

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WP (C) 1014/2012**

Judgment reserved on :31.07. 2017
Date of decision : 18.12.2018

SMT. KIRAN BHANDARIPetitioner
Through: Mr. Raj Rishi, Advocate
versus

M/s. DR. O.P. ABROL CLINIC Respondent
Through: Mr. Rajat Malhotra and Mr.
Sunil Malhotra, Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner Smt. Kiran Bhandari vide this Writ Petition No.1014/2012 instituted on 17.02.2012 after removal of objections assails the award dated 25.04.2009 of the Ld. Presiding Officer, Labour Court-IX, KKD Courts, Delhi in ID No.377/2005 (old) ID No.382/08 (new) vide which the claim under Section 10 (4A) of the Industrial Disputes Act, 1947 filed by the petitioner herein as claimant before the learned Labour Court-IX, KKD Courts, Delhi directly seeking reinstatement with full back wages and continuity of service against the respondent herein Dr. O.P. Abrol Clinic alleging that her service had been illegally terminated out of a grudge by the management i.e. the respondent on 28.03.2005, - was dismissed, it having been held that there had been no termination of service of the

petitioner/ workwoman herein but rather she had voluntarily left her job of her own will and accord and had abandoned her job.

2. At the outset, it is essential to observe that the petition filed in the year 2012 assailing an award dated 25.04.2009 is clearly delayed by laches which have not been satisfactorily explained and that there had been an inordinate unexplained delay in institution of the petition is brought forth through averments made in para-15 of the petition which read to the effect:

“That the petitioner/ workman is a poor lady. After the passing of the award, she approached a lawyer namely Sh. Ashish Kulshestra, Advocate to file writ petition against the award dated 25.04.2009, she paid her partial fee also, to proceed with the matter but the said advocate did not file any writ petition and kept on giving false assurances to the petitioner that he has filed the writ petition and he even used to give false date of hearing also to the petitioner. However, it was also submitted only in the month of January, 2012 that it revealed to the petitioner that in fact that the said Advocate has not filed any writ petition and he kept on befooling the petitioner. Hence, the delay, if any, in filing the writ petition is liable to be condoned. The said delay was neither intentional nor deliberate on the part of the petitioner.”

Significantly, the contents of this paragraph are also wholly vague. The petition is thus clearly barred by laches. However, in the interest of justice, it has been considered appropriate to consider the merits of the prayer made by the petitioner.

3. The record indicates that vide order dated 16.08.2012 in the present proceedings, CM APPL.2233/2012 filed by the petitioner herein seeking condonation of delay in filing the writ petition was

dismissed, it having been held that the application was not maintainable in as much as there was no period prescribed under the Limitation Act, 1963 for filing a writ petition, though it was directed that the respondent herein would be at liberty to take the plea of delay and laches during the course of arguments.

4. The course of the proceedings also indicates that the matter had been referred to mediation vide order dated 01.07.2013 but no settlement was arrived at between the parties.

5. The petitioner through her statement of claim before the learned Presiding Officer of the Labour Court-6, KKD, Shahdara in ID No.977/2005 submitted that she had been working with the respondent/management at its clinic situated at 3026/5A, Ranjit Nagar, Hanuman Chowk, Patel Nagar, Delhi for 25 years prior to institution of her claim dated 22.09.2005 with her last drawn salary of being Rs.4600/- and submitted that she had discharged her duties as a helper/attendant effectively and sincerely with no cause of complaint but that her services were terminated on 28.03.2008 by the respondent/management inasmuch as she had joined the Rashtriya General Mazdoor Union, 11, Rajpur Road, Delhi for a fight for her demand which came to the knowledge of the management.

6. The petitioner further contended that her services had been illegally and arbitrarily terminated by the management without giving her any written notice or any compensation while discharging her from the job and though she made a complaint through the Union to the Labour Office, Government of NCT Delhi, as a consequence of which, a Labour Inspector accompanied by the workwoman went to

the place of the management for the purpose of inspection and to intervene in the unlawful termination of her service but the management did not agree to take her back in the job, as a consequence of which, a notice of demand of service dated 03.06.2005 was duly served on the management through registered post through the Union which was to no avail. According to the petitioner, the conciliation proceedings initiated by her through the Union also did not lead to any fruitful conclusion due to the alleged adamant attitude of the management.

