

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10963 of 2014

Date of Decision: 28.03.2017

M/s Deve Paints Ltd.

... Petitioner

Versus

Presiding Officer, Industrial Tribunal
and Labour Court, Union Territory,
Chandigarh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Manish Jain, Advocate,
for the petitioner.

Mr. K.L. Suneja, Advocate,
for respondents No.2 to 7.

RAJIV NARAIN RAINA, J.

1. The plea of resignation set up by the management as defence to the claim application has been disbelieved by the Presiding Officer, Labour Court, Union Territory, Chandigarh in his order dated February 05, 2014 passed in a joint application presented under Section 33-C (2) of the Industrial Disputes Act, 1947 ("1947 Act"). The management was proceeded against ex parte before the Labour Court for its long absence after putting in appearance but by the time management had not put in its written statement but were permitted to enter the proceeding and lead evidence and cross-examine the witnesses produced by the workmen (who were six in number in the joint application). The workmen's evidence was completed and closed when the management stepped in and to that extent it had ample opportunity to cross-examine the workmen and their witnesses on the documents on record.

2. Much has been made of the letter dated October 11, 2007 (P-3) at page 39 of the paper-book which is purported to be a letter by Raj Kumar Thakur, one of the workmen, addressed to the Managing Director of the petitioner-Company claiming gratuity in a sum of ₹ 26,117/- (figures are *mutatis mutandis* in the case of co-applicants). But the workman including Raj Kumar Thakur, Shiv Darshan Kumar did not claim gratuity in the application which was filed only for other outstanding dues capable of being determined by the Labour Court. From this document which relates to subject matter gratuity, the management asserts that the workman resigned from service (late Raj Kumar Thakur and late Shiv Darshan Kumar were alleged to have resigned from the company on March 31, 1995) and, therefore, there was no question of claiming monetary benefits towards unpaid salary etc. from February 1996 to March 1998. In the cross-examination conducted by the management, the workmen denied having resigned from service.

3. Accordingly, the letter dated October 11, 2007 did not find its way on record as an exhibit and became the document Mark 'D' which marked document does not qualify as legal evidence. All the workmen had asserted in their cross-examinations that they had worked for the periods claimed. If the resignation story has been disbelieved by the Labour Court after appreciating the evidence on record then it is not for this Court to substitute its opinion and come to another conclusion so long as the management had opportunity to produce evidence in support of its stand. The alleged resignation letters have not seen the light of day. Hence, the management cannot complain that prejudice was caused to them. The

employer-employee relationship was not disputed between the parties.

4. Therefore, I have no reason sufficient at hand from the file to warrant upsetting the orders of the Labour Court and the view taken after appreciating the evidence on record. Neither did the management file an application for recall or setting aside of the order proceeding against it ex parte nor did they question the order by way of writ proceeding, when they could have, at the appropriate stage, and, therefore the principle of 'issue estoppel' applies to the case apart from the principles of waiver and acquiescence. The view taken on the materials of record by the labour court is a possible and plausible view which is not open to be disturbed in this petition filed under Articles 226/227 of the Constitution.

5. As a result, the petition fails and is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

28.03.2017

manju

Whether speaking/reasoned *Yes*

Whether reportable *No*