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

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**RESERVED ON -2nd September, 2022
PRONOUNCED ON -2nd November 2022**

+ W.P.(C) 2726/2020, CM APPL. 14554/2022 & CM APPL. 35266/2022

M/S NNS ONLINE PVT. LTD. Petitioner

Through: Mr.Vidit Garg and Ms.Shipra
Mishral, Advocates
versus

GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI
THROUGH SECRETARY (LABOUR) AND ANR. Respondents

Through: Ms.Avni Singh, advocate for
respondent no.1 with Mr.Manish
Kumar, Inspecting Officer
Respondent no.2 in person.

**CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

J U D G M E N T

DINESH KUMAR SHARMA,J :

1. The present writ petition has been filed by M/S NNS ONLINE PVT. LTD-petitioner-management challenging the impugned order dated 20.02.2020 in LIR No. 2313/2017, whereby the learned Presiding officer, Labour Court, Rouse Avenue, New Delhi *inter alia* held that the services of the respondent No.2-workman was terminated by the

petitioner-management illegally and therefore the petitioner-management was directed to reinstate the respondent No.2-workman at the same post i.e. News Coordinator with continuity of service and other consequential benefits within a period of one month from the date of publication of the said award.

2. The award has been challenged pre-dominantly on the ground that the impugned order is contrary to law and facts of the case and the learned Labour Court has failed to appreciate material facts as brought out in the proceedings. The plea of the petitioner-management is that the respondent No.2-workman had resigned from his work on 01.12.2013 and the resignation was duly accepted by the petitioner-management. It has been submitted that the learned Labour Court has fallen into grave error *inter alia* holding that the resignation has not been accepted by the petitioner-management following proper procedure while accepting the resignation of the respondent No.2-workman. It has been submitted that no procedure has been prescribed or enshrined defined under the law for the petitioner-organization for accepting the resignation.
3. It has been submitted that after the resignation, the respondent No.2-workman was no longer an employee of the petitioner. It has been further submitted that the learned Labour Court also failed to take into account that immediately after his resignation, the respondent No.2-workman had duly withdrawn his Provident Fund. The petitioner has further submitted that the learned Labour Court has failed to appreciate that the respondent No.2-workman has started his own fortnightly newspaper in 2014 and the said fact was admitted by the respondent

No.2-Workman in his cross examination. It has been submitted that therefore the finding of the learned Labour Court that the respondent No.2-workman was an employee of the petitioner-management till 30.06.2016 is totally contrary to the record.

4. The petitioner-management has further submitted that respondent No.2-workman did not produce iota of any evidence on the record to substantiate his claim that he was an employee of the petitioner-management since 01.01.2006. It has been submitted that the learned Labour Court has wrongly drawn an adverse inference on the petitioner-management for not producing any document as per Section 11 (3) (b) of Industrial Disputes Act, 1947 ('the I.D. Act'), as the petitioner-management had produced the said documents. It has been submitted that the respondent No.2 –workman did not mention the said documents in his evidence affidavit.
5. The petitioner-management further submitted that the learned Labour Court failed to appreciate the fact that even Ex. WW1/4 (copy of ESIC insured data form issued by the petitioner-management) produced by the respondent No.2 itself, shows the date of appointment of the workman as 01.06.2009. It has further been submitted that Ex. WW1/5 (copy of the identity card) shows the date of validity upto 31.12.2011. The petitioner-management has submitted that the finding of the learned Labour Court that the respondent No.2-workman was an employee of the petitioner-management from 01.01.2006 to 30.06.2016 is totally contrary to the record.

