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

Reserved on: 22nd December, 2018

Pronounced on: 05th April, 2018

+ W.P. (C) 14302/2004

DEV NARAYAN

..... Petitioner

Through: Mr. H.K.Chaturvedi and

Mr.Sagar Chaturvedi, Advocates

versus

THE MGMT.OF M/S AUTO PRECISION Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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JUDGMENT

C. HARI SHANKAR, J.

1. The industrial dispute, which has led to the passing of the impugned Award, dated 16th October, 2003, by the Labour Court, was initiated by the petitioner, claiming to be aggrieved by his unceremonious verbal removal from service, by the respondent, on 28th May, 1991.

2. Subsequent thereto, on 24th June, 1991, the Okhla Industrial Workers Union (hereinafter referred to as “OIWU”) addressed a representation to the Regional Labour Officer (Ex. WW-1/4 before the Labour Court), complaining that the petitioner, who had been serving the respondent since 1983, had been verbally removed from service on 28th May, 1991, merely because he had protested against the respondent extracting, from its employees, twice the work which they were supposed to perform. The representation, therefore, requested that the petitioner be reinstated in service with full back wages. The Regional Labour Officer/Labour Inspector responded, *vide* letter dated 26th June, 1991 (Ex. WW-1/3) addressed to the OIWU, stating that the matter had been discussed, with the respondent, who had stated that the petitioner had not been removed from service, but had remained absent from service, of his own accord, from 28th May, 1991, and that the respondent was prepared to take him back in service. As such, the OIWU was advised to immediately direct the petitioner to rejoin duty with the respondent.

3. Iterating the above facts, the petitioner contended, in his Statement of Claim filed before the Labour Court, that the verbal termination of his services, by the respondent, on 28th May, 1991, was *ex facie* illegal, and pointed out, in this regard, that he had neither been visited with any notice prior to the said removal from service,

nor paid any amount, by the respondent, at the time of such removal. The petitioner further contended that the respondent had misrepresented facts to the Regional Labour Officer, and submitted that, when he reported at the office of the respondent for work, the respondent refused to entertain him. The allegation that the petitioner had, of his own will and volition, chosen to remain absent from work with effect from 28th May, 1991, was categorically denied. Alleging that these acts of the respondent amounted to unfair labour practice, the petitioner prayed that he be reinstated in service with full back wages.

4. It may be noted, here, that, while referring the industrial dispute, raised by the petitioner, for adjudication to the Labour Court, the Secretary (Labour), Delhi Administration framed the following single term of reference:

“Whether the services of Sh. Dev Narayan have been terminated illegally and/or unjustifiably by the management, and if so, to what relief he entitled and what directions are necessary in this regard?”

5. The respondent, in its Written Statement filed before the Labour Court, submitted, as a “preliminary objection”, that, as the respondent had not terminated the services of the petitioner, he “should be directed to report for duty”, albeit with the clear understanding that he would not be entitled to any back wages with effect from 28th May,

1991. Legally, it was contended that, as the petitioner had absented himself from duty without any prior information or sanction of leave, and despite been repeatedly advised, by the respondent, in writing, to report for duty, had failed to do so, no “industrial dispute”, within the meaning of Section 2(k) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”), arose. The submission, of the petitioner, that, after the visit of the Labour Inspector at the premises of the respondent, he had reported for work, but was not allowed to do so, was denied.

6. Before the Labour Court, the petitioner filed his affidavit-in-evidence, on 23rd May, 1994, reiterating his contention that the respondent had verbally terminated his services on 28th May, 1991. It may be noted, here, that the petitioner averred, in para 7 of his affidavit, that, as the respondent was not taking him back in service, the Labour Inspector had, *vide* his report, exhibited as Ex. WW-1/3, advised the petitioner to initiate an industrial dispute, whereas, as a matter of fact, Ex. WW-1/3 does not contain any such advice; rather, the said communication, from the Labour Inspector, pointedly stated that the respondent was willing to take the petitioner back in service, and advised the OIWU to send the petitioner back to work immediately. The petitioner, however, reiterated his stance that the respondent was entirely unwilling to take him back on work. In these circumstances, it was submitted, in the affidavit-in-evidence of the

petitioner, that his termination, from service, infringed Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”), as the petitioner had worked continuously for over 240 days in each year during which he served the respondent.

