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

Date of decision: 17th September, 2018

+ **W.P.(C) 9786/2018 & CM Nos.38128-29/2018**

EAGLE HUNTER SOLUTIONS LIMITED Petitioner

Through : **Mr. Vivek Sharma, Adv.**

versus

SH. PREM CHAND Respondent

Through : **None.**

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

CM No.38129/2018 (exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 9786/2018 & CM No.38128/2018 (stay)

1. This writ petition is directed against the award, dated 21st July, 2018, passed by the Labour Court, whereby the termination of the services of the respondent, by the petitioner, on 1st March, 2012, has been held to be illegal and the respondent has been held entitled to reinstatement with continuity of service and full back wages.
2. The facts, as set out in the impugned award, do not admit of any complexity and may be briefly set out thus :

(i) The respondent workman was employed, with the petitioner, since 13th January, 2011, at the rate of Rs.6,656/- per month, as a Security Guard. He contended, before the Labour Court, that the petitioner had terminated his services on 1st March, 2012, without notice and without having paid him his salary for the period 1st February, 2012 to 29th February, 2012. On this premise, he initiated an industrial dispute, which was referred by the appropriate government to the Labour Court for adjudication, with the following term of reference :

“Whether Sh. Prem Chand S/o Sh. Tara Chand has abandoned his duty on and from 8/2/2013 or his services have been terminated illegally and/or unjustifiably by the management; if so, to what relief is he entitled and what directions are necessary in this respect ?”

(ii) Contesting the claim of the respondent, the petitioner, in its written statement, adopted the stand that the respondent had remained unauthorisedly absent from duty w.e.f. 8th February, 2012, and did not join duty despite being asked to do so, by the petitioner. It was, therefore, contended that the respondent had abandoned his service.

(iii) On the basis of the pleadings of the parties, the Labour Court crystallized the issues arising for its consideration, in its order dated 16th July, 2015, thus :-

“a) Whether the workman himself abandoned services of the management from 08.02,2012 ? OPM

b) If issue no.1 is decided in favour of the workmen, "whether his services were illegally or unjustifiably terminated by the management"? OPW

c) Relief.”

(iv) Before the Labour Court, the respondent examined himself as WW-1. He reiterated his statement of claim and also produced certain supporting documents, which he proved. In cross-examination, he categorically denied having refused to rejoin the services of the petitioner, or any offer having been made by the latter. He reiterated that he was willing to join the services of the petitioner, even at that stage.

(v) The petitioner led the evidence of one Mr. B.B. Pandey, who reiterated the contents of the written statement filed by the petitioner before the Labour Court.

(vi) Consequent on recording of evidence and advancing of arguments by learned counsel for the parties, the Labour Court, in the impugned award, returned the following findings:

(i) The onus to prove the abandonment of service was on the petitioner. The petitioner had failed to discharge the said onus.

(ii) MW-1 Mr. B.B. Pandey had admitted that he could not say whether any written communication had been served on the respondent, asking him to join, or not, without seeing the record. Similarly, he also submitted

that he could not make any submission regarding the attendance of the respondent, without seeing the record.

(iii) The Labour Court found that the “record”, to which Mr. Pandey referred, was the record in the possession of the petitioner, and that it was for the petitioner to produce the same. It has further specifically being observed, in the impugned award, that the petitioner neither produced the said record, nor sought any adjournment to do so.

3. In these circumstances, the Labour Court concluded that an adverse inference was liable to be drawn against the petitioner on this issue.

