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

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Decided on: 04.02.2020

+ W.P.(C) 2704/2012 & CM APPL. 5815/2012

SUBHASH KUMAR

..... Petitioner

Through: Mr. Sarfaraz Khan, Advocate.

versus

M/S MANOJ REPAIRING & JOB WORKS

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This petition impugns the order dated 30.01.2012 passed by the learned Labour Court in LIR/D No. 270/2008, on the ground that no enquiry was conducted prior to the termination of the petitioner's services. He claims that he was employed with the management as a machine operator since 1986, and if it is not accepted from 1986, then, at least, from 23.04.2006. The records of the management were seen by the learned Labour Court and it reflected that he was employed as a helper and not as a machine operator. This evidence of the management was not disputed by the petitioner.

2. The management's version was believed by the learned Labour Court to the extent that the workman was a habitual absentee and from time to time, he would on his own, not report to work. His attendance record

showed that from 24.04.2007 to 28.06.2007, he remained absent unauthorisedly and unlawfully and again from 20.08.2007, he remained absent despite the management calling upon him through correspondence to join duties. He failed to do so. A chargesheet was issued to him on 04.10.2007 asking him to give his written explanation. He did not give a reply. A domestic enquiry was initiated. Meanwhile, the workman approached the office of the Labour Officer. At the latter's intervention, the workman resumed duties on 31.10.2007, therefore, the enquiry proceedings were dropped, but yet again from 17.03.2008 he remained absent. Instead of joining duties, he started filing false and frivolous complaints against the management and failed to join duties despite the intervention of the Labour Officer.

3. The Labour Officer visited the management on 03.07.2008. The workman joined duties on that date, he went away from the place of employment at 1:30 p.m. His absenteeism was promptly informed to the Labour Officer on the same date.

4. The logical issues to be examined would be: (i) whether the workman had voluntarily abstained from reporting to work with the management or whether his services were terminated illegally or unjustifiably, (ii) whether he was entitled to any benefits as a result, and (iii) if yes, whether he was entitled to reinstatement of his services and/or consequential benefits?

5. The issue has been dealt with in the impugned order as under:

“Issue no. 1

7. *The onus to prove this issue was upon the management. At the outset, it may be stated that the workman claimed that he was employed by the management since November 1986 but he failed to prove this fact and could not lead any evidence despite opportunity granted. On the contrary, the management's plea was that he was appointed on 23.4.2006 vide appointment letter Ex.MW1/1. This letter was never questioned in the cross-examination of MW1 and as such it is held that the workman joined the services of the management on 23.04.2006 in the capacity of a helper, contrary to his plea that he was appointed as Machine Operator.*

8. *It is evident from the record that in this matter the management had every time participated in the conciliation proceedings before the Labour Officer, whenever the workman approached it. Not only that, every time the workman absented himself or as alleged was removed from services, he was asked to join the service vide written communication which are also part of record and have not been challenged in cross-examination. Similarly, the management has also placed on record the attendance sheet of the workman Ex.MW1/11 which has again never challenged in the cross-examination of MW 1 and has thus, attained finality and authenticity.*

9. *According to the management, the workman unauthorizedly absented from his duties from 24.4.2007 to 28.6.2007 and when he was reprimanded, he gave an apology letter wherein he accepted his said absence. The said letter Ex.MW1/2 was admitted by the workman in his cross-examination and he never took the plea that it was got written by him by force or under pressure. Though he denied that he was served with any charge sheet but the management filed the copy of the same Ex.MW1/3 which was served through post vide receipts Ex.MW1/4. He further admitted that a domestic inquiry was initiated by the management against him which was dropped later on. This is also the case of the management that the said inquiry was dropped on*

30.10.2007 on the intervention of the Labour Officer and the workman was again called to resume his duties w.e.f. 31.10.2007. The inquiry proceedings are also Ex.MW1/7 which were also not questioned during the cross-examination of MW1.

10. Further more, the workman admitted to have received the letter dt. 24.3.2008 and 02.4.2008 vide which he was called upon to join his duties which were also replied upon by him as Ex.WW1/9 and WW1/10 which shows that he himself had absented himself from duties. The cross-examination of the workman shows that he was not even sure about the date of his alleged termination. It is a matter of record that the management had filed written statement before the Conciliation Officer Ex.WW1/6 wherein against the management had offered the workman to join his duties. They had also replied to the demand notice sent by the workman wherein he was again asked to resume his duties.

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6. The facts would show that on various occasions, the management had given repeated opportunities to the workman to join work but he consistently played truant. Even after joining his duties on 03.07.2008, he left the place of work at 1:30 p.m. His voluntarily choosing to refrain from work cannot be a cause for any liability or wrong on the part of the management. In the circumstances, the Court finds no reason to interfere with the impugned order which found that the workman had absented himself from his duties wilfully and unauthorisedly, without his services being terminated by the management. The workman had himself not reported for work. No fault of the management is made out. Therefore, he would not be entitled to any benefits.

7. In view of the above, the petition being without merit, is dismissed alongwith the pending application.

NAJMI WAZIRI, J

FEBRUARY 04, 2020

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