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

Date of decision : 19.08.2019

+ LPA 22/2019
M/S DESIGN DECISIONS INC THR.ANIL KUMAR

..... Appellant
Through: Mr. Rajat Arora and Mr. Niraj Kumar,
Advocates
versus

YOGESH ARORA

..... Respondent
Through: Mr. Satish Kumar Tripathi, Advocate
with respondent in person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

G.S. SISTANI, J. (Oral)

1. Typographical error in the order dated 22.07.2019, wherein the date has been wrongly mentioned as 09.08.2019 is corrected and shall be read as 19.08.2019.

2. The present appeal is directed against the order dated 03.10.2018, by which the appellant had challenged the Award dated 09.10.2017, passed by the learned Labour Court. Challenge is also laid to an order dated 05.12.2018 passed in the Review Petition filed by the appellant herein.

3. The respondent was employed with the appellant as an Assistant architect since the year 1988. The consistent stand of the appellant has

been that the appellant did not dismiss the respondent but it is the respondent, who had abandoned his job since August 2011.

4. An industrial dispute was raised by the respondent before the Labour Court in the year 2014. Thereafter, the appropriate Government, in the year 2015, referred the matter for adjudication before the Labour Court. An Award was passed on 09.10.2017 by the learned Labour Court in favour of the respondent workman for reinstatement with 75% back wages.

5. The Award was challenged by filing a writ petition in the month of September 2018. The learned Single Judge, while deciding the writ petition vide order dated 03.10.2018, has modified the Award to the extent that the quantum of back wages granted by the Labour Court was reduced from 75% to 50%. Thereafter, a review petition was also filed, which was dismissed vide order dated 05.12.2018.

6. Mr. Arora, learned counsel appearing for the appellant has labored hard to contend that the Labour Court as also the learned Single Judge have failed to take into account the fact that the respondent had abandoned his services. It is, thus, contended that the respondent would not be entitled either to back wages or for reinstatement. Elaborating his argument further, Mr. Arora has drawn the attention of the Court to a document, placed on record, which clearly establishes that the respondent was gainfully employed throughout the period between 2011 till date, as an LIC Agent. The attention of the court is drawn to the column, which shows the commission received by the respondent. It is on the basis of this

submission that learned counsel for the appellant contends that this is not a case where the respondent would be entitled to any back wages.

7. Learned counsel for the appellant has also submitted that the factum of the respondent having been employed as an Insurance Agent has not been disputed. Reliance is placed on the affidavit of evidence filed by the appellant herein to contend that the respondent had himself stopped reporting for work after August 2011. It is further contended that even at the stage when the appellant had offered reinstatement, the respondent has not been cooperating and has not attended to his duties, although he did join for a period of one and half months.

8. Mr. Tripathi, learned counsel appearing for the respondent submits that there is no infirmity or illegality in the order passed by the learned Labour Court or the learned Single Judge. He submits that it not in dispute that the respondent was engaged by the appellant and he continued to work till August 2011, after which he was dismissed, without holding any inquiry.

9. We have heard learned counsels for the parties and examined the Award as well as the order passed by the learned Labour Court and the learned Single Judge respectively.

10. We are of the view that the learned Single Judge has correctly noted that while the appellant herein had pleaded that the respondent had abandoned the work and was not terminated, the management had not held any inquiry to prove the abandonment. Learned Single Judge

has rightly relied on the decision rendered by the Apex Court in the case of *M/S. Scooters India Ltd vs. M. Mohammad Yaqub & Anr, (2001) 1 SCC 61*, wherein the Apex court while dealing with the case of abandonment had held that an enquiry must be held to prove the abandonment of employment before the services are terminated on this ground. In the absence thereof, we find that there is no illegality or infirmity in the order so passed. As far as the submission made with regard to the respondent working as an LIC Agent is concerned, the learned Single Judge has taken the same into consideration keeping in view the earnings of the respondent and given benefit to the appellant herein by reducing the back wages from 75% to 50%.

11. It is settled law that while entertaining a writ petition or an appeal against the Award of an Industrial Tribunal or the Labour Court, the Court must examine as to whether there is any perversity, *ex facie*, or the view taken by the Tribunal is of such a nature which would completely shock the conscious of the Court. No interference is required in case a different or distinct view is possible. Taking into consideration the fact that no inquiry was held to prove the alleged abandonment, the learned Single Judge has correctly applied the law to the facts of the case. We find no grounds to interfere in the order passed by learned Single Judge. The appeal is accordingly dismissed.

12. The amount deposited in this Court shall be released in favour of the respondent. The interest accrued on the amount already deposited, be also paid to the respondent, in accordance with the order

of the learned Single Judge, in addition to any other amounts that may be due to the respondent at this stage.

G.S.SISTANI, J

JYOTI SINGH, J

AUGUST 19, 2019

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