence. The management also relied upon an information Ex.MW1/5 (colly.), received under RTI Act regarding action on DD No. 46B lodged by the workman and as per the report from PS Gandhi Nagar no incident as alleged, could be verified during the investigation which shows that a false complaint was lodged by the workman.

12. Apart from the aforesaid, it is also to be observed that even during evidence, the workman was offered to join duties by the management but he refused alleging that management is indulged in abusing and violence. However, in further cross-examination he deposed that during his employment with the management he was never given any beatings but only faced misbehaviour for which he never lodged any complaint. This further shows about the false plea taken by the workman. Lastly, he deposed categorically that he was not willing to join duty with the management.

13. Abandonment is a state of mind which has to be deciphered from the acts of the workman. The repeated offers made by the management calling upon the workman to join duties but his evasiveness in joining the duties and making counter allegations against the management clearly shows his intention of having abandoned the job with the management. He had even admitted during his cross-examination having received letter dt. 17.3.2009 of the management Ex.WW1/M1 vide which the management had again called upon the workman to join duty but he failed to join. The above facts clearly show his intention of abandoning his job.”

6. The learned counsel for the petitioner submits that the petitioner was not allowed to join his duties, instead he was abused and pushed around by the Management, was threatened with dire consequences and even sent away. He refers to a complaint filed with the Police Station in this regard.

However, the Court would note that the said complaint does not mention him having reported for duty alongwith the Labour Inspector, whose evidence was led on behalf of the workman as WW3. The Labour Inspector had deposed that at about 10:00 am or 10:30 am on 13.03.2009, he alongwith the workman had reached the shop of the Management to get him rejoin the service and that no incidence of rebuke or abuse took place at the place of work. Whereas in his cross-examination, the workman has deposed that he had reported for duty at 2.00 pm on 13.03.2009. His deposition is evidently not in consonance with that of his own witness WW3. There is no mention in the police complaint of the fact that the Labour Inspector accompanied him to enable him to join the duty. Hence, the said contention of the petitioner that he was pushed around and was not permitted to join the duty is untenable. On the basis of settled law, if a workman, who started absenting himself from duty and abandoned work, the Management cannot be held responsible for his consequent removal of service.

7. In the circumstances, the Trial Court had concluded that the workman had abandoned his job and did not report for duty as he was not interested in working with the Management. Accordingly, issue No. 4 was answered in favour of the Management.

8. This Courts finds no anomaly in the reasoning or the conclusion arrived at in the impugned order. The petition is accordingly dismissed.

(NAJMI WAZIRI)
JUDGE

SEPTEMBER 29, 2016

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