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

Date of Decision:- 12.12.2019

+ **W.P.(C) 7185/2018**

MANVEER SINGH

..... Petitioner

Through: Mr.Sarfaraz Khan with Mr.H.S.
Sachdeva, Advs.

versus

M/S MOHAN NURSING HOME AND HOSPITAL..... Respondent

Through: Mr.Santosh Kumar & Mr.Amit
Sharma, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition filed by the workman assails the award dated 17.03.2018 passed by the learned Labour Court-XIX, Dwarka Courts, New Delhi in LCA No.4403/2016. Under the impugned award the Labour Court has rejected the petitioner's claim by holding that he had been unable to prove his illegal termination from service w.e.f. 17.09.2011 by the Management/respondent. Instead the Labour Court, by relying on the respondent's stand in its written statement that it was still willing to reinstate the petitioner, held that the petitioner had voluntarily abandoned service.

2. On the last date, learned counsel for the respondent had sought time to obtain instructions on whether the matter could be amicably resolved by paying a lump sum compensation of Rs.1,25,000/- to the

petitioner.

3. Today, learned counsel for the respondent submits that the respondent is not inclined to enter into an amicable settlement with the petitioner. In these circumstances, the writ petition has been taken up for consideration on merits.

4. The petitioner claiming to have been appointed to the post of an OT Technician in the respondent hospital at a monthly salary of Rs. 9,500 in the year 1984, raised an industrial dispute with the grievance that he had been illegally terminated on 17.09.2011 by the respondent under oral orders, without providing him with any notice or holding any inquiry against him. The petitioner also claimed that notwithstanding the demand notice dated 14.05.2012 which he served on the respondent; he was still not reinstated in service.

5. When conciliation proceedings failed, the petitioner's industrial dispute was referred to the Labour Court on the following terms:-

"Whether Sh. Manveer Singh s/o late Sardar Singh abandoned his job or his services have been terminated illegally and/ or unjustifiably by the management and if so to what sum of money as monetary relief along with other consequential benefits in terms of existing laws and to what other relief is he entitled and what directions are necessary in this respect?"

6. Before the Labour Court, the respondent filed its written statement denying the petitioner's claims of being appointed in the respondent Hospital as an OT Technician in 1984 and of being illegally terminated from service. It was the respondent's plea that the petitioner had been appointed as an Office Boy in the respondent Hospital in the year 2001 and was drawing a salary of Rs.6,500/- per

month in September, 2011, when he stopped reporting for duty on his own accord without providing any information to the respondent. In support of his claim, the petitioner stepped into the witness box as his sole witness while the respondent/management tendered the evidence of one Shri Sunil Kumar.

7. Based on the evidence led by the parties, the Labour Court passed the impugned award rejecting the petitioner's claim by observing as under:-

2) *Whether the workman used to work as Maid with the management and she herself abandoned her job voluntarily?*
O.P.M.

The onus to prove this issue was upon the Management, however, no evidence at all had been adduced on record regarding the workman working as maid with it or that he himself had voluntarily abandoned his job.

However, it shall also be interesting to note herein that as per the claim of workman, his services were terminated by the Management with effect from 17.09.2011, however, as apparent from the record itself, the workman had not bothered to take any action against Management before 14.05.2012 when the alleged legal notice Ex.WW1/3 was sent by him to the Management. No plausible explanation has been furnished on record on the part of the workman as to why he kept sitting on the matter for almost about six months and had not taken any action earlier against the Management. So far as I-Card Ex.WW1/1 is concerned, I have no hesitation in holding that the said I-Card does not bear the signatures either of the workman or of the issuing authority including its seal/ stamp, hence, it cannot be said that I-Card was actually issued to the workman by Management. Furthermore, there is apparent overwriting seen on the I-Card where the period of validity from the year 2001-2003 has been deliberately converted into 2002-2006. Therefore, it cannot be said that I-Card stood duly proved on record. Thus from the conduct of workman, it appears that he himself had abandoned the job voluntarily. This issue is accordingly answered in favour of Management and against the Workman.

3) *Whether the services of the workman were terminated illegally or unjustifiably by the management? O.P.W*

The onus to prove this issue was upon the Workman and it is manifestly clear from the affidavit Ex.MWL/A that Management is still ready and willing to take back the workman on job, however, despite the said offer, the workman had not bothered to attend the duties with the Management, which fact categorically goes to show that his services were not terminated illegally or unjustifiably by the Management rather he himself had abandoned the same. The workman had miserably failed to prove it on record that he was terminated in an illegal or unjustifiable manner by the Management. Hence, this issue is also decided in favour of the Management and against the Workman.