7. The petitioner was cross-examined, by the respondent, on the above affidavit-in-evidence, on 26th August, 1998. He denied the suggestions, put to him, to the effect that he had absented from duty with effect from 28th May, 1991, and that he had been offered to be taken back on duty, by the respondent, but did not join the same.

8. The respondent led the evidence of Mr. Vipin Jain, Accountant with the respondent, as MW-1. Mr. Jain filed his affidavit-in-evidence, dated 7th May, 1999 by way of examination-in-chief, on behalf of the respondent, before the Labour Court. It was categorically stated, therein, that the respondent was ready and willing to take the petitioner on duty even as on that date, but on the clear understanding that he would not be entitled to any back wages w.e.f. 28th May, 1991, till the date when he would report for duty. It was reiterated that the respondent had not terminated the petitioner, but that the petitioner had himself remained absent from duty w.e.f. 28th May, 1991, without any information or prior sanction of leave. It was further asserted that, even after the visit of the Labour Inspector, at the premises of the respondent, the petitioner never turned up to report for work.

9. MW-1 Mr. Vipin Jain was cross-examined, on the above-mentioned affidavit-in-evidence, tendered by him, on 7th May, 1999. He admitted the fact that the respondent had not served any warning or chargesheet on the petitioner, but denied the allegation that the respondent was extracting more work, from the workmen, including the petitioner, than was required to be done by them. The allegation of termination, of the services of the petitioner, by the respondent, was also categorically denied, and it was asserted that the respondent had never refused to take the petitioner on duty or after 28th May, 1991, or after the visit of the Labour Inspector at the respondent's premises.

10. The Labour Court adjudicated the above industrial dispute by means of the impugned Award, dated 16th October, 2003.

11. On the basis of the facts that had emerged, the Labour Court framed the following two questions, as arising for its consideration, on 30th March, 1996:

“1. Whether the workman abandoned the job as stated, if so, it effect?

2. As per the terms of reference.”

12. With respect to Issue No. 1, as framed above by the Labour Court, the petitioner strenuously objected to the very framing of the

said issue, or to the jurisdiction of the Labour Court to decide the same, on the ground that the issue was beyond the reference made by the appropriate Government under Section 10(1)(c) read with Section 12 (5) of the ID Act. Reliance was placed for the said purpose, on the following judicial pronouncements:

- (i) ***Delhi Cloth and General Mills Co. Ltd vs Workmen, AIR 1967 SC 469,***
- (ii) ***I.T.D.C. vs Delhi Administration, 1982 Lab IC 1309 (Del),***
- (iii) ***Mool Chand Khairati Ram Hospital Kar. Union vs Labour Commissioner, 1997 (76) FLR 12 (Del),***
- (iv) ***Eagle Fashions vs Secretary (Labour), 1998 (78) FLR 371 (Del)*** and
- (v) ***Bhagwan Hosierey vs Principal Officer, Labour Court, 2001 (89) FLR 701 (Del).***

13. Responding to the said preliminary submission, it was contended, on behalf of the respondent, before the Labour Court, that Issue No. 1 framed by the Labour Court was not beyond the scope of the reference made to it by the appropriate Government, as it was incidental and ancillary to the said reference, and did not result in enlargement of the ambit thereof. The respondent relied, for this purpose, on the following decisions:

- (i) *Hindustan Petroleum Corporation Ltd vs Presiding Officer, Industrial Tribunal, 2002 (95) FLR 1195,*
- (ii) *J. K. Synthetics v. Rajasthan Trade Union Kendra, (2001) 2 SCC 87* and
- (iii) *Harris Engineers Ltd vs Govt of N.C.T. of Delhi, 2002 (III) LLJ 246.*

14. The Labour Court rejected the above noted preliminary objection voiced by the petitioner, holding that there was no admission, on the part of the respondent, of the factum of termination of the petitioner's services by it. Further, it was noted that the "foundation of the reference" was not shaken or violated while considering the plea of the respondent "that it was not a case of the termination but a case of termination of service by abandonment of services by the claimant". Reliance was placed, by the Labour Court, for arriving at its findings, on *Ashoka Hotel vs Govt of Karnataka, 1984 (64) FJR 176* [which relied, in turn, on the judgement of the Supreme Court in *Express Newspapers (P) Ltd vs Their Workmen, (1963) 23 FJR 1*], and *Sheshrao Bhaduji Hatwar vs P.O., 1st Labour Court, 1992 (II) LLC 672 (Bom)*, as well as the judgements of the Supreme Court in *Delhi Cloth and General Mills Co Ltd vs Their Workmen, 1967 (I) LLJ 423* and *Sitaram Shiroadkar vs Administrator, Govt of Goa, 1985 (I) LLJ 480.*