4. I have, in my judgment in *M/s. Engineers India Ltd. v. Presiding Officer Labour Court*, 2018 SCC Online DEL 7572, culled out the following principles; regarding “abandonment” as discernible from leading authorities on the issues viz. *Uptron India Ltd. v. Shammi Bhan*, (1998) 6 SCC 538, *Syndicate Bank v. General Secretary, Syndicate Bank Staff Association*, (2000) 5 SCC 65, *Punjab & Sind Bank v. Sakattar Singh*, (2001) 1 SCC 214, *Scooters India Ltd. v. M. Mohd Yakub*, (2001) 1 SCC 61, *Regional Manager, Bank of Baroda v. Anita Nandrajog*, (2009) 9 SCC 462, *Lakshmi Precision Screws Ltd. v. Ram Bhagat*, (2002) 6 SCC 52, *Vijay S. Sathaye v. Indian Airlines Ltd.*, (2013) 10 SCC 253, *U.O.I. v. Major Bahadur Singh*, (2006) 1 SCC 368 and *State of Haryana v. Om Prakash*, (1998) 8 SCC 733:

“(i) Common law principles, on the issue of abandonment from service, would not apply, where the abandonment is by way of regulatory fiat, invoking any applicable Clause which contemplates “deemed abandonment”. In such cases, the clause itself would have to be interpreted, to discern whether a case of “deemed abandonment” can be said to have been made out, or not.

(ii) 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. Any clause contemplating “deemed abandonment”, even if it exists, cannot be so interpreted as to deem abandonment to have taken place, even where intention to abandon is not apparent.

(iii) Whether intention to abandon exists, or not, is a question of fact, to be determined in each case.

(iv) Termination, or removal, from service, is a positive act of the employer; *per contra*, abandonment is a positive act of the employee.

(v) The fact that the act, which, per Rule, Regulation or Standing Order, is deemed to amount to “abandonment of service”, also constitutes “misconduct”, within the said applicable rules or regulations, is not a ground to contend that the employer necessarily had to treat the act as “misconduct” and proceed against the employee by way of a domestic inquiry or disciplinary proceeding; the discretion, in this regard, vests with the employer.

(vi) 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”.

(vii) Unless and until it could attract one or more of the exceptions statutorily engrafted in Section 2(oo) of the ID Act, striking, of the name of a workman, off the rolls of an establishment, on the ground of the workman having “abandoned” his services, would tantamount to “retrenchment” within the meaning of the said Act.

(viii) The principles of natural justice have, in all cases, to be observed before treating an employee to have abandoned his service, even if the Rule, or Clause, deeming “abandonment” to have taken place, does not expressly contemplate compliance with any such principles. At the same time, if an employee unequivocally expresses his desire to abandon the services of the employer, by entirely failing to turn up for work or otherwise, then, no notice, prior to removal of the name of the employee from the rolls of the employer, would be necessary, as any such notice would only be an empty formality.

(ix) Exclusion, from the ambit thereof, of the principles of natural justice, would render the provision of “deemed abandonment”, itself unconstitutional.

(x) Cases of abandonment, by invocation of the provisions of Bipartite Settlements, between Banks and their employees, may stand on a different footing, as they are based on an interest, between employer and employee (s), and have to be examined separately. The present case not being one such, I do not propose to enter into the said arena.”

(Emphasis supplied)

As such, in the absence of positive evidence, to which the petitioner had failed to do in the present matter, the Labour Court decided issues no.1 and 2 as framed by it, and reproduced hereinabove, against the petitioner and in favour of the respondent.

5. Consequently, Issue No.3 was decided by holding the respondent entitled to reinstatement with full back wages.

6. It is equally trite in law that the parameters of interference by this Court with the award of Labour Court and the Industrial Tribunal are extremely limited.

7. I have had occasion to examine the said aspect and holding as under in my earlier decision in *D.T.C. v. Chander Singh*, (2017) 4 LLJ 747:

“41. It is also unfortunate that the petitioner chose to challenge the award of the learned Tribunal, which merely directed reinstatement of a driver, and cannot be said, by any stretch or imagination, to be perverse or illegal in any manner. The scope of interference with awards of Labour Courts & Industrial Tribunal has been examined by me in a recent position in *DTC v. Mool Chand*. It was noticed, in that decision, that the scope of interference, in certiorari, with awards of Labour Courts and Industrial Tribunals are circumscribed by the following classic exposition of the law, to be found in *Syed Yakoob v. K.S. Radhakrishnan*, AIR 1964 SC 477:

7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard, to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of

fact, however grave it may appear to be. In regard to finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and

the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened.”

