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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 11414/2015 & CM 30078/2015**

M/S Y.I. INTERNATIONAL PVT LTD Petitioner
Through: Mr.Achin Goel, Adv. for Mr. Rakesh
Kumar, Adv.

versus

RAMESH Respondent
Through: Mr.R.K.Jha, Adv.

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

ORDER
% **01.08.2016**

1. The challenge in this writ petition is to the award dated 27th February, 2015 passed by the Industrial Adjudicator on a reference made by the appropriate Government on 16th January, 2007 on the following terms:-

“Whether services of Sh.Ramesh S/o Sh.Ram Sahai have been terminated illegally and/or unjustifiably terminated by the management; and if so, to what sum of money as monetary relief alongwith other consequential benefits in terms of existing Law/Govt. notification and what other relief is he entitled and what directions are necessary in this respect?”

2. It was the case of the respondent that he was working with the petitioner management as Sweeper since 1st January, 1998 and his last

drawn salary was Rs.1800/- per month. He had further stated that he was discharging his duties diligently but the management had not provided legal benefits such as appointment letter, leave register, attendance register, bonus, salary slip, ESI, PF, etc. and the management was not paying the minimum wages as prescribed by the Delhi Government. He was terminated illegally on 25th July, 2005 without holding any enquiry in violation of Section 25(F) of the Industrial Disputes Act, 1947. He sent a demand notice to the Management on 26th July, 2005 but the Management did not reply to the same.

3. The case of the petitioner before the Industrial Adjudicator was, there was no relationship of employer and employee between the petitioner and the respondent. The petitioner had also taken a stand that the respondent showed his inability to continue with his services with the management and gave his resignation which was duly accepted by the management and the petitioner paid all the dues to the respondent on 9th July, 2005. The following three issues were framed by the Industrial Adjudicator:-

(i) Whether there existed relationship of workman and management between the claimant and the respondent?

(ii) Whether the services of the workman were terminated illegally and/or unjustifiably by the management?

(iii) Relief in terms of reference.

4. The workman filed his affidavit and exhibited five documents being Ex.WW1/1 to WW1/5. The petitioner had produced, its Managing Director as MW-1. Eight documents were exhibited by the petitioner through its witness. Document Ex.MW1/1 is the copy of the application of the workman against the post of the Sweeper, Ex.MW1/2 is the copy of the appointment letter of the workman of the respondent, Ex.MW1/3 (colly) are the copies of wages and attendance register from 1st July, 2007, Ex.MW1/4 is the copy of the resignation letter of the respondent, Ex.MW1/5 is the copy of the letter dated 9th July, Ex.MW1/6 is the copy of the wages sheet of the workman, Ex.MW1/7 is the full and final settlement document dated 9th July, 2005, Ex.MW1/8 is the copy of the complaint before the Asstt. Labour Commissioner (South).

5. On issue no.1, the Industrial Adjudicator has relied upon the stand of the petitioner itself, wherein the petitioner had stated that the respondent had showed his inability to continue his services with the

Management and submitted his resignation, which was later on accepted by the petitioner. According to the Industrial Adjudicator this itself reveals that there was a relationship between employer and employee between the petitioner and the respondent. Industrial Adjudicator had also relied upon other exhibits being Ex.MW1/1 to MW1/6 to decide the issue against the petitioner holding that there exists relationship of employer and employee between the petitioner and the respondent.

6. On issue no.2, it is the finding of the Industrial Adjudicator that the onus to prove this issue was on the respondent. The Industrial Adjudicator relied upon the finding on issue no.1 that the respondent was an employee of the petitioner has been firmly established. The Industrial Adjudicator noted the defence taken by the petitioner to challenge the claim of the respondent that the workman has tendered his resignation and the same was duly accepted by the petitioner and all the dues of the workman towards full and final settlement of his amount were paid by the petitioner on 9th July, 2005. It was also concluded by the Industrial Adjudicator, since it is the management which has asserted that the respondent had voluntarily left the services

of the petitioner, the burden of proving this fact fell squarely on the petitioner. In order to prove that the respondent had submitted his resignation and taken his dues from petitioner towards full and final settlement of his account, the petitioner relied upon the resignation letter Ex.MW1/4 and letter of acceptance Ex.MW1/5. Both the documents alleged to have been written by the respondent to the petitioner. None of the documents Ex.MW1/4 and MW1/5 were put to the workman during his cross examination. The Industrial Adjudicator noted the statement of the respondent during the cross examination that he is incapable of writing in Hindi as well as in English. The Industrial Adjudicator held that the Management was required to prove as to who had written the contents, however, the same was not done by the Management. The Industrial Adjudicator noted that MW-1 Mr.Deepak Bhardwaj, Manager of the Management to whom the respondent is alleged to have handed over the resignation is admittedly not the author of Ex.1/4. The Industrial Adjudicator also observed that it is not the case of the management witness that the same has been written by the respondent in his presence. Finally, it concluded that the witness MW-1 could not prove the said

documents on which the petitioner sought to rely upon.

7. The Industrial Adjudicator relied upon a judgment of the Supreme Court in *M/s Nicks (India) Tools vs. Ram Surat & Anr.* 2004 III LLJ 764 SC to hold that the respondent was not given an opportunity to explain his version qua those two exhibits. The Industrial Adjudicator finally held, the petitioner neither stated what specific amount was paid by it to the respondent towards full and final settlement of his dues nor has produced relevant accounts/ledger record of the said payment. There is a finding of the Industrial Adjudicator that no receipt of payment of the settlement amount to the workman has been filed by the Management. Accordingly, issue no.2 was decided in favour of the respondent. Based on the findings on the two issues, the Industrial Adjudicator granted an amount of Rs.1.25 lacs to the respondent in lieu of reinstatement and back wages along with the cost of Rs.25,000/- towards litigation expenses. It is contended by the learned counsel for the petitioner that the finding of the Industrial Adjudicator that no receipt of payment of settlement amount to the workman has been filed by the Management is an incorrect finding. He has drawn attention to page 70, which is the

evidence by way of affidavit of the petitioner's witness wherein the petitioner had relied upon Exs.MW1/4 and MW1/5 and also MW1/7. According to him, the said documents conclusively proves that the respondent had resigned and taken the final settlement. On a specific query to the learned counsel for the petitioner whether these documents were put to the respondent in the cross examination, the answer was in negative. In other words, the documents Ex.MW1/4 and MW1/5, which could not be proved by the petitioner, the conclusion of the Labour Court as noted above is justified. According to the learned counsel for the petitioner, the thumb impression on the receipt on the documents was that of the respondent, but conceded, that there was no cross examination on these lines by the authorized representative of the petitioner.

8. In view of the above position, the Industrial Adjudicator having granted compensation of an amount of Rs.1.25 lacs and litigation expenses of Rs.25,000/- for the period of service between the period 1998/2001 till 2005 and for the pendency of the litigation between 2007 and 2015, the same cannot be faulted.

9. In the facts of the case, this Court is not inclined to interfere

with the impugned award in exercise of its power under Article 226 of the Constitution of India. Accordingly, the petition is dismissed.

V. KAMESWAR RAO, J

AUGUST 01, 2016
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