15. Proceeding to examine Issue No 1, as framed by it, on merits, the Labour Court noted that (i) MW-1 had deposed, on oath, that the services of the petitioner were never terminated and that, in fact, he absented himself from duty with effect from 28th May, 1991, (ii) the Labour Inspector, who visited the respondent, was also requested, by it, to direct the petitioner to report for duty (though, admittedly, the respondent did not examine the Labour Inspector), (iii) the petitioner himself proved, on record, the report of the Labour Inspector (Ex. WW-1/3), to the effect that the petitioner had himself absented from duty on 28th May, 1991, while the respondent was ready to take him back on duty, (iv) the Labour Inspector also wrote, on 26th June, 1991, to the OIWU, requesting it to direct the petitioner to report for duty, and (v) there was neither any averment, nor any deposition, by the petitioner, in his affidavit-in-evidence, to the effect that he ever reported for duty, in compliance with the said direction; rather, the petitioner only relied on the demand notice sent through the OIWU on 27th June, 1991 which, too, did not aver that the petitioner had again reported for duty at the office of the respondent after 27th June, 1991. These facts, cumulatively seen, it was held, lent sustenance to the plea of the respondent, that the petitioner had abandoned his job, by *suo motu* remaining absent from work and not reporting for duty, despite the direction of the Labour Inspector. As such, it was held that there was no evidence of termination, of the petitioner, by any act of the

respondent. Issue No 1 was, therefore, decided in favour of the respondent, and against the petitioner.

16. Having thus decided Issue No. 1 against the petitioner, the Labour Court held, with respect to Issue No. 2, i.e., the entitlement, of the petitioner, to reinstatement with back wages, that, in view of the absence of any evidence, to indicate that the respondent had ever terminated the services of the petitioner, and in view of the lack of evidence of any effort, on the part of the petitioner, to rejoin duty, he was not entitled to reinstatement or back wages. Reliance was placed, for this purpose, on *Sonal Garments vs Trimbak Shankar Karve, 2003 LLR 5 (Bom)*.

17. In view of the above, the Labour Court answered the reference, made to it by the appropriate Government, by holding that there was no termination, by the respondent, of the services of the petitioner and that the petitioner stood disentitled to the relief of reinstatement or back wages.

18. The petitioner assails the said decision, by means of the present writ petition.

19. There was no appearance on behalf of the respondent, before me; accordingly, I have heard detailed submissions advanced by Mr.

H. K. Chaturvedi, learned counsel for the petitioner, and proceeded to decide the present petition taking into account the said submissions and the material on record.

20. Mr. Chaturvedi advanced, as his first plank of attack against the impugned Award of the Labour Code, the preliminary objection, voiced by his client before the Labour Court as well, regarding the jurisdiction of the Labour Court to enter into the issue of supposed abandonment, by the petitioner, of his services. Mr. Chaturvedi emphatically submitted that the term of reference, contained in the order, whereby the matter stood referred for adjudication to the Labour Court, was only regarding the legality of the termination, by the respondent, of the petitioner, and submitted, therefore, that the Labour Court was proscribed, in law, from framing an issue as to whether the petitioner had, or had not, abandoned his services. He sought to place reliance, for this purpose, on the judgement of this court in *I.T.D.C. (supra)* and the judgement of the Bombay High Court in *Sitaram Vishnu Shirodkar (supra)*. He, therefore, submitted that, the Labour Court having proceeded to examine an issue which was outside the pale of its jurisdiction, the matter necessarily had to be remanded to the Labour Court for decision afresh. He also placed reliance on Section 10(4) of the ID Act, to contend that the issue of abandonment could not be regarded as incidental to that of termination. In his submission, once the Labour Court held that there

had been no termination, of the services of his client, by the respondent, the matter had to rest there, and the Labour Court had no jurisdiction to return any finding, adverse to his client, on the presumption that his client had abandoned his service.