7. The petitioner further contended that she had been regularly approaching the management for reinstatement of service from the date her services were terminated but till date she had not been reinstated in her job. The petitioner further contended that the extreme penalty of dismissal imposed was highly disproportionate and harsh. She contended further that her termination was violative of Section 25-F of the Industrial Disputes Act, 1947 in as much as she was not served with the requisite one month notice nor paid one month salary in lieu of notice nor paid any retrenchment compensation and she had been made to undergo unfair labour practice in terms of Section 2(ra) r/w Item-5 (a) & (b) of Schedule-V of the Industrial Disputes Act, 1947.

8. The respondent through its written statement before the learned Labour Court apart from contending that his clinic did not fall within the ambit of an '*industry*' inasmuch as he, Dr. O.P. Abrol was running a small clinic due to his profession and running the same did not make it fall within the ambit of running an '*industry*' in terms of Section

2(J) of the Industrial Disputes Act, 1947. The respondent further submitted that there was no organized labour working with him to make his clinic fall within the ambit of an 'industry'.

9. Reliance was thus placed on behalf of the respondent on the observations of the Hon'ble Supreme Court in the case ***Bangalore Water Supply & Sewerage Board Vs. A. Rajappa (1978) 2 SCC 213*** to the effect:

"109..... Professional expertise and excellence, with its occupational autonomy, ideology, learning, bearing and morality, holds aloft a standard of service, which centers round the individual doctor, lawyer, teacher or auditor. This reputation and quality of special service being of the essence, the cooperation of the workmen in this core activity of professional offices is absent. The clerks and stenos, the bell boys and doormen, the sweepers and menials have no art or part in the soul of professional functions with its higher code of ethic and intellectual professional, their contribution being peripheral and low grade with no relevance to the client's wants and requirements.

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111.....A single lawyer, a rural medical practitioner or urban doctor with a little assistant and/or menial servant may ply a profession but may not be said to run an industry. That is not because the employee does not make a contribution nor because the profession is too high to be classified as a trade or industry with its commercial connections but because there is nothing like organized labour in such employment. The image of industry or even quasi industry is one of a plurality of workmen, not an isolated or single little assistant or attendant. The latter category is more or less like personal avocation for livelihood taking some paid or part time from another. The whole purpose of the Industrial Disputes Act is to focus on resolution of

industrial disputes and Regulation of Industrial relation and not to meddle with every little carpenter in a village or blacksmith in a town who sits with his son or assistant to work for the customers who trek in. The ordinary spectacle of a cobbler and his assistant or a cycle repairer with a helper, we come across in the pavements of cities and towns, repels the idea of industry and industrial dispute. For this reason, which applies all along the line, to small professionals, petty handicraftsmen, domestic servants, and the like, the solicitor or doctor or rural engineer, even like the butcher, the baker and candle stick maker, with an assistant of without does not fall within the definition of industry. In regular industries, or course even a few employees are enough to bring them within Section 2(j), otherwise, automated industries will slip through the net.... "

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"95. A conspectus of the clauses has induced Gajendragadkar, J. to take note of the impact of provisions regarding public utility service also: (SCR page 875)

"If the object and scope of the statute are considered there would be no difficulty in holding that the relevant words of wide import have been deliberately used by the Section 2(j). The object of the Act was to make provision for the investigation and settlement of Industrial disputes, and the extent and scope of its provisions would be realized if we bear in mind the definition of "Industrial dispute" given by Section 2(k) of 'wages' by Section 2(rr) 'workman' by Section 2(s) and of 'employer' by Section 2(g). Besides, the definition of a public utility service prescribed by Section 1(m) is very significant. One has merely to glance at the six categories of public utility service mentioned by Section 2 (m) to realize that the rule of construction on which the Appellant relies is inapplicable in interpreting the definition prescribed by Section 2(j).

