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

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Date of Decision: 05th July, 2019

+ W.P.(C) 9638/2015 & CM No.22902/2015 & 7214/2017

M/S SUPERIOR ELECTRIC STORE Petitioner
Through: Mr. Rajeev Awasthi, Advocate.

versus

SANT LAL Respondent
Through: Mr. Mahesh Srivastava and Mr.
Vaibhav Manu Srivastava, Advocates.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The petitioner has challenged the award of the Labour Court whereby the Court awarded compensation of Rs.2,25,000/- along with interest at the rate of 9% per annum along with litigation cost of Rs.25,000/- to the respondent for illegal termination.
2. The respondent raised an industrial dispute alleging illegal termination by the petitioner on 23rd July, 2009 which was referred to the Labour Court. The respondent pleaded in his statement of claim that he was appointed as an Electrician by the petitioner in 1977 and his last drawn salary was Rs.5,100/- per month; the respondent went on leave to his native village from 13th April, 2009 to 30th May, 2009 with the permission of the management; the respondent fell ill during the leave and he informed the management by telephone; the respondent returned back to resume the duty on 23rd July,

2009 but the management did not take him back and terminated the services; the respondent issued a demand notice on 04th August, 2009 and thereafter raised an industrial dispute.

3. The petitioner defended the aforesaid claim by alleging that the respondent worked as apprentice wireman from 10th February, 1977 to 30th April, 1985; the respondent absented himself during aforesaid period and did not perform the job properly; the respondent stopped coming to work with effect from 30th April, 1985; the respondent approached the petitioner in 1987 for work certificate which was issued to him on 28th May, 1987; the respondent approached the petitioner for financial assistance in 2000 which was refused; the respondent left the job on his own in 1985 and was not terminated by the petitioner. The respondent appeared in the witness box as WW1 whereas the petitioner appeared in the witness box as MW1.

4. The Labour Court held that the relationship of employer and employee between the parties for the period 10th February, 1977 to 30th April, 1985 was admitted. The respondent's claim to have worked after 30th April, 1985 up to 23rd July, 2009 has been disputed by the petitioner. The learned Labour Court disbelieved the petitioner's defence that the respondent absented himself during 10th February, 1977 to 30th April, 1985 and did not perform his job properly in view of the certificate dated 26th May, 1987 issued by the petitioner which records that the respondent was sincere in his duty. The learned Labour Court also disbelieved the petitioner's defence that the respondent approached the petitioner in 2000 for financial assistance. The learned Labour Court concluded that the respondent worked with the petitioner till 23rd July, 2009 in view of documents Ex. MW1/XW2 to MW1/XW6 which show the involvement of

the management in doing the work by the respondent at the places mentioned in those documents.

5. Learned counsel for the petitioner urged at the time of the hearing that the respondent worked with the petitioner till 30th April, 1985 when he left the job on his own. Reliance was placed on work certificate dated 28th May, 1987, according to which the respondent worked with the petitioner from 10th February, 1977 to 30th April, 1985. It was submitted that the work certificate shows that the respondent did not work with the petitioner after 30th April, 1985.

6. Learned counsel for the respondent urged at the time of the hearing that the respondent worked continuously from 1977 up to 23rd July, 2009 when he was illegally terminated. The work certificate was taken by the respondent for applying for electrical wiremen license.

7. This Court is of the view that the petitioner's plea that the respondent did not work with the petitioner after 30th April, 1985, is false. Reference be made to the cross-examination of MW-1, Mr. Jai Singh who admitted that the respondent worked with the petitioner after 1985. MW-1 was confronted with documents, Ex. MW1/XW2 - Gate Pass - Air Force Station Security Section dated 06th February, 2004; Ex. MW1/XM3- Temporary Identity Card - Delhi Electric Supply Undertaking dated 16th February, 1996; MW1/XW4- Temporary I-Card/Gate Pass- Delhi Vidyut Board valid for 22nd December, 1999 to 21st January, 2000; MW1/XW5- Temporary I-Card/Gate Pass - Delhi Vidyut Board dated 01st April, 2000 and Ex. WW1/XW6- Air Force Sports Complex- Gate Pass dated 02nd January, 2004 to prove that the respondent was in continuous employment with the management. The

relevant portion of the cross-examination of Mr. Jai Singh is reproduced hereunder:

"It is correct to suggest that management had sent the workman to work at Air Force Station New Delhi entry gate pass Ex. MW1/XW2. It is correct to suggest that management had sent workman to work at M/s. Delhi Electric Supply Undertaking vide Ex. MW1/XW3. It is correct to suggest that management had sent the workman to work at Delhi Electric Supply Undertaking vide Ex. MW1/XW4. It is also correct to suggest that management had sent the workman to work at Delhi Electric Supply Undertaking vide Ex. MW1/XW5. It is correct to suggest that letter dated 02.01.2004 was issued on behalf of management and the same is Ex. MW1/XW6. (vol. as and when anybody is sent to work at govt. institution, gate pass is must from security point of view).....".

8. The learned Labour Court observed that Ex. MW1/XW2 to Ex. MW1/XW6 show the involvement of the management in doing the work through the workman at the places as mentioned in these documents. The relevant portion of the judgement is reproduced hereunder:

"12.....The admitted depositions made by Mr. Jai Singh as regards documents exhibited as Ex. MW1/XW2 to Ex. MW1/XW6, which are dated 06.02.2004, 16.02.1996, valid for 22.12.99 to 21.01.2000, 01.04.2000 and 02.01.2004 respectively, are not at all consistent with the stand of the management to the effect that somewhere in the year 2000 approached the management and asked for financial assistance which management had refused but considering the services rendered by the workman to the management it was independently given to the workman without any involvement of the management just to oblige the workman and to provide assistance since workman was passing through bad phase. Documents Ex. MW1/XW2 to Ex. MW1/XW6 do show the involvement of the management in doing the work by the workman at the places as mentioned in these documents. When

the stand as taken by management in the WS has not been found to be worth credence from judicial mind and keeping in view the depositions made by workman in his cross-examination, the preponderance of probabilities suggest that the stand taken by workman in the statement of claim or his evidence affidavit is quite possibly true. In my considered opinion in the totality of facts and circumstances of this case by applying the principles of preponderance of probabilities the possibility of workman having been in the employment of management till 23.07.2009 as per his averments/depositions cannot be ruled out altogether. Thus, in the totality of facts and circumstances of this case, it deserves to be observed that management terminated the services of workman illegally/unjustifiably on 23.07.2009 as per the case of workman.”

9. This Court agrees with the finding of the Labour Court that the respondent worked with the petitioner from 1977 up to 23rd July, 2009. The petitioner's defence does not inspire confidence for the reasons recorded in the award. There is no infirmity in the well reasoned findings of the learned Labour Court. Learned Labour Court has examined the evidence lead by both the parties in para 12 of the award. The compensation awarded by the Labour Court is fair and reasonable and does not warrant any interference.

10. There is no merit in this petition which is hereby dismissed. Pending applications are disposed of.

11. The interim order is vacated.

J.R. MIDHA, J.

JULY 05, 2019

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