21. On merits, Mr. Chaturvedi relied on the well-known decision of the Supreme Court in ***G. T. Lad vs Chemicals and Fibres of India Ltd, AIR 1979 SC 582***, which clearly holds that there could be no abandonment of service in the absence of animus to abandon. Mr. Chaturvedi submits that the facts of the present case would emphatically militate against any presumption of animus, on the part of his client, to abandon his service, and draws my attention, in this regard, to (i) the affidavit, dated 23rd May, 1994, of the petitioner, especially the assertion, in para 8 thereof, that the petitioner had, on 24th June, 1991, again requested, through the OIWU, that he be taken back in service, but to no avail (ii) letter, dated 26th June, 1991 (Ex. WW-1/3 *supra*) from the Labour Inspector to the OIWU, which indicated that the allegation of abandonment, by the petitioner, of his service, was a defence raised by the respondent, (iii) notice, dated 27th June, 1991 (Ex. WW-1/1 *supra*) by the OIWU to the respondent, which bore the signature of the petitioner at the foot thereof, and (iv) the application, filed by the petitioner before the Conciliation Officer (Ex. WW-1/7) in June 1991, wherein, too, it was averred that, after 24th June, 1991, the petitioner had again visited the premises of the

respondent, for being taken back in service, but the respondent refused to oblige. Mr. Chaturvedi would urge that it was for this reason that the term of reference, in the order, dated 26th August, 1992, whereby the dispute was referred, by the Delhi Administration for adjudication to the Labour Court, was only with respect to termination, and not abandonment. Mr. Chaturvedi submitted that the Labour Court was entirely in error in failing to direct reinstatement of his client, once it had held that the respondent had not terminated his services. He further submitted that the finding, of the Labour Court, that there was no averment, in the affidavit of the petitioner, to the effect that he had ever reported for duty, in compliance with the direction of the Labour Inspector, was incorrect, and that there was, in fact, a specific submission, to this effect, in the said affidavit, to which he drew my attention. In these circumstances, Mr. Chaturvedi would submit that there was no evidence, whatsoever, to support the finding, of the Labour Court, that his client had abandoned his service.

Analysis and decision

22. I would first address the preliminary submission, of Mr. Chaturvedi, regarding the propriety and legality of the examination, by the Labour Court, of the question of abandonment, by the petitioner, of his services, and the framing of Issue No. 1, to that effect, by the Labour Court.

23. It is necessary to understand, at the outset, that there is no half-way house between “termination” and “abandonment”. The territory between the two is no-man’s land. That, with effect from 28th May, 1991, the petitioner ceased to serve the respondent, is not in dispute. Only one, of two, inferences, could be drawn therefrom, and no third, i.e., either – as the petitioner would aver – that the respondent did not allow the petitioner to work after the said date, which would tantamount to “termination”, or – as the respondent would contend – that the petitioner, of his own volition, stopped working from the said date, which would tantamount to “abandonment”.

24. Abandonment and termination are both positive acts, with the former requiring positive intent, on the part of the workman, not to work, and the latter requiring positive intent, on the part of the management, not to allow the workman to work. Requisite animus is the *sine qua non* in either case. There is, however, the subtle jurisprudential distinction between termination (at the instance of the employer) and abandonment, in that, in the former case, it would always be possible for the employer to unequivocally indicate, to the employee, that his services were no longer required and, therefore, that they stood “terminated”, whereas, in the latter case, often, the intention not to continue working for the employer has to be presumed from the conduct of the employee. It is only for this reason that a jural

concept of “deemed abandonment” has evolved over a period of time. I have, in a recent decision in *Engineers India Ltd vs Labour Court, 2018 SCC Online 572 (Del)*, had occasion to examine the concept of “abandonment”, and the law that has evolved, by various pronouncements of the Supreme Court [including *G. T. Lad (supra)*] in that regard. I had called out certain guiding principles, on the issue of “abandonment”, in the said decision, among which are the following:

- (i) Intention, or animus, to abandon, is the necessary *sine qua non*, for any case of “abandonment” to be said to exist. In the absence of intention, there is no abandonment.
- (ii) Whether intention to abandon exists, or not, is a question of fact, to be determined in each case.
- (iii) Termination, or removal, from service, is a positive act of the employer; *per contra*, abandonment is a positive act of the employee.
- (iv) Any evidence, to indicate that the employee, or workman, desired to join duty, but was prevented from doing so, would, by itself, militate against any presumption of “abandonment”.