6. It has been submitted by the petitioner-management that the respondent No.2-workman never raised any dispute for a long number of years regarding his alleged forceful resignation on 01.12.2013. The respondent No.2 also did not raise any industrial dispute with respect to the non receipt of ESI and PF facilities post 2013.
7. It has been submitted that the respondent No.2 has admitted in his statement of claim as well as during his cross examination that respondent No.2 was also working with the petitioner-management in the capacity of General Manager, Manager (HR) and his last drawn wages were Rs.45,000/-p.m.. It has been submitted that the respondent No.2 could not have been considered 'Workman' as defined under Section 2(s) of the I. D. Act.
8. The petitioner has stated that the learned Labour Court has returned a finding merely on the basis of some authority letter issued in favour of the respondent No.2-workman to appear before various statutory authorities, to prove that the respondent No.2-workman was a workman employed with the petitioner-management. It has been submitted that the learned Labour Court failed to appreciate that the said reference still does not prove that the respondent No.2-workman was the workman of the petitioner-management, because as per the I.D. Act every employee is not necessarily to be considered as a workman. The petitioner-management submitted that the respondent No.2-workman after resigning from the services of the petitioner-management on December, 2013 started his own newspaper and simultaneously did various works for the petitioner-management as a freelancer on

commission basis and used to raise the bills for the aforesaid works. It has been submitted that for such an arrangement, the respondent No.2-workman could not have been considered as a workman of the petitioner-management till 30.06.2016.

9. A reference order was made by the Joint Labour Commissioner (West) on 11.04.2017 on an industrial dispute being raised by the respondent No.2-workman through, Sh. Narayan Singh, General Secretary, Hindustan Engineering & General Mazdoor Union (regn. No. 4479), D-2/24, Sultanpuri, Delhi-41.
10. The Joint Labour Commissioner (West) framed the following reference to the Labour Court-11 for its adjudication:

"Whether the services of workman Sh. Chandra Prakash Pandey S/o Sh. Satya Nath Pandey have been terminated illegally and/or unjustifiably by the management; and if so, to what relief is he entitled and what directions are necessary in met this respect?"

11. Upon receipt of the reference made by the learned Labour Court, notice was issued to the respondent No.2-workman. The respondent No.2-workman filed his statement of claim wherein he took a plea that he was working with the Petitioner-management as a News Coordinator for the period from 01.01.2006 to 30.06.2016 and his last drawn wages were Rs.45,000/- per month.
12. Respondent No.2-workman stated that the petitioner-management forcibly terminated his services and removed his name from the wages register. The respondent No.2-workman stated that the petitioner-management pressurized him to withdraw his provident fund in 2014

and also harassed him into tendering his resignation. Respondent No.2-workman stated that the petitioner-management started paying him salary without payment slip and without his signatures. During this period, he was also not given any PF or ESIC benefits. The respondent No.2-workman stated that when he pressed his demand towards implementation as per the Majithia Wage Board, his services were illegally terminated w.e.f. 30.06.2016.

13. The respondent No.2-workman stated that the petitioner-management has taken a false plea that he was in employment with the petitioner-management only from the month of January, 2009. The plea regarding his resignation from the petitioner-management 01.12.2013 was also denied. Respondent No.2-workman stated that he was posted as a News Coordinator and was also doing various other types of work i.e. Personal Manager, General Manager, Director or simple workman.
14. In the written statement filed by the petitioner-management, stated, that even as per the admission of the respondent No.2, that he was working at the post of a Manager and his last drawn wages were Rs. 45,000/- per month, and therefore he is not covered under the definition of 'Workman' as defined under Section 2 (s) of the I.D. Act. The petitioner-management also denied the relationship of employer-employee between the parties. It has been stated that the respondent No.2-workman had joined the petitioner-management somewhere in January, 2009 and resigned from the services of the petitioner-petitioner-management on 01.12.2013 at his own accord. It was further stated that the respondent No.2-workman started his own publication of

a Hindi Newspaper under the name and style of “Vikas Vaibhav” under RNI No. 2014/57173. It was further stated that the respondent No.2 approached the petitioner-management in the month of January, 2016 for doing specific job work of compilation of directory of Pitampura residence and the petitioner-management had agreed to the same for a fixed amount per month, without any specific working hours. In the written statement, it has been stated that the withdrawal of his Provident Fund itself in 2014 establishes the case of the petitioner-management that the respondent No.2-workman voluntarily resigned in 2013 to start his own newspaper in 2014.

