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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 24th September, 2021
+ **W.P.(C) 5257/2020**
M/S. CHUNMUN STORES (P) LTD. Petitioner
Through: Mr. O.P. Gupta, Advocate

versus
SH. GAURAV CHAUHAN Respondent
Through: None.
CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed challenging the impugned award dated 11th October, 2019, by which the Labour Court has held that the termination of the Respondent/Workman (*hereinafter, 'Workman'*) was illegal and the Petitioner/Management (*hereinafter, 'Management'*) was directed to pay full back wages at the rate of minimum wages w.e.f. 13th February, 2016 till the date of the impugned award.
3. The case of the Management is that the Workman was appointed as a tailor on 1st March, 2013 and in February, 2016 he suddenly stopped coming to work, without any intimation to the Management. The Management issued notice to the Workman on 15th February, 2016 and 17th February, 2016 at the address which was available with them. However, he did not join back service.
4. The Workman thereafter filed a claim before the Labour Court alleging termination and seeking reinstatement of service along with full

back wages and all consequential benefits. Copy of the prayer in the claim petition is set out below:

“It is therefore most respectfully prayed that an award may kindly be passed for reinstatement of his service with full back wages including earned wages, continuity of service and all consequential benefits along with 18% interest, in the interest of justice.”

5. The Management contested the matter and evidence was recorded. Vide the impugned award dated 11th October, 2019, the following relief has been granted to the Workman:

“RELIEF (ISSUE NO.3)

15 As far as relief part is concerned, the workman has made a prayer in statement of claim that he is unemployed since the date of termination of his service, therefore the management be directed to reinstate him in service with full back wages including benefits of continuity of service and all other consequential benefits. The management in its written statement stated that the workman is at liberty to join the services of the management but without back wages. However, this court is of the opinion that since it has already been proved that the services of the workman were terminated by the management illegally, therefore, the workman is entitled to back wages. Accordingly, the management is directed to pay full back wages to the workman at the rate of minimum wages whichever is higher from time to time w.e.f. 13.02.2016 i.e. date of termination of services of the workman upto the date of award. The management is directed to release the payment of full back wages to the workman within a period of one month from the date of publication of the award, failing which this amount shall carry a simple interest @ 9% per annum from the date of award till realization.

16 With these observations the statement of claim of the workman under the provisions of the Industrial Disputes Act is disposed off.

17 A copy of this award be sent to the Deputy Labour Commissioner, Government of NCT of Delhi of Distt./ Area concerned for publication as per rules and judicial file be consigned to Record Room as per rules.”

6. Mr. Om Prakash Gupta, Id. Counsel for the Management submits that the Workman has admitted before the Labour Court that the affidavit which he had filed was not read by him. According to the Management, the Workman has, in fact, joined the services of another employer. Ld. counsel further submits that in the cross examination, the Workman admitted that he had not given his new address to the Management and therefore, the notice which was sent was sent at the address which was available with the Management. On all these three grounds, according to the Management, there has been no illegal termination. This is, in fact, a case of abandonment of service by the Workman. Ld. counsel relies upon the judgment of this Court in *Diamond Toys Co. (P) Ltd. v. Toofani Ram & Anr. [W.P.(C) No. 4501/2004, decided on 7th February, 2007]* to argue that in the case of abandonment of service, the cessation of employment cannot be held to be illegal.

7. A perusal of the record which has been filed before this Court shows that the claim petition has been preferred on behalf of the Workman by one Mr. Mohit Sehrawat, who is described as the Authorised Representative (*hereinafter*, 'AR') for the Workman. The written statement was filed by the Management denying the allegation of illegal termination. In fact, in the

written statement, the Management clearly pleads that the Workman has unauthorisedly absented himself without intimation and he is at liberty to join the services of the Management without back wages. The relevant paragraph of the written statement is set out below:

“1. That the claim is liable to be dismissed as the management never terminated the service of the claimant rather the claimant has been absenting unauthorized without intimation to management with effect from 12.02.2016 and management has given notices dated 15.02.2016 and 17.05.2016 whereby management has requested to the claimant to join the service of the management. The claimant is at liberty to join the services of the management but without back wages.”