25. In each case, the onus, to prove that termination, or abandonment, had taken place, would be on the party so contending.

26. Once this is understood, it becomes immediately apparent that the preliminary objection, of Mr. Chaturvedi, regarding the propriety

of Issue No 1, as framed by the Labour Court, and the jurisdiction of the Labour Court to adjudicate thereon, is fundamentally bereft of substance. In my view, there is no necessity to refer, for the purpose, to any judicial pronouncements. The plea of abandonment, by the petitioner, of his services, was the defence put up, by the respondent, to the plea of termination, by the respondent, of the services of the petitioner, as urged by the latter. It is a matter of simple common sense that a *lis* cannot be adjudicated merely by referring to the stand of one of the parties thereto, without appreciating the merits of the stand, put up by the other, by way of rebuttal. The plea of abandonment, in the present case, being the response, by the respondent, to the plea of termination, urged by the petitioner, it was incumbent, on the Labour Court, to examine the merits of the said plea. Expressed otherwise, it would have been impossible – as well as impermissible – for the Labour Court to render a verdict, in the matter, merely by examining whether the respondent had, or had not, terminated the services of the petitioner, without addressing, equally, the plea of the respondent that it was the petitioner who had, in fact, abandoned his services. It is appropriate, in this context, to understand that abandonment also results, in the ultimate consequence, in termination. Though established abandonment, by an employee, of his service, would result in snapping of the jural link between him and his employer, the sequitur would be termination of the employee's employment with the employer.

27. “Termination” is not an expression of art. In some ways, it is merely a constriction of the expression “determination”. Determination of the employer-employee relationship, therefore, would result, *ipso facto*, in termination of the employee, whether it takes place because of the act of the employer in terminating the relationship, or the act of the employee in choosing not to attend work. As such, abandonment, by the employee, of his service, would also result in termination thereof.

28. The jurisdiction of the Labour Court or Industrial Tribunal, under the ID Act, is not limited to the points referred to it for decision/adjudication, in the order of reference made by the appropriate Government, but extends to “matters incidental thereto”, by virtue of Section 10 (4) of the ID Act, which reads as under:

“(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Regular, as the case may be, shall confine its adjudication to those points *and matters incidental thereto*.”

(Emphasis supplied)

The expression “matters incidental thereto” is, by its very nature, wide and comprehensive in equal measure. A leading authority on the ambit of the said expression, as it occurs in section 10 (4) of the ID

Act, is the judgement of the Supreme Court in *Delhi Cloth and General Mills Co. Ltd vs Workmen*, AIR 1967 SC 469, and a careful study of the said decision would substantially answer the objection raised by the petitioner. Before advertng to the factual matrix in which Section 10 (4) of the ID Act came up for consideration in that case, it would be apposite to extract the law, relating to the expression “matters incidental thereto”, as expostulated in para 21 of the report, thus:

“From the above it therefore appears that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the Tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto. The word “incidental” means according to *Webster's New World Dictionary*:

‘happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but usually associated.’

“Something incidental to a dispute” must therefore mean something happening as a result of or in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct.’

In the case before the Supreme Court, the above issue arose in the context of the third and fourth terms of reference, as contained in the order, under Section 10 (1) and 12 (5) of the ID Act, whereby the

Delhi Administration referred the disputes for adjudication to the Industrial Tribunal. They read thus:

“3. Whether the strike at the Delhi Cloth Mills and the lockout declared by the management on the 24-2-1966 are justified in legal and whether the workmen are entitled to wages for the period of the lockout?

4. Whether the ‘sit-down’ strike at the Swatantra Bharat Mills from 23-2-1966 is justified and legal and whether the workmen are entitled to wages during the period of the strike?”