The positive delineation of "industry" is set in these terms: (SCR p. 879) "... as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the cooperation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organized or arranged in a manner in which trade or business is generally organized or arranged. It must not be casual or must it be for oneself nor for pleasure. Thus the manner in which the activity in question is organized or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which Section 2(j) applies. Judged by this test there would be no difficulty in holding that the State is carrying on an undertaking when it runs the group of hospitals in question." Again (SCR P. 878)."

"It is the character of the activity which decides the question as to whether the activity in question attracts the provision of Section 2(7); who conducts the activity and whether it is conducted for profit or not do not make a material difference."

10. The respondent contended through its written statement that the petitioner had joined him around 1980 when she had no qualification for being a compounder or for discharging any duty as a medical personnel and she had been kept by the respondent who had a small clinic with two or three personnel who were not from the medical field or with a medical background to help him and the petitioner was given instructions so that she could be of help in providing for the medicines as per instructions of the respondent. According to the respondent, the petitioner left her job of her own around 1982-1991 and thereafter

again joined and stated further that she had worked for so many years with the respondent and learned the non-medical work in the clinic which had no connection with the medical service being discharged by the respondent and thereafter she started taking the matter for granted and started coming late and she was told to refrain from the same but she continued to do so and on 28.03.2005, the petitioner came very late and she was told by the respondent to come in the evening shift for duty and there was rush of patients in the clinic when the respondent wanted to concentrate on his patients but the petitioner did not return to work the same day and this continued for a few days and on 01.04.2005, the petitioner came to collect her salary at about 12:50 p.m. which she was given and after the few days, she visited again stating that she wanted to work somewhere else where the working hours were suitable to her and thus requested for an experience certificate for having worked till that date and thus the respondent had given her the experience certificate but did not terminate her services and the certificate merely provided that she had worked as a dispensing assistant from 1980 onwards and the respondent at no time terminated her service as he always required the assistance of a labour and the petitioner by now had learnt the manner of the functioning of the clinic.

11. The respondent further submitted through his written statement before the learned Labour Court that on 06.05.2005, he received a notice from the Deputy Labour, Inspector, F-Block, Karampura to which the respondent replied stating categorically that he had never terminated her service and had issued the experience certificate as

requested by her and that in his reply submitted before the Deputy Labour Inspector, he had clearly stated that the petitioner was most welcome to rejoin her service and that he had only a small clinic and did not believe in terminating his old helper and she would be taken back without any pre-condition on behalf of the respondent, but the petitioner refused to join even before the Labour Inspector.

12. The respondent further submitted that even before the Conciliation Officer at the Labour Office, the respondent had brought forth all these facts and reiterated that it was the petitioner who had herself abandoned her services and that her service had never been terminated by the respondent.

13. The learned Labour Court-IX vide the impugned award dated 25.04.2009 held that the petitioner herein fell within the category of a workwoman in terms of the Industrial Disputes Act, 1947 which findings have not been assailed by the respondent by filing any counter petition and thus are not being considered now. It is essential also to observe that vide order dated 12.02.2017 of the PO Labour Court-VI on an application under Section 36 of the Industrial Disputes Act filed by the workwoman, the respondent herein contended to similar effect that the management did not fall within the definition of 'industry' in terms of Section 2(j) of the Industrial Disputes Act, 1947 which contention was repelled but the respondent herein is not indicated to have assailed the said order dated 12.02.2017 also.

14. However, on the merits of the case, the learned Labour Court-IX vide the impugned award qua issue framed as issue no.2 to the effect that **"Whether the claimant was illegally or unjustifiably**

terminated by the management w.e.f. 28.03.2005 ? OPW” recorded its findings as under:

“14. I have taken up this issue first before deciding issue no.1 because to my considered opinion, the main controversy in this matter revolves around this issue. Now turning to the evidence on record pertaining to this issue, WWI i.e. the workman herself admitted in her cross-examination that actual date of her termination was 28.03.05; that she had filed a complaint before Labour Authority against her termination but she did not remember the date of that complaint; that it was correct that copy of that complaint was not on record; that it was correct that despite her termination dated 28.03.05, she got certificate from the management on 20.04.05 regarding her satisfactory job; that she received letter of the management during conciliation proceedings asking her to rejoin her duties but she did not join.

