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

+ LPA 941/2015

JITENDER CHAWLA

..... Appellant

Represented by: Mr.Ashraf Yusuf Khan, Advocate
with Mr.Surinder Singh and
Mr.Sanjiv Kumar, Advocates

versus

M/S CHOUDHARY CEMENT AGENCY

..... Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **11.01.2016**

CM No.32077/2015

For the reasons stated in the application delay of 55 days in filing the appeal is condoned.

The application is disposed of.

LPA No.941/2015

1. The award dated December 22, 2011 pronounced by the learned Labour Court came to be challenged by the appellant in W.P.(C) No.2966/2012 as also by the respondent in W.P.(C) No.5621/2013, for the reason findings returned against the respondent were that its stand that appellant had voluntarily abandoned the job was incorrect as also its stand that subsequently in November, 2005 its establishment was closed was wrong. Holding services of the appellant to be illegally terminated,

reinstatement with consequential benefits was denied on the reasoning that the appellant was gainfully employed and was earning more than what he was earning by way of wages when employed under the respondent.

2. Vide impugned order dated September 22, 2015 the two writ petitions have been disposed of reversing the finding by the Labour Court and returning a finding that the evidence established appellant having voluntarily abandoned the job. The learned Single Judge has held that the respondent failed to establish having closed its business in November, 2005. The finding that the appellant was gainfully employed has also been sustained.

3. It is apparent that the appellant is aggrieved by the finding that he had voluntarily abandoned the job under the respondent and additionally had been gainfully employed.

4. On the issue concerning whether respondent illegally terminated the service of the appellant or whether the appellant voluntarily abandoned the job, the finding by the learned Single Judge is in paragraph 11 of the impugned decision which reads as under:-

“11. The management also felt aggrieved by the findings of the Labour Court on Issue No.1 and Issue No.1A and filed writ petition No.5621/2013 on the ground that the findings are contrary to the material existing on record. The findings that the workman was not confronted with the full and final settlement receipt dated 14.05.2001 is contrary to the record as the workman was duly confronted with this receipt during his cross-examination but he denied his signatures on the same. Furthermore, the Labour Court erred in observing that MW-2 Sh.P.R.Mahal stated in cross-examination that a fact slipped from his mind that signatures of workman were not on the revenue stamp and, therefore, he did not ask him to sign on revenue stamp. No such statement was given by MW-2 Sh.P.R.Mahal in his cross-examination. Furthermore, the

Labour Court did not appreciate the suggestion given by the AR of the workman to MW-4, Sh.Raghubir Singh that the paper on which the receipt dated 14.05.2001 was written, was taken from his office meaning thereby that the workman not only admitted the execution of this settlement cum receipt but also the fact that he had himself executed the said receipt. As regards the finding of the handwriting expert, the Labour Court failed to take note of the fact that the settlement cum declaration dated 14.05.2001 was signed by the respondent in Hindi, the workman signed all documents including pleadings and evidence before the Labour Court in English and on the application of the management, the respondent tendered his signatures in Hindi and gave incomplete signatures by mentioning only "Jitender" whereas the settlement cum declaration dated 14.05.2001 is signed by him as "Jitender Kumar". The handwriting expert observed that there was similarities in the formation of letters so far as Jitender is concerned but since the other word i.e., "Kumar" and "date" were not available for comparison he could not give any opinion thereon. Even otherwise, the Labour Court had ample power to compare the disputed and admitted signatures of the respondent-workman which was not exercised by the Court. Further, the Labour Court did not take into consideration the admitted document dated 02.06.2001 Ex.WW-1/MX1 which was an application given by the respondent seeking re-employment with the petitioner after termination of his employment on 14.05.2001. This document establishes beyond doubt that the workman himself left the employment on 14.05.2001. This document establishes beyond doubt that the workman himself left the employment on 14.05.2001 and thereafter sought re-employment on 02.06.2001. On material aspects, testimony of Paramjeet Singh remained unchallenged as he was not cross-examined on those points. The witness had categorically stated that the shop was demolished in November, 2005 and there was no employee since then. The witness stated during cross-examination that he can produce his sales tax and income tax record but the workman did not require him to produce the said record nor did the Court give any such direction. Under the

circumstances, it was submitted that the findings of the Labour Court on Issue Nos.1 and 1A be set aside.”

5. Learned counsel for the appellant has not been able to show to us any infirmity in the facts noted by the learned Single Judge and concedes that the facts have been correctly noted. If this be so, the reasoning of the learned Single Judge brings out the perversity in the award and thus we affirm the reasoning of the learned Single Judge. We additionally note that apart from the receipt in question and appellant's communication dated June 02, 2011, Ex.WW-1/MX1, a communication dated August 22, 2000 Ex.WW-1/1, and another communication dated May 15, 2011, Ex.WW-1/2, also establish that the appellant voluntarily abandoned the job. In this connection we need to highlight that on the receipt relied upon by the management to show that the appellant took money which was due to him when he voluntarily abandoned the job, the stand of the appellant before the Labour Court was that he did not sign the receipt. The learned Single Judge has given good reasons to hold that in view of Ex.WW-1/MX1, notwithstanding there being inconclusive forensic opinion concerning appellant's signatures on the receipt, the finding has to be against the appellant. The two exhibits which we have referred to are admittedly written by the appellant and he proved the said documents. In both communications the appellant has admitted his signatures on the receipt, evidenced by his stand taken in the two communications that the management had obtained his signatures on blank documents. Either the appellant could have taken the stand that the receipt contained his signatures but were appended by him when the sheet was blank and later on was used to be made into a receipt or the stand could be that the receipt did not bear his signatures.

6. The appeal is dismissed in limine.
7. No costs.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

JANUARY 11, 2016
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