The Supreme Court was concerned, in that matter, with the issue of whether it was open to the Industrial Tribunal, on the basis of the pleadings of the parties, to hold that there was no strike at all. The Supreme Court answered the issue in the negative, opining that, despite the wide scope of the expression “matters incidental thereto”, the Tribunal, in that case, was bound by the terms of reference, which, plainly read, proceeded on the premise that the strike had taken place, and required the Tribunal to adjudicate whether the strike was justified and legal, or not. The Supreme Court held that, in view of the fact that the reference by the appropriate Government proceeded on the premise that the strike had taken place, it was not open to the Tribunal to hold otherwise, i.e., that there was no strike at all. Applying this principle to the present case, it would be seen that the point of reference, contained in the referral order of the Delhi Administration, specifically refers the issue of *whether the services of*

the petitioner had been terminated illegally and/or unjustifiably by the respondent, and not merely whether the termination was illegal or unjustified. In other words, the issue of whether the respondent had, in fact, terminated the services of the petitioner, or not, squarely arises for consideration, in the words of the reference, as crafted by the referral order of the Delhi Administration. Per sequitur, where the case of the respondent-management was that there had been no termination of the petitioner's services, on its part, as it was the petitioner himself who voluntarily abandoned his services, the issue of whether such abandonment had, or had not, taken place, was clearly a "matter incidental" to the issue referred for adjudication. It cannot, therefore, be said that the Labour Court exceeded its jurisdiction in framing Issue No 1 as it did, or in adjudicating the same. The preliminary objection, voiced by learned counsel for the petitioner has, therefore, necessarily to be rejected.

29. Coming, now, to the meat of the matter, it is true that intention to abandon is the necessary prerequisite to a finding that the employee abandoned his services, as contended by Mr. Chaturvedi. It is the contention of Mr. Chaturvedi that the existence of intention to abandon, on the part of the petitioner, had to be proved as a positive fact, and that the evidence on record, in the present case, rather indicated to the contrary. Having said that, the "evidence", on which Mr. Chaturvedi seeks to place reliance, to support his submission that

the requisite intention to abandon, on the part of his client, could not be said to exist, in my view, does not really advance the case of the petitioner. Mr. Chaturvedi has placed reliance on (i) the affidavit, dated 23rd May, 1994, of the petitioner, (ii) the letter, dated 26th June, 1991, from the Labour Inspector to the OIWU, (iii) the notice, dated 27th June, 1991, by the OIWU to the respondent, which bore the signature of the petitioner, and (iv) the application filed by the petitioner before the Conciliation Officer in June 1991. These documents, however, whether viewed individually or collectively, cannot, in my opinion, be said to establish the *absence of intention*, on the part of the petitioner, to abandon his services.

30. It must be remembered that there is no dispute about the fact that, with effect from 28th May, 1991, the petitioner ceased working for the respondent. The petitioner has not placed, on record, a single document, indicating that the respondent discontinued his services, or asked him to quit. Rather, the respondent, even in its written statement before the Labour Court, maintained that it was willing to take the petitioner back on work, subject only to the condition that he would not be entitled to back wages. Though the petitioner has stated, on one or two occasions, that he had reported in the office of the respondent for work, after 27th June, 1991, and had not been permitted to resume duty, no evidence, to that effect, is forthcoming, as rightly held by the Labour Court. *Neither, it appears, did the petitioner take any remedial*

steps, even by way of a communication, to the respondent, whether by himself or through the OIWU, to the effect that the respondent had resiled from its undertaking to take the petitioner back on duty, by refusing to allow him to work, despite his turning up at its office for the said purpose. There is, therefore, no material, whatsoever, on the basis of which it could be held that the petitioner had, in fact, reported for work, at the office of the respondent, after 27th June, 1991, but had not been allowed to rejoin duty.

31. As the facts stand, therefore, the petitioner, apparently, stopped working for the respondent with effect from 28th May, 1991, and never chose to turn up for work thereafter, despite the respondent expressing its readiness and willingness to take him back on its rolls.

32. In that backdrop, the reliance, by Mr. Chaturvedi, on the aforementioned four documents, can take his case thus far and no further. While the letter, dated 26th June, 1991, from the Labour Inspector to the OIWU, is actually counter-productive to the case of the petitioner – as it exhorts the OIWU to direct the petitioner to report back, at the office of the respondent, to resume duty – the other three documents merely contain a bald averment, to the effect that the petitioner had reported for duty after 27th June, 1991, but was not allowed to resume work. Such a bald statement, unsubstantiated by any evidence in support, could not possibly have been regarded as

establishing intention, on the part of the petitioner, to resume duty, and, consequently, it is not possible for this court to fault the Labour Court in refusing to accept the submission, of the petitioner, that there was no intention, on his part, to abandon his services.