15. The learned Labour Court on the pleadings of the parties and framed the following issues to be adjudicated:

“1 Whether the workman himself resigned from services of the management on 01.12.2013, voluntarily and on his own? OPM

2 Whether the services of the workman have been terminated illegally and/or unjustifiably by the management w.e.f. 30.06.2016? OPW

3 Relief.”

16. The respondent No.2-workman filed his affidavit by way of evidence. In the affidavit, the respondent No.2 reiterated that he had been working with the petitioner-management as a News Coordinator since 01.01.2006 to 30.06.2016. It has been further submitted that the petitioner-management started paying his salary by way of cheque from 2008. It has been submitted that the petitioner-management also failed to show the real salary of the real work done by respondent No.2-

workman and concealed the matter about his salary in his written statement. Respondent No.2-workman also stated that the petitioner-management forcibly terminated him and removed his name from the wages register and the petitioner- management also pressurized him to withdraw his provident fund in 2014. In the affidavit, respondent No.2-workman stated that after 2014, the petitioner-management started paying his salary in cash and stopped paying PF and ESIC benefits. In the affidavit certain details of payment by cheque from July, 2015 onwards has been given. Respondent No.2 stated on asking for his legal dues, the petitioner-management illegally terminated his services w.e.f. 30.06.2016.

17. The petitioner was duly cross examined by the AR of the petitioner-management. The petitioner –management did not lead any evidence.
18. Learned Labour Court returned a composite finding on issue No. 1 and 2. In regard to issue No.1, the learned Labour Court returned the finding that the petitioner-management had obtained the resignation from the respondent No.2-workman forcibly on 01.12.2013. Learned Labour Court also drew an adverse inference against the petitioner-management and *inter alia* held that the services of the respondent No.2 was illegally terminated on 30.06.2016. Learned Labour Court decided both the issues in favour of the respondent No.2 and against the workman-management.
19. Respondent No.2-workman contends that the learned Labour rightly awarded relief of reinstatement with continuity of service and other

consequential benefits as the petitioner-management had illegally terminated the services of the workman in violation of the Majithia Wage Board and the numerous provisions enumerated in the Working Journalist And Other Newspaper Employees (Conditions Of Service) And Miscellaneous Provisions Act, 1955 (W.J. Act) and I.D. Act. It has been contended that the Ld. Labour Court also ought to have awarded backwages to the workman herein.

20. Petitioner-management moved the present petition impugning the said Award, whereby, vide order dated 13.03.2020, this Court granted interim stay of operation of impugned Award dated 20.02.2020 on the ground that a *prima facie* case was made out for interim relief against the workman.
21. Respondent No.2-workman submits that the contention of the Petitioner-management that he is not workman as per ID Act since he was withdrawing a salary Rs. 45,000/- p.m. is contrary to the law laid down in ***“Express Newspapers (Private) ... vs. The Union of India And Ors”***, AIR 1958 SC 578.
22. Respondent No.2-workman further contends that since all the provisions of the ID Act would apply on a newspaper employee, the petitioner cannot claim ‘change of service condition’ in the case of the respondent no. 2-workman. The petitioner is bound to give notice in the case of change of service condition. Reliance is placed on the judgement dated 26.10.2021 of a Division Bench of the Supreme Court in ***“Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi***

And Anr.”, Civil Appeal Nos. 5829-30/2021, wherein no notice was issued to the workman by the petitioner-management as mandated by virtue of the provisions contained in section 9(A) read with the 4th schedule.