8. The Management also sets out in the written statement that letters dated 15th February, 2016 and 17th February, 2016 were issued to the Workman but he still did not join the services of the Management. The Workman led his evidence by filing an affidavit on 7th November, 2019. The said affidavit is in English and has been signed by the Workman in Hindi. The same has been identified by the concerned AR, as mentioned above. However, in the cross examination, when the Workman was asked a question as to what are the contents of the affidavit, he clearly stated that he was not aware of the contents of the affidavit. He also admitted that he has not given his new address to the Management. The contents of the cross examination are set out below:

“XXXX by Sh. Anil Rajput alongwith Ms. Sakshi, AR for the management.

I am 7th pass. I am not aware about the contents

of my affidavit Ex.WW1/A. It is correct that for some time, I reside at V-39, Phase-I, Budh Vihar, New Delhi. Lastly, I resided at the aforesaid address till 2008-2009. It is correct that I never visited the management after 12.02.2016. Management had not issued any termination letter.

At this stage, attention of witness has been drawn by Ld. AR for management towards the document i.e. affidavit of the workman, available on judicial record, with the permission of the Court. On seeing the same, witness admits his signatures at point A & B.

Management had not issued any letter dated 15.02.2016 asking me to join the management. I had not informed the management about my changing of address. It is correct that I had given the address to the management at the time of joining where I was residing in the year 2008-2009 at V-39, Phase-I, Budh Vihar, New Delhi. It is wrong to suggest that management had not terminated my services or that after 12.02.2016, I had not joined the management voluntarily.

Presently, I am residing at G-I-51, Phase-I, Budh Vihar, Delhi. It is my rented accommodation at the rate of Rs. 1,500/- per month. I have two children and both are school going in Govt. School. My monthly household expenses including education of my children are Rs. 8,000/- to Rs. 9,000/-.

It is wrong to suggest that document Ex.WW1/1 to Ex.WW1/5 are false and fabricated. It is wrong to suggest that I joined the management on 01.03.2013. It is wrong to suggest that I am gainfully employed somewhere or that I have deposed falsely.”

9. The Management also led its evidence through its Manager (HR) - Mr. Pravesh Kumar. Opportunity for cross examination of Mr. Pravesh Kumar was given to the Workman, however, the same was not availed

on 23rd May, 2019 as the Workman was not represented.

10. In the present writ petition, the stand of the Management is that the Workman has already joined M/s Goel Garments at F-19, Sector 8, Rohini, Delhi, at a higher salary and the same has been concealed by the Workman.

11. The question that arises is whether the award of back wages is justified or not.

12. This Court finds it quite peculiar and unacceptable that the Workman in his cross examination has clearly admitted that he does not know the contents of the affidavit at all. Moreover, in the present writ petition, when notice was issued, the said AR appeared before the Court and described himself as an advocate. Thereafter, no pleadings have been filed denying the contents of the writ petition. The matter was passed over and the court staff also attempted to get in touch with the AR of the Workman through mobile, but to no avail.

13. It is seen that in a large number of labour cases, the workman is represented by an authorised representative i.e., AR and in several cases, the workman is not even aware of what claim petition has been filed or the contents of the pleadings and affidavits thereto. The same is the situation in the present petition. The Workman in this case had not read the affidavit, maybe due to lack of knowledge of the English language. The cross examination specifically records that he was not aware of the contents of the affidavit. The new address where he was residing was also not given by him to the Management, as per his own admission in the cross-examination. The notices issued by the Management were obviously issued at the address which was available with them. The Workman simply denies that he had voluntarily resigned. However, the facts and circumstances of this case clearly show that the Workman was issued two notices and, in fact, in the cross examination of the AR of the Management, the AR has specifically stated that the

Workman has abandoned the service. This clearly goes against the Workman.

14. Even in the present petition, in the first order, this Court has recorded the plea of the Management that the Workman has joined another employer. This submission made categorically in the writ petition is not rebutted and hence, ought to be deemed as admitted. The fact that the Workman is a tailor and he has joined another garment company clearly shows that the facts were not fully disclosed to the Labour Court. Moreover, the Management had clearly stated in its written statement that the Workman was free to join back duty. This is thus a clear case of abandonment and the Labour Court could not have awarded back wages.