33. For the same reason, the contention, of Mr. Chaturvedi, that, having found that the respondent had not terminated the services of the petitioner, the Labour Court had no option but to direct the petitioner's reinstatement, and that it seriously erred in law in failing to do so, has merely to be stated to be rejected. It was no part of the duty of the Labour Court to direct the respondent to take back, on its rolls, an employee who had abandoned his services, or expressed his intention, overtly or covertly, not to work for the respondent. The Labour Court or Industrial Tribunal are, no doubt, required to adopt a labour-friendly approach; at the same time, once it was found that a workman had abandoned his services, or did not evince any intention to work for the management, the brief of the Labour Court stood discharged, and it could not be expected to force, on the management, the services of an unwilling worker.

34. One may, in this connection, usefully refer to the following passage, from para 3 of the report in *State of Haryana vs Om Prakash*, (1998) 8 SCC 733, which is self-speaking in nature:

“Therefore, the authority was wrong in coming to the conclusion that there was a violation of Section 25-F of the Act besides, *as stated earlier, he himself voluntarily ceased to report for duty and there was no act on the part of the employer nor is there anything on record to suggest that the employer had refused work to him.* Retrenchment within the meaning of Section 2(oo) means termination by the employer of the service of the workman for any reason whatsoever. Therefore, *it contemplates an act on the part of the employer which puts an end to service to fall within the definition of the expression “retrenchment” in Section 2(oo) of the Act. There was nothing of the sort in the instant case. It was the workman who ceased to report for duty and even after he ceased to report for duty, it is not his case that at any point of time he reported for duty and he was refused work.* He straightaway proceeded to invoke the provisions of the Act and, therefore, this is a case in which the employer has done nothing whatsoever to put an end to his employment and hence the case does not fall within the meaning of Section 2(oo) of the Act. Therefore, the case does not attract Section 2(oo), nor does it satisfy the requirements of Section 25-F.”

True, in the above decision, there is an observation, by the Supreme Court, that it was not the case of the workman, before it, that, after ceasing to report for duty, he had, thereafter, in fact reported for duty and was refused work, whereas, in the present case, the petitioner has sought to contend that, after 27th June, 1991, he had reported to the office of the respondent, but was not allowed to work. As already noted by me hereinabove, however, the submission is effectively made *in vacuo*, without an iota of material to support it; neither is there any evidence that the petitioner never made any protest in this regard, even by means of a representation to the respondent itself.

35. Viewed any which way, therefore, the petition has to fail. There is no evidence, whatsoever, to indicate that the respondent had ever terminated the services of the petitioner. Worse, even after the petitioner petitioned the Labour Court, the respondent repeatedly undertook to take the petitioner back on its rolls, but there is nothing to indicate that the petitioner ever obliged, or reported for work at the premises of the respondent. The submission, of the petitioner, that he, in fact, did so, but was not taken back on work, is too facile to merit acceptance, especially in the absence of any evidence that the petitioner raised any protest in this regard, either by seeking judicial redress, or even by way of a protest representation. Justice to labour, cannot be at the cost of injustice to industry. I am constrained, therefore, to observe that the petitioner has not made out any case which would entitle him to relief, either from the Labour Court, or from this Court.

36. It has to be remembered, in this context, that this Court, exercising its jurisdiction under Article 227 of the Constitution of India, does not sit in appeal over the decision of the Labour Court or Industrial Tribunal, but interferes therewith only where the findings of the Labour Court or industrial Tribunal are perverse, or suffer from some manifest error of law or fact. No such infirmity, in the opinion

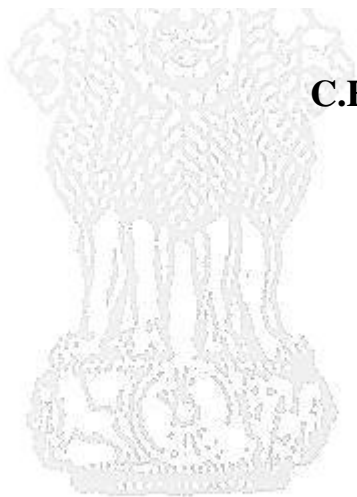
of this Court, can be said to plague the impugned Award, dated 16th October, 2003, passed by the Labour Court.

37. In the result, I am unable to find any cause or reason to interfere with the impugned Award passed by the Labour Court.

38. The writ petition is, consequently, dismissed, without any order as to costs.

APRIL 5, 2018
RK

C.HARI SHANKAR, J



सत्यमेव जयते