23. Moreover, respondent No.2-workman submits that petitioner cannot be allowed to challenge “Order of reference” and both parties cannot travel beyond the pleadings and challenge the order of reference. Reliance is placed on “*The Delhi Cloth and General Mills Company Ltd. Vs. The Workmen & Ors*”, 1967 SCR (1) 882.
24. Respondent No.2-workman submits that the attendant circumstances must be seen in case of ‘Voluntary Resignation’ as has been held vide the Judgement dated 10.02.2022 of the Supreme Court in “*Ms. X Vs. Registrar General High Court of Madhya Pradesh and Another*”, WP (C) No. 1137/2018. As far as the ‘Acceptance’ of such resignation is concerned, the same must be communicated and the last working date of the employee should also be mentioned in such acceptance, without which the resignation is considered incomplete. In the instant case, even though the termination dated 01.12.2013 is presumed to be considered voluntary, there must be communication of acceptance of resignation along with last working date of the employee, without which the resignation is not complete and the employee continues to be on the roll of the employer. Respondent No.2- workman submits that in the instant case, no proper communication was sent to the workman and the dues of the workman were also not settled.

25. Respondent No.2-workman thus submits that the illegal resignation/termination is null and void and is liable to be quashed. Respondent No.2-workman prays that the present petition be dismissed and the Award be upheld and modified to the limited extent of awarding back wages in addition to reinstatement with continuity of service and other consequential benefits as already awarded by the Ld. Labour Court.
26. It has to be borne in mind that the High Court while exercising its jurisdiction under Article 227 of the Constitution of India can set aside or ignore the findings of fact of an inferior court or tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the court or tribunal who (sic) has come or in other words it is a finding which was perverse in law. Except to the limited extent indicated above the High Court has no jurisdiction to interfere with the findings of fact.
27. It is trite that this Court under Article 227 of the Constitution could go into the question of facts or look into the evidence, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. The High Court also should not interfere with a finding within the jurisdiction of the Labour Court/tribunal except where the findings were perverse and not based on any material evidence or it resulted in manifest injustice.
28. The exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature. It is so exercised in the normal

circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice, to name a few. The finding of fact being within the domain of the Labour Court/tribunal, except where it is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the article is not called for. At the cost of repetition it is reiterated that there is total unanimity of judicial precedents on the issue that the error must be that of law and patently on record committed by the Labour Court/tribunal so as to warrant intervention.

29. In the present case, if the judgment of the learned Labour Court is examined within the parameters of the jurisdiction to be exercised by this Court under Article 226, Constitution of India, it is found that the judgment of the learned Labour Court suffers from perversity. The findings have been given either on the basis of no evidence or the evidence has been misinterpreted. Before going into further merits of the case, it is vital to note that the reference as made by the Joint Labour Commissioner was only with regard to the fact that whether the service of the respondent No.2-workman has been terminated illegally or unjustifiably. Learned Labour Court in this regard had rightly excluded the prayer of the respondent No.2-workman regarding implementation of the Majithia Wage Board. Thus, this Court will also not enter into the question of implementation of the Majithia Wage Board.
30. The challenge posed before this Court against the judgment dated 20.02.2012 wherein the learned Labour Court has returned the finding

that the resignation of the respondent No.2-workman was taken forcibly on 01.12.2013 and his services were terminated illegally on 30.06.2016. I consider that the findings of the learned Labour Court is liable to be set aside as the award suffers from inherent contradictions.

31. The perusal of the impugned award would indicate that the respondent No.2, had admitted in his evidence, that initially his salary was Rs.7,000/- per month and his salary was not increased till 01.06.2009. The respondent No.2 –workman had stated that he was confirmed in the service on 01.06.2009. He further stated that the salary was increased after 01.06.2009 but he was not aware as to how much salary he was getting in the year 2009. The entire evidence as also the award is silent and contains no evidence regarding the salary being paid to the respondent No.2-workman. It does not appeal to the reason of this Court that an employee would not even remember the salary being received by him. The case of the respondent No.2-workman suffers from various infirmities which makes it quite doubtful, unconvincing and unbelievable.
32. The respondent No.2-workman had deposed that he had records to prove that he had been working with the petitioner-management from the period of 2006 to 2009 but admittedly, he did not file the same on judicial record. It is quite bizarre that if respondent No.2-workman had such a record then why did he not produce the same on judicial record.
33. The plea of the petitioner-management is that the respondent No.2-workman had resigned from the service as he wanted to start his own