15. The main contention of the management throughout has been that there was no question of termination of services of the workman by the management but rather she voluntarily left her job at her own will and accord and did not join her duties despite several request letters written to her by the management from time to time calling upon her to join her duties. I find force in this contention of the management. There is a letter dated 11.07.05 on record written on behalf of the management to the conciliation office, labour office, Karampura, Delhi asking at the end of it to direct the workman to join her duties immediately with the management. This letter has also been admitted by the workman herself in her cross-examination as mentioned above. There is a letter Ex. MW1/5 dated 01.01.08 on record. It is a letter of fresh appointment of the workman on some fresh terms and conditions of the appointment reached between workman and the management. If there was any intention on the part of the management for terminating the services of the workman as alleged by her, I am of the considered opinion that the management would not have given her a fresh appointment letter as Ex. MW1/5 on record. There is another letter 07.04.08

Ex. MW1/6 on record sent by Registered AD post from the side of the management to the workman telling her clearly that she had been absenting from work place w.e.f. 23.03.08 without any leave application and without sanction of the leaves in her favour and she was asked at the end of this letter to report for her duties forthwith. As revealed from the judicial file, the workman did not join her duties despite receiving this call letter from the management. I am further of the considered opinion that there was no substantial rebuttal of these letters from the side of the workman by way of any cogent evidence, either oral or documentary. On the basis of abovementioned discussion coupled with own admissions of the workman in her cross examination as mentioned above and further coupled with other entire oral as well as documentary evidence on record, I am of the considered opinion that the workman herself abandoned job at her will and accord and hence, there was no question of termination of her services illegally or unjustifiably by the management w.e.f. 28.03.05. Hence, this issue is decided against the workman and in favour of the management.”

15. In her cross examination while stating that the date of her termination of service by the respondent was 28.03.2005, the petitioner herein admitted having received a certificate from the management on 20.04.2005 in relation to satisfactory performance. She admitted that she had received a letter of the management during conciliation proceedings asking her to rejoin and admitted that she did not join the services of the respondent.

16. Through his cross-examination, Dr. O.P. Abrol examined as MW-1 on behalf of the management dated 24.07.2008 denied that he had terminated the service of the claimant on 28.03.2005.

17. Ex. MW1/6, a letter dated 07.04.2008 issued by the respondent to the petitioner herein admittedly sent through speed post even during the pendency of the proceedings before the learned Labour Court-IX

called upon the petitioner herein to report for duty within 72 hours from the date and time of receipt of the letter and the testimony of the petitioner categorically admits the receipt of the letter from the management during the conciliation proceedings calling upon her to rejoin but she did not join.

18. As rightly held by the learned Labour Court, a reply dated 11.07.2005 of the management to the claim statement before the Conciliation Officer, Labour Office, Karampura, New Delhi for calling upon to reject her claim nevertheless sought that the petitioner be directed to join her duties immediately.

19. Ex. MW-1/5, a letter dated 01.01.2008 issued by the respondent also indicates that the letter of fresh appointment was issued to the petitioner by the respondent. It has also been rightly held by the learned Labour Court (POLC)-IX that the issuance of a fresh letter of appointment on the same terms and conditions of the appointment as earlier between the petitioner and the respondent brought forth clearly that there was no mala fide intent on the part of the management for terminating her services.

20. Ex.MW1/6 is another letter sent by the respondent to the petitioner herein during the course of proceedings calling upon the petitioner not to take any action vide which letter, the petitioner was called to report for duty within 72 hours from the date and time of receipt of the letter to which also the petitioner herein sent no response. *As rightly held by the learned Labour Court (POLC), the issuance of Ex.MW1/6 and the fresh letter of appointment*

Ex.MW1/5 dated 01.01.2008 negate any intent or desire by the respondent herein to terminate the services of the petitioner.