15. This Court has noticed that in a number of labour matters, the workman is represented through ARs or a member of the Union. On most occasions the workman does not even appear before the Labour Court. Even evidence is adduced by the AR. It is also not clear as to the manner in which the amounts, when awarded are paid to the workmen. The judgment of this Court in ***Diamond Toys (supra)*** clearly holds as under:

“6. xxx xxx xxx
If a workman leaves his job all of a sudden and stops attending the workplace of the employer, Industrial Dispute Act does not put any obligation on the employer to call back the workman and request him to come and join his duties. Such a request can be made by the employer only when employer considers that a useful workman should not leave the job or where a workman is governed by certain rules and regulations under State employment and the employer is supposed to hold an enquiry under the service rule before termination of service of an employee. Where the workman is free to leave and join another employer

without even a notice and without obtaining a no objection from his employer, the employer cannot be compelled to call such a workman for joining the duties or to conduct an enquiry into the absence of the workman and then terminate his services. Leaving the services of an employer by the workman is a valid mode of his abandonment and there is no illegality attached to a workman leaving the services of his previous employer and joining another employer. If the employer does not consider the abandonment of service or leaving the service by a workman as a misconduct, the law cannot force the employer to consider such abandonment as a misconduct and hold an enquiry. Misconduct of an employee is the one which an employer considers as the misconduct. An enquiry is required to be held only where an employer intends to impose punishment on the employee for an alleged misconduct, if an employer does not intend to compose any punishment on the employee and considers that if the employee has left his service, let it be so, the law cannot compel the employer to hold an enquiry and punish an employee for the misconduct.

7. I consider that it was not necessary for the employer to hold an enquiry into the abandonment of the service by the respondent. It was for the respondent to prove that his services were terminated for some reasons by the employer or without any reason by the employer. The respondent had taken a stand which was found to be false. Under these circumstances, the Labour Court's conclusion that it was a case of retrenchment is perverse.

8. A question would arise as to why a workman would raise industrial dispute if he had voluntarily left the service and still make a claim against the employer. For this one has to have peep into union activities. Several pocket unions have been floated by some advocates and self proclaimed union leaders, who run these unions on contract basis. These unions catch

hold of such employees and enter into a contract with them of giving them a percentage of the money received from employer. These unions exploit the lacunae in labour laws to fullest possible extent for their own benefit. It is for this reason that in all such statement of claims always one reason of termination is given: 'workman made demand for legal facilities and he was terminated'. This Court has come across cases where written contracts are entered by union for receiving percentage of amount received by workman, even if the amount is under Section 17-B of Industrial Disputes Act for maintenance of workman.

9. In view of my above discussion, I find that the award dated 17th April, 2003 passed by the Labour Court is perverse and is hereby set aside. The writ petition is allowed accordingly."

16. In the above judgment as well, the Id. Single Judge of this Court has raised concerns about the Workman's position being misused by third parties or other persons who may be representatives of Unions. Even in the present case, though the AR appeared for the Workman, both before the Labour Court and before this Court, the affidavit of the Workman seems to have been filed without explaining the contents of the document to the Workman. Under such circumstances, false claims being filed against the Management ought to be avoided, to the extent possible.

17. Accordingly, Labour Courts, upon claim petitions being filed, or at the time of recording of evidence ought to ascertain the exact identity of the workman and if required, at the initial stage itself call the workman before Court and record the statement of the workman. This would ensure that the workman does not come under the influence of third parties to file claims against the Management and is able to obtain the benefits of the award, if any in his/her favour.

18. In the present case, the true facts have not been pleaded before the Labour Court that the Workman had shifted his residence and had taken alternate employment. If these facts had been disclosed, the Labour Court may have not awarded the back wages. Under such circumstances, the impugned award is unsustainable. The same is accordingly set aside.

19. The petition is allowed in the above terms. Copy of this order be circulated by the worthy Registrar General to the Labour Courts in order to ensure that Labour Courts confirm the identity of the workmen who are filing claims before them before proceeding further.

20. The petition is disposed of in the above terms. All pending applications are also disposed of.

21. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted upon by any authority/entity or litigant.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 24, 2021
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