42. Thereafter, relying on the well-known decisions in *Management of Madurantakam Cooperative Sugar Mills Ltd. v. S. Viswanathan*, (2005) 3 SCC 193, *P.G.I. of Medical Education and Research, Chandigarh v. Raj Kumar*, (2001) 2 SCC 54 and *M.P. State Electricity Board v. Jarina Bee*, (2003) 6 SCC 141, I had culled out the following principles:

- ‘(i) The Labour Court/Industrial Tribunal is the final fact finding authority.
- (ii) The High Court, in exercise of its powers under Article 226/227, would not interfere with the findings of fact recorded by the Labour Court, unless the said findings are perverse, based on no evidence or based on illegal/unacceptable evidence.
- (iii) In the event that, for any of these reasons, the High Court feels that a case for interference is made out, it is mandatory for the High Court to record reasons for interfering with the findings of fact of the Labour Courts/Industrial Tribunal, before proceeding to do so.

(iv) Adequacy of evidence cannot be looked into, while examining, in writ jurisdiction, the evidence of the Labour Court.

(v) Neither would interference, by the writ court, with the findings of fact of the Labour Court, be justified on the ground that a different view might possibly be taken on the said facts.

(vi) “Perversity”, for its part, is attributed to a judicial/quasi judicial decision if the decision ignores/excludes relevant material, considers irrelevant/inadmissible material, is against the weight of evidence, or so outrageously defies logic as to suffer from irrationality.

(vii) In examining whether a decision is, or is not, perverse, the classic test, of the reasonable man's conclusion on the facts before the authority concerned would apply.

(viii) Inadequacy of evidence, or the possibility of reading the evidence in a different manner, would not amount to perversity.”

The judgment in *Chander Singh (supra)*, it may be noted, was challenged before the Supreme Court by way of SLP No.5306/2018, which was dismissed *vide* order dated 9th March, 2018 holding that no ground was made out to interfere therewith.

8. Operating, as I am, within the limited peripheries of certiorari jurisdiction, I do not find any manifest error in the impugned award of the Labour Court, as would warrant interference by me under Article 226 of the Constitution of India. At the cost of reiteration, it may be mentioned that the position, in law, is well settled that the onus to prove abandonment is on the employer. Mere filing of affidavit alleging that the workman had abandoned the services is entirely

insufficient to discharge the said onus. That apart, the affidavit filed by MW-1, too, only referred to the respondent having been offered employment by the petitioner, during the course of the conciliation proceedings. Even on that aspect, MW-1, the only witness of the respondent, was, at best, ambivalent, confessing that it was not possible for him to state whether any written communication had been served on the respondent or not. He neither produced any record, to support his plea of abandonment, as set up by the petitioner, nor sought time to produce any such record.

9. That apart, it was necessary for the petitioner to succeed in its case, to prove that the respondent had abandoned his services *on 8th February, 2012*. Even it was to be shown that thereafter, during conciliation proceedings, an offer of employment was extended to the respondent, that would not have sufficed to establish a case of abandonment, by the respondent, of his services, *on 8th February, 2012*.

10. In view thereof, I had pointedly queried, of learned counsel for the petitioner, as to whether there was any material to indicate that the respondent had abandoned his services *on 8th February, 2012*. His only reliance, in this connection, is to the deposition of the respondent, during cross-examination on 16th August, 2016, in which he states that he “left the management on 01.03.2012”. This sole statement, in my view, cannot suffice to make out a case of “abandonment” by the respondent, of the services of the petitioner especially as, in his cross-examination before the Labour Court, the respondent expressed his willingness to re-join the services of the petitioner even at that stage.

Animus to abandon, it is well-settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence, of any such animus on the part of the Respondent No.1, is forthcoming in the present case.

11. For all the above reasons, I am unable to discern any justifiable ground for this Court to interfere with the impugned award of the Labour Court, which is consequently sustained in its entirety.

12. The writ petition and application are accordingly dismissed *in limine*.

13. There shall be no order as to costs.

SEPTEMBER 17, 2018/mk

C.HARI SHANKAR, J