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

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Date of Decision: 4th October, 2016

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W.P.(C) 8321/2016 & CM No.34495/2016

NIRULAS CORNER HOUSE PVT LTD.

..... Petitioner

Through: Mr. Hari Shankar Kanujia and
Mr. Chetanya Puri, Advocates with
Ms. Pooja Sharma, AR in person.

Versus

JITENDER KUMAR PANT

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The petitioner is aggrieved by the impugned Award dated 12.01.2016 passed by the Labour Court in ID No.136/10/96, which has directed a lump sum compensation of Rs.2,00,000/- to be paid to the respondent/workman on the ground that his services were terminated for a solitary incident of absence from duty. Indeed, despite a resolution between the parties, the respondent was not permitted to join the duties. In the circumstances, though his removal from service was not held to be illegal but the punishment was unjustifiable. Since the workman has started working elsewhere, the aforesaid lump sum amount of compensation was awarded to him only for the period for which he remained unemployed.

2. The learned counsel for the petitioner submits that although a solitary incident of absence from duty is sufficient for the removal of a workman

from service, nevertheless, in the present case, there was not only one incident when the workman himself remained absent from duty. He further submits that the petitioner remained absent from duty not for one day but for a number of days.

3. However, the aforesaid statement of the learned counsel for the petitioner is untenable from the reasoning in the impugned Award, which holds as under:-

“14. On the second ground, Id. ARW argued that entry of the claimant was banned in the premises of the management and that is why he could not mark his attendance. On the other hand, it has been argued by Id. ARM that claimant has failed to prove that his entry was barred. The first correspondence done by the claimant with the management after 27.08.1995 is Ex. WW2/3 dated 01.09.1995. In that correspondence, he mentioned four reasons of his dis-satisfaction with the management. The first reason is that there was variation in his pay. The second one is of frequent transfer. Third one is demotion to lower post. Fourth and last one is refusal by management for attendance and duty. It is pertinent to mention that letter Ex. WW2/3 was written by the claimant to management in response to transfer order dated 25.08.1995. If the management had banned his entry or was not allowing him to mark his attendance, he should have mentioned that fact as the ground No.1 for his dis-satisfaction with the management. Instead of doing so, he mentioned that ground in the last. It shows that the main reasons of dis-satisfaction with the management were variation in pay, frequent transfer and demotion. As per his evidence and document, he was refused duty by F & B Manager Mr. Subhash Sethi. The claimant had filed statement of claim Ex.WW1/MI before Conciliation Officer on 06.10.1995. It is mentioned in para No. 5 of Ex. WW1/MI that F & B Manager Mr.Subhash Sethi had demoted him orally on 27.08.1995 and when he asked the reason, he refused him to punch the

card for attendance. It is further mentioned that thereafter, he was visiting the management regularly, but he was not allowed to mark presence. Such assertions show that his entry was not barred in the premises of the management. It is mentioned in para No. 9 of Ex. WW2/M1 that he had visited the management on 19.09.1995. On that day, he was asked by Mr. Subhash Sethi to submit his documents so that he may discuss his case with seniors and colleagues within 3-4 days after 19.09.1995. It proves that his entry was not banned before 19.09.1995. He did not furnish explanation why he did not do any duty before his entry was banned. Mr. Subhash Sethi had demoted the claimant and had also issued transfer letter. Despite it, why did he believe him by submitting original documents with him? The claimant did not furnish any explanation. Moreover, there are some purchase receipts Ex. WW2/7 collectively. These have been relied upon by the claimant and his AR argued that his client had visited the management several times for duty, but the management did not allow him to mark presence. Such plea is contradictory to the plea of banning of entry. These receipts are dated 04.09.95, 21.09.1995, 25.09.1995, 26.09.1995, 27.09.1995, 29.09.1995, 30.09.1995, 05.10.1995 and 10.10.1995. If these receipts are acted upon in favour of the claimant, these prove that the claimant's entry was not banned in the premises of the management till 10.10.1995. So, this ground also fails.

15. The third ground is of demotion. Ld. ARW argued that claimant was initially appointed as Sales Assistant and he was promoted as General Assistant in the year 1991. Mr. Subhash Sethi, F & B Manager demoted him as TM-5 and due to that reason there arose dispute between the claimant and the management. He further submitted that designation of TM-2 is equivalent to General Assistant and designation of TM-5 is equivalent to Sales Assistant. It is mentioned in letter Ex. MW3/2 dated 10.09.1993 that with a view to streamline the organizational structure based upon skill proficiencies, it had been decided to introduce the Team

Member concept w.e.f. 10.09.1993. Accordingly, the claimant was being re-designated as Team Member-5 (TM-5). That letter proves to the hilt that claimant was re-designated as TM-5 in the year 1993 and not in 1995. That fact was admitted by the claimant in statement of claim Ex. WW1/M1 also filed before Conciliation Officer. It is mentioned in para No. 4(d) of Ex. WW2/M1 that the management had suddenly demoted him as TM-5 without any reason in October, 1993. These documents prove that re-designation of the claimant was on 10.09.1993 and not on 25.08.1995. All the correspondences like Ex. WW2/3, Ex. WW2/4 and Ex. WW2/5 made by him with the management about demotion on 27.08.1995 are absolutely false. The proper time for the claimant to agitate against re-designation was in September, 1993. He had no occasion to agitate after transfer order on 25.08.1995. So, the claimant has failed to justify any reason for non-joining the management at the transferred place.

16. In view of above discussion, the management has successfully proved misconduct against the claimant.

17. MW3 was asked in cross examination whether there was any other incident of absence against the claimant and she replied that she cannot say whether the claimant ever absented from duty prior to 1993 as she had to check up the documents. Thereafter, the management did not place on record any paper showing any incident of absence of the claimant. MW3 did not give any satisfactory reply whether claimant was promoted or not. MW4 deposed that he was not sure, but possibly the claimant was promoted once. On previous absence, MW4 deposed that he cannot say whether the claimant absented from duty prior to 25.08.1995. From such kind of evidence, it transpires that there is only one incident of claimant's absence from duty. For one solitary incident, termination of services is the excessive punishment disproportionate to the misconduct proved against him. So, it is held that termination of services of claimant is not

illegal, but it is unjustifiable.”

4. From the above, it is clear that no evidence was led by the petitioner to show that the respondent/workman was absent on any date prior to 25.08.1995. During the course of hearing, the learned counsel for the petitioner was asked whether the records could show any other incident when the respondent/workman remained absent from duty. The response has been in the negative.

5. Insofar as the learned Trial Court held that there was a solitary incident of petitioner's absence from duty, for which the precipitate punishment of removal from service was visited upon him, the learned Trial Court has rightly held that it was excessive punishment being disproportionate to the misconduct proved against the respondent especially taking into consideration that he had worked for about seven years with the petitioner. He had joined the petitioner management on 04.04.1989 and his services were confirmed in October, 1989 after the successful completion of a probation period of six months. It is under these circumstances that a lump sum compensation of Rs.2,00,000/- was imposed upon the management. The Court finds no reason to interfere with the impugned Award.

6. The writ petition alongwith pending application is dismissed accordingly.

(NAJMI WAZIRI)
JUDGE

OCTOBER 04, 2016
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