newspaper. In the cross examination the respondent No.2-workman admitted that he is the editor of 'Vikas Vaibhav Fortnightly Newspaper' and further admitted that the said newspaper is registered in his name. However, the respondent No.2-workman interestingly, did not know the year of its registration. It was recorded by the learned Labour Court that it was also deposed by the respondent No.2-workman that he did not have any record pertaining to 'Vikas Vaibhav Fortnightly Newspaper' and also did not have any knowledge about the status of 'Vikas Vaibhav Fortnightly Newspaper'. Therefore, the respondent No.2-workman was concealing more than making a true statement before the Court.

34. It was also recorded by the learned Labour Court in the impugned award that the respondent No.2-workman had admitted that he had resigned from the service of the petitioner-management on 01.12.2013 vide letter Ex. WW1/X2. However, he simultaneously made a voluntarily statement that the petitioner-management had obtained his resignation forcibly. The learned Labour Court has also reproduced the resignation letter Ex.WW1/X2 which reads as follows;

*"Sh. Rajesh Gupta ji
M.D.
NNS Media Group
ND*

Respected Sir,

With warm regard I want to say that for personal reason I want to resign to my job. I hope that you will kindly consider it.

Thanking you,

s/d

(Chandra Prakash Pandey)

Date: 1.12.2013"

35. Learned Labour Court has also recorded in the impugned award that on the resignation letter an endorsement, “accepted” was made. However, learned Labour Court reached to a strange finding that the petitioner-management did not follow proper procedure while accepting the resignation of the respondent No.2-workman. None of the parties have spoken about any procedure on the record or prescribed in law, which was to be followed by the petitioner-management. Learned Labour Court has returned this finding merely on the basis of surmises and conjectures.
36. Learned Labour Court also took an exception to the fact that the petitioner-management considered the resignation on the same day i.e. 01.12.2013 without asking why the respondent No.2-workman wanted to resign. Learned Labour Court took a view that the petitioner-management was in haste to accept the resignation of the respondent No.2-workman as they wanted to get rid of the workman as soon as possible. This Court has not found any material on record on the basis of which the learned Labour Court has reached on this finding. Thus this finding of the learned Labour Court is based on the assumptions.
37. It is also quite strange that the respondent No.2-workman was forced to resign in the year 2013 and was also forced to withdraw his provident fund however, still he kept silent and did not make any

complaint or representation before the competent authority. It does not appeal to the reason that an educated person like respondent No.2-workman, who is well aware about his rights, will not raise his voice for the pressure exerted on him.

38. In ***“North Zone Culture Centre & Another v. Vedpathi Dinesh Kumar”***, Civil Appeal No. 3506 of 2003, AIR 2003 SC 2719, the Supreme Court *inter alia* held that when a public servant has invited by his letter of resignation the determination of his employment, his service normally stands terminated from the date on which the letter of resignation is accepted by the appropriate authority and, in the absence of any law or statutory rule governing the conditions of his service, to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority.
39. In the present case, it is not the case of the respondent No.2-workman that the acceptance of the resignation was not communicated to him. The case of the respondent No.2-workman is that he was forced to write the resignation. However, in absence of any complaint being made, immediately thereafter, this plea of the respondent No.2-workman does not seem to be believable. The respondent No.2-workman by virtue of his resignation has expressed his intention for the determination of his employment. The employment stands terminated from the date on which the letter of resignation is accepted. As per petitioner-management the resignation was accepted on the same date. The finding of the learned Labour Court that proper procedure was not followed by the petitioner-management for acceptance of resignation is

without any basis and evidence on record.

