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

Date of decision : 3rd October, 2018

+ W.P.(C) 10513/2018 & CM Nos.41058-41059/2018

M/S DESIGN DECISIONS INC THROUGH SHRI ANIL
KUMAR JAIN, SOLE PROPRIETOR Petitioner
Through: Mr. Inder Jit Singh, Adv.

versus

YOGESH ARORA Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

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J U D G M E N T (O R A L)

1. This writ petition challenges an Award, dated 9th October, 2017, passed by the Labour Court, on a reference, dated 26th August, 2015, received from the Deputy Labour Commissioner, Government of National Capital Territory of Delhi, with respect to an industrial dispute between the petitioner and the respondent.

2. The respondent, in his statement of claim, stated that he had been appointed with the management of the petitioner, as an assistant architect, in December, 1988. He further stated that the petitioner had a sister concern named M/s Designer's Consortium, being run by the same proprietor (though Mr. Singh submits that the said unit was run by the wife of the proprietor of the petitioner), and that he used to work for both the concerns. He alleged that he had been deputed to

Chennai from April to June, 2010, but had not been paid conveyance allowance. He further alleged stoppage of his salary from September, 2011, though he continued to report regularly for duty. He contended that his services had been terminated, by the petitioner, with effect from 1st October, 2013 without notice.

3. Demand notice dated 16th June, 2014 sent by him to the petitioner, was alleged not to have received any response.

4. It was in these circumstances that the respondent initiated an industrial dispute, which was referred, for adjudication to the Labour Court, by the GNCTD, as already noted hereinabove.

5. Before the Labour Court, the respondent prayed for reinstatement, with full back wages, continuity of service and other consequential benefits.

6. The petitioner, per contra, raised the following contentions :

“(i) The claim of the respondent was barred by time.

(ii) The petitioner had never terminated the services of the respondent; rather, the respondent had himself discontinued working for the petitioner from August, 2011 and had, thereby, abandoned his services.”

7. The following issues were framed by the Labour Court, as arising for its consideration, vide order dated 12th August, 2016 :

“(i) Whether the claim of the claimant is barred by law?

(ii) In terms of reference

(Whether Sh. Yogesh Arora s/o Late Sh. Jain Swaroop Arora absented from his duty unauthorizedly or his services have been terminated illegally and/or unjustifiably by the management and if so, to what sum of money as monetary relief alongwith other consequential benefits in terms of existing Laws/Govt. Notification and to what other relief is he entitled and what directions are necessary in this respect?)

(iii) Relief?”

8. The workman examined himself as WW-1, whereas the petitioner examined Sh. Anil Kumar Jain, its proprietor, as MW-1.

9. On the issues framed by it, as reproduced hereinabove, the Labour Court held/observed as under :

(a) Re. Issue (1)

(i) Issue no. (1) was regarding whether the claim of the respondent was barred by law. The respondent contended that, as his services had been terminated on 3rd October, 2013, and he had raised an industrial dispute, before the Conciliation Officer, on 28th August, 2014, the claim was within time. The Labour Court decided this issue in favour of the respondent, relying on Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the ‘ID Act’). No serious cavil, to this aspect of the decision of the learned Tribunal, has been raised by the petitioner in the present proceedings.

(b) Re. Issue (2)

Regarding this issue, the Labour Court held/noted as under :

(i) MW-1 Sh. Anil Kumar Jain had admitted, in his cross examination, that the respondent was employed with the petitioner as an Assistant, though he did not remember his date of joining.

(ii) The respondent had, in his affidavit (Ex.WW-1/A) sworn on oath, submitted that he had joined the petitioner in December, 1988.

(iii) Having admitted that the respondent was his employee, it was for the petitioner to produce the service record of the respondent to prove that the respondent joined its services. In the absence of any such evidence, being forthcoming from the petitioner, the contention, of the respondent that he joined the petitioner in December, 1988, merited acceptance.

(iv) MW-1 Sh. Anil Kumar Jain further admitted, in cross examination, that the respondent used to work for both his concerns, i.e. M/s Design Decision and M/s Designer's Consortium.

(v) Even if the respondent had not appeared for work and had abandoned his job, the petitioner was required to

hold an enquiry in that regard and offer the respondent a chance for explanation in accordance with the principles of natural justice, as held by the Supreme Court in ***Scooters India Ltd. v. M. Mohammad Yaqub And Anr, (2001) 1 SCC 61.***

(vi) Relying on the above reasoning, the Labour Court held that the termination of the services of the respondent had been effected without following due process of law and was, therefore, *ex facie* illegal and unjustified. Issue no.(2) was, therefore, decided in favour of the respondent and against the petitioner.

(b) Re. Issue (3)

Following the judgment of the Supreme Court in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.), (2013) 10 SCC 324***, the respondent was held entitled to be reinstated in service with continuity of service and with 75% back wages.

10. It is a trite position, in law, that this court, while entertaining petitions, under Article 226 of the Constitution of India, does not sit in appeal over the decisions of the Labour Court or Industrial Tribunal, especially on findings of fact. It is only where the decisions suffer from perversity *ex facie*, or are such as would not appeal to any reasonable man, conversant with the facts and the law, that this court steps in. It is equally well settled that this court would not interfere

merely on the ground that an alternate view, different or distinct from the view adopted by the Labour Court or Industrial Tribunal, is possible on the facts.

11. In the present case, the Labour Court has proceeded by appreciating the evidence before it in a manner which, at the very least, is a view which can probably be taken thereon. It has taken into account the fact that there was admission, by MW-1, of the fact that the respondent had worked with it, and has, on the basis thereof, correctly held that, once the factum of working, of the respondent, with the petitioner, stood admitted, the onus lay, on the petitioner, to produce the records to establish that the respondent had abandoned its services. No exception can, either, be taken, to the finding of the Labour Court that, in proceeding on the ground that the respondent had abandoned its services, the petitioner had not acted in accordance with the law laid down by the Supreme Court in *Scooters India Ltd. (supra)*.

12. Mr. Singh, appearing for the petitioner, has sought to rely on my earlier judgment in *Dev Narayan v. The Management of M/s Auto Precision (WP(C) 14302/2004)* which also involved an issue of abandonment. A bare reading of the said decision reveals that the facts, as obtaining in the said case, were to the effect that, despite the management having offered to take the workman back in service, and a communication, to the said effect, also having been addressed by the Labour Inspector, on 26th June, 1991 to the Union representing the cause of the workman, there was no response from the side of the

workman. In that case, the Labour Court had held against the workman, and this Court, following the same principle of limited interference with the Award of the Labour Court, had found that, on these facts, among others, the Award of the Labour Court could not be said to be vitiated by apparent illegality or perversity, and that no case for such interference was, therefore, made out.

13. Clearly, therefore, the decision in *Dev Narayan (supra)* is distinguishable from the present case.

14. Mr. Singh finally objects to the grant of 75% back wages, by the Labour Court, on the ground that the petitioner was in receipt of earnings as Commission Agent for the Life Insurance Corporation. He is, however, unable to dispute the fact that the back wages payable would be substantially higher than the commission which was being earned by the respondent.

15. Be that as it may, in view of the said objection raised by Mr. Singh, the quantum of back wages, as granted by the Labour Court, stand reduced from 75% to 50%.

16. Subject to the above modification, the impugned Award of the Labour Court is upheld, and the writ petition is dismissed, with no order as to costs.

C.HARI SHANKAR, J

OCTOBER 03, 2018/kr