4) *Relief - In view of my findings on the aforesaid issues no. 1 to 3, the statement of claim as filed by workman is hereby dismissed. Award is passed accordingly. Reference stands answered in aforesaid terms. Copies of award be sent to Labour Commissioner for publication. File be consigned to record room.*

8. The present petition has been filed by the workman assailing the award. Learned counsel for the petitioner submits that the findings of the Labour Court are wholly perverse and the respondent's offer to reinstate the petitioner in its written statement, could not, by any stretch of imagination, lead to the presumption that the petitioner had abandoned service. He submits that the Labour Court had noticed the respondent's failure to lead any evidence to substantiate that the petitioner had voluntarily left its services, despite the admitted position that he had served the respondent for almost eleven years, or issue any written communication to the petitioner asking him to rejoin service; yet, the Labour Court has, on the basis of surmises and conjectures, arrived at a conclusion that the petitioner had himself abandoned the respondent's service. He, therefore, submits that the

impugned award is unsustainable and prays for the same to be set aside.

9. On the other hand, learned counsel for the respondent, while supporting the impugned award, submits that the very fact that the respondent had clearly expressed its willingness to reinstate the petitioner in service in its written statement filed in November, 2014, which offer was not accepted by the petitioner, shows that the petitioner was never terminated from service and had himself abandoned service. He, therefore, contends that in these circumstances, there is no infirmity in the findings of the Labour Court that the petitioner had voluntarily left service.

10. I have considered the submissions of the learned counsel for the parties and with their assistance perused the record.

11. A perusal of the award shows that no evidence was led before the Labour Court by the respondent in support of its plea that the petitioner had voluntarily left service. The respondent's only case before the Labour Court was that once the petitioner stopped reporting to work on his own accord, the respondent sent his co-worker Shri Narayan Singh to his house requesting him to re-join duties. In reality, without requiring the respondent to explain as to why it never issued any written communication to the petitioner asking him to rejoin duties or as to why the purported co-worker Shri Narayan Singh was not produced as a witness in support of their case, the Labour Court has accepted the respondent's bald plea while rejecting the petitioner's claim. Even before this court, learned counsel for the respondent has been

unable to justify the non-production of Shri Narayan Singh before the Labour Court. It further appears that while concluding voluntary abandonment of services by the petitioner, the Labour Court was unduly influenced by the respondent's offer made in its written statement to take the petitioner back in service. Be that as it may, I find that the Labour Court drew an adverse inference against the petitioner, instead of drawing an adverse inference against the respondent.

12. I also find that another factor which has weighed heavily with the Labour Court while rejecting the petitioner's claim is the fact that he issued a demand notice to the respondent only after six months had elapsed from the date of his termination. It appears that the Labour Court failed to appreciate the petitioner's specific case that he was neither given any appointment letter nor given any termination letter before being terminated from service by the respondent and therefore, in such circumstances the delay of six months in raising a demand notice could not be treated as inordinate delay. Reference in this regard may also be made to the judgment of the Supreme Court in ***R.M. Yellatti vs. Asstt. Executive Engineer*** (2006) 1 SCC 106:

"19. Before concluding, we would like to make an observation with regard to cases concerning retrenchment/termination of services of daily-waged earners, particularly those who are appointed to work in government departments. Daily-waged earners are not regular employees. They are not given letters of appointments. They are not given letters of termination. They are not given any written document

which they could produce as proof of receipt of wages. Their muster rolls are maintained in loose sheets. Even in cases, where registers are maintained by the government departments, the officers/clerks making entries do not put their signatures. Even where signatures of clerks appear, the entries are not countersigned or certified by the appointing authorities. In such cases, we are of the view that the State Governments should take steps to maintain proper records of the services rendered by the daily-wagers; that these records should be signed by the competent designated officers and that at the time of termination, the designated officers concerned should give certificates of the number of days which the labourer/daily-wager has worked. This system will obviate litigations and pecuniary liability for the Government.”

13. Similarly, I find that the presumption of the Labour Court against the petitioner that the cuttings on the I-card were attributable to him is also without any basis and cannot be sustained. For the aforesaid reasons, I have no hesitation in coming to the conclusion that the findings of the Labour Court that the petitioner had voluntarily left service is wholly perverse and cannot be sustained.

14. Accordingly, the impugned award is set aside and the petitioner's termination is held to be illegal. However, keeping in view the fact that except the petitioner's bald statement that he has been unemployed ever since his termination, there is nothing on record to show that he had been unemployed and that the respondent had offered to reinstate him in its written statement filed before the Labour Court, it would be appropriate to grant the

petitioner only 50 % back wages from the date of his termination till the date of filing of the written statement, i.e. 09.11.2014. The respondent is accordingly directed to forthwith reinstate the petitioner as an Office Boy with 50% back wages for the period between 17.09.2011 and 09.11.2014. It is further directed that, in case the petitioner is not reinstated within two weeks from today, the respondent will also be liable to pay future wages to the petitioner.

15. In view of the petitioner's grievance that his provident fund dues were not being deposited by the respondent, which plea has been denied by the respondent who claims that all the provident fund dues have been duly deposited, the respondent is also directed to supply all the requisite forms in respect of his provident fund dues to the petitioner.

16. The writ petition is allowed in the above terms.

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REKHA PALLI, J.

DECEMBER 12, 2019

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