40. It is also a settled proposition that if there is no statutory requirement for issuing any notification for the purpose of relinquishment from the service, the resignation comes into effect immediately on expressing an intention to relinquish the office as communicated to the employer. Even, no overt act is required to be undertaken by the employer after the resignation has been communicated. The relinquishment takes a fact from the date of such communication where the resignation is made and accepted.
41. Thus, this Court considers that the finding of the learned Labour Court that the resignation was obtained forcibly is without any basis and is liable to be set aside. Furthermore, the learned Labour Court has reached to the conclusion regarding the continuation in service till 2016, only on the basis of some authority letter being executed by the Director of the petitioner-management. It is pertinent to mention here that though the respondent No.2-workman stated to have received certain amounts from the petitioner-management 2015 onwards, but did not produce any record in the evidence recording. The impugned award records that the respondent No.2-workman had deposed that he had records to prove that he had been working with the petitioner-management from 2014-16 but he has not filed the same in the judicial record. It is a settled proposition that the party who wants to prove a fact is bound to bring on record the evidence. If, such evidence has not been brought on record, an adverse inference can be drawn against him.

42. This Court considers that merely on the basis of the Documents Ex. WW1/1 and Ex. WW1/2 which are an authority letter in favour of the respondent No.2-workman and an application moved by Sh. A. K. Jain, learned counsel for the petitioner-management respectively, it cannot be concluded that the respondent No.2-workman was in employment till 2016.
43. It is pertinent to mention here that the petitioner-management itself stated that the respondent No.2-workman had worked with the company as a free lancer. This Court considers that the learned Labour Court has given undue weightage to these documents. These two documents in isolation are not sufficient to prove that the respondent No.2-workman was in employment with the petitioner-management till 2016 or that there exists a relationship of employer-employee between the petitioner-management and respondent No.2-workman.
44. It is also pertinent to mention here that the learned Labour Court recorded in the impugned order that admittedly, the respondent No.2-workman was having no documentary evidence to prove his employment with the petitioner-management from 01.01.2006 till 31.05.2009 and from 01.12.2013 till 30.06.2016. However, an adverse inference was drawn regarding this for non-production of the documents in pursuance to the application moved by the respondent No.2-workman under Section 11 (3) of the Industrial Disputes Act, 1947. In absence of any positive evidence on record the issue cannot be

decided merely on the basis of adverse inference.

45. Ld. Labour Court passed the award contrary to the evidence oral & documentary placed on record. It is evident that the Ld. Labour Court misdirected itself and misinterpreted the evidence on record and passed the award based on conjecture and surmises. It is settled law that an award which is based on no evidence or is contrary to evidence on record is a perverse award and can be set aside in exercise of power of judicial review. In “*University of Delhi vs. Sushil Kumar & Others*,” WP(C) 3007/2003; 2006 SCC OnLine Del 1266 this Court *inter alia* held as under:

“11. It is settled law that an award which is based on no evidence or is contrary to evidence on record is a perverse award and can be set aside in exercise of power of judicial review. It is, obvious from record, that Tribunal misdirected itself and did not take into account the documents produced by the petitioner and the evidence of the petitioner and passed order on conjecture and surmises.”

46. The reference which was pending consideration before the learned Labour Court was only confined to that extent whether service of the respondent No.2-workman was terminated illegally and unjustifiably by the petitioner-management. If the respondent No.2-workman had voluntarily resigned from his service and the same was duly accepted by the petitioner-management, there is no question of illegal or unjustifiable termination of his service. In view of this finding regarding continuity of service till 30.06.2016 also becomes irrelevant.

47. In view of the discussions made hereinabove, the impugned award dated 20.02.2020 is set aside.
48. The present writ petition along with pending applications is allowed and disposed of, accordingly.

DINESH KUMAR SHARMA, J

NOVEMBER 2, 2022
Pallavi



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