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

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Date of Decision: 16th May, 2019

+ W.P.(C) 5336/2011

PRABHU VERMA

..... Petitioner

Through: Ms.Anubha Kaushal, Advocate

versus

D P INDUSTRIES

..... Respondent

Through: Ms.Urvi Mohan, Advocate (Amicus Curiae)

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (ORAL)

1. The petitioner has challenged the award of the Labour Court whereby his statement of claim has been dismissed.
2. The petitioner was working with the respondent as a Power Pressman with effect from 06th December, 2000.
3. On 19th September, 2003, the petitioner's left hand was stuck in the machine during the course of his employment due to which the fingers of his left hand were amputated.
4. According to the petitioner, the respondent terminated him on 11th May, 2006 after illegally confining him and pressurizing him to sign the resignation letter and his signatures were obtained on blank papers after giving him a cheque for Rs.10,183/-.
5. On 08th August, 2006, the petitioner issued a legal notice to the respondent which was not responded. The petitioner also made a complaint to P.S. Mangol Puri, Delhi on 08th August, 2006 but he was not taken back.

The petitioner raised an industrial dispute which was referred to Labour Court.

6. The respondent contested the claim on the ground that the petitioner left the services of the respondent after receiving Rs.12,533/- in full and final settlement on 07th May, 2006 against a receipt.

7. The Labour Court framed the following issues:

- “i. Whether the Workman had left the services after taking his full and final as alleged in the Written Statement?*
- ii. As per the terms of Reference.*
- iii. Whether the Workman is entitled to reinstatement with consequential benefits as prayed for?”*

8. The Labour Court observed that the onus of proving Issue No.1 was on respondent who chose not to lead the evidence. The Labour Court thereafter examined the evidence lead by the petitioner and held that the petitioner received Rs.10,183/- in full and final settlement and, therefore, the claim was not maintainable.

9. Learned counsel for the petitioner urged at the time of the hearing that the onus to prove Issue No.1 was on respondent who chose not to lead the evidence. In that view of the matter, the Labour Court ought to have decided Issue No.1 against the respondent. Without prejudice, it is submitted that the Labour Court has not appreciated the petitioner's evidence and has wrongly held Issue No.1 against the petitioner.

10. There is no appearance on behalf of the respondent.

11. Vide order dated 12th April, 2019, this Court appointed Ms. Urvi Mohan, Advocate as Amicus Curiae to assist this Court.

12. Learned Amicus Curiae submits that the award of the Labour Court is perverse because the respondent did not lead the evidence before the Labour

Court but the Labour Court decided the Issue No.1 against the petitioner.

13. This Court is of the view that that findings of the Labour Court are perverse and liable to be set aside. The onus of Issue No.1 was on the respondent to prove that the petitioner resigned from the job and accepted Rs.12,533/- from the respondent in full and final settlement. However, the respondent chose not to lead any evidence. On the other hand, the petitioner lead the evidence to prove that the respondent forcibly took his signatures on blank papers on which the resignation and the receipt were prepared. The respondent's defense that petitioner voluntarily resigned from the service and received Rs.12,533/- in full and final settlement is hereby rejected. Issue No.1 as well as Issue No.3 are decided in favour of the petitioner, and the petitioner is entitled for reinstatement with 50% back wages.

14. The writ petition is allowed, the impugned award is set aside; and the respondent is directed to reinstate the petitioner with 50% back wages from the date of illegal termination i.e. 11th May, 2006.

15. This Court appreciates the assistance rendered by Ms. Urvi Mohan, Amicus Curiae.

16. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

J.R. MIDHA, J.

MAY 16, 2019

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