21. In the facts and circumstances of the instant case thus, the reliance placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***G.T. Lad and Others Vs. Chemicals and Fibres India Ltd. 1979 LAB. I.C. 290*** the facts of which are not in *pari materia*, with the facts of the instant case are wholly misplaced, wherein also it is laid down categorically in para 6 that read to the effect:

“Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”

22. Reliance placed on behalf of the petitioner on the verdict of this Court in ***M/s Fateh Chand Vs. Presiding Officer, Labour Court & Anr. 2012 LLR 468*** is also wholly misplaced in as much as this too lays down categorically that inference of abandonment depends on facts and circumstances of each case qua which as already observed hereinabove the facts established on the record before the learned Labour Court-IX bring forth clearly that the petitioner had chosen to abandon her services with the respondent.

23. In the circumstances, thus the reliance placed on behalf of the petitioner on the verdict of this Court in ***DTC Vs. Shri Shishu Pal 2000 (85) FLR 431*** to contend that in the absence of any enquiry having been held against the petitioner, the termination of services of the petitioner could not be automatic and there ought to have been

reinstatement of the petitioner with back wages even if the petitioner was absent, the facts and circumstances of the instant case as observed hereinabove have brought forth that the petitioner had abandoned the services with the respondent. Likewise, reliance placed on behalf of the petitioner on the verdict of this Court in ***Emsons Radio Corporation & Anr. Vs. Secretary (Labour) Government of NCT, Delhi and Anr. 2006 LLR 1040*** to similar effect to contend that no enquiry having been held into the alleged unauthorized absence of the petitioner, does not aid the petitioner, in as much as in the instant case, the testimony of the petitioner herself has brought forth itself despite the offer for rejoin the services, the petitioner did not bother to rejoin the services of the respondent.

24. Likewise, reliance was placed on behalf of the petitioner on the verdict of this Court in ***The Management of M/s Birla Textiles Vs. P.O. (Labour Court-I), Delhi & Others 2001 LLR 471*** to contend that in the absence of disciplinary action having been initiated against the petitioner for alleged absence of the workman, the stand of the management that the workman had abandoned the service was wholly unjustifiable does not assist the petitioner in the facts and circumstances of the case where the evidence on record establishes that the petitioner had abandoned the services of the respondent. Likewise, reliance on behalf of the petitioner on the verdict of the Hon'ble High Court of Punjab and Haryana in ***Bhuna Cooperative Sugar Mills Ltd. Vs. Mohinder Singh and Another 2001 LLR 141*** is equally misplaced in view of the evidence led on the record. The verdict of the Hon'ble Supreme Court relied upon on behalf of the

petitioner in between *M/s Nicks (India) Tools Vs. Ram Surat and Anr. 2004 (103) FLR 102* also does not aid the petitioner in as much as the burden of prove that the petitioner had voluntarily left the service has been satisfactorily discharged by the management in the facts and circumstances of the instant case.

25. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble High Court of Bombay in between *Gaurishankar Vishwakarma Vs. Eagle Spring Industries (Private), Ltd. and Others reported in LNN (Bombay) 1988 259* is also equally misplaced in as much as the respondent has been able to establish that the petitioner had abandoned the services of the respondent. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble High Court of Bombay in between *Rajendra Prasad B. Nayak Vs. Arpee Electricals (Private) Ltd., and others 1979- I LLN 331* also in the facts and circumstances of the instant case does not aid and assist the petitioner in as much as the evidence on the record before the learned Labour Court-IX cogently and consistently establishes that the petitioner had abandoned the services of the respondent.

26. The available record thus makes it apparent as rightly held by the POLC-IX that the workwoman had abandoned her job of her own will and accord and did not join the services of the respondent of her own.

27. In the facts and circumstances, it is held that there was no illegal termination of the services of the petitioner and that the petitioner is not entitled to any reinstatement. Taking the totality of the

circumstances of the case into account, it is held that there is no infirmity in the impugned award dated 25.04.2009 of the Ld. Presiding Officer, Labour Court-IX, KKD Courts, Delhi in ID No.377/2005 (old) ID No.382/08 (new), Writ Petition (C) 1014/2012 filed by the petitioner herein, is thus dismissed.

ANU MALHOTRA, J.

DECEMBER 18, 2018

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