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

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***Reserved on : 31.08.2022
Pronounced on: 20.09.2022***

+ W.P.(C) 17361/2004 and C.M. No. 12989/2004

DR. BALDEV SINGH

..... Petitioner

Through: Mr. Kailash Vasdev,
Senior Advocate with Ms.
Nayantara, Ms. Manya Jha
and Mr. Umrao Singh Rawat,
Advocates.

versus

SH. SOHAN LAL & ANR.

..... Respondents

Through: Mr. Manoj Kumar Advocate

CORAM:**HON'BLE MR. JUSTICE GAURANG KANTH****J U D G M E N T****GAURANG KANTH, J.**

1. The present Writ Petition is directed against the Award dated 15.01.2004 passed by the learned Presiding Officer, Labour Court-II, Karkardooma Court, New Delhi in ID No. 294/1996 (hereinafter referred to as "**Impugned Award**"). Vide the Impugned Award, the learned Labour Court set aside the termination of the Respondent/Workman by the Petitioner/Management and directed reinstatement of the



Respondent/Workman with continuity of service along with full back wages and all other legal benefits.

Facts relevant for the consideration of the present Writ Petition are as follows:

2. It is the case of the Respondent/Workman that he was working with M/s Hemkunt Clinic & Laboratory since July 1977 as a Compounder. During the said period, the Respondent/Workman sought a leave from 31.05.1994 to 30.06.1994, which was duly sanctioned by the Petitioner. He reported back to his duty on 01.07.1994 and attended his duties till the end of July 1994. On 06.08.1994, the Respondent/Workman raised a demand for his outstanding dues towards his monthly salary for the month of June & July, 1994. The Management refused to pay his dues and illegally terminated his services without assigning any reason.
3. The Respondent/Workman initiated the industrial dispute by filing a complaint before the Conciliation Officer. On failure of conciliation proceedings, the appropriate Government referred the matter to the Labour Court with the following terms of reference:

“Whether Sh. Sohan Lal has left his service of his own accord or his services 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 this respect?”

4. The Respondent/Workman filed his Statement of Claim before the learned Labour Court reiterating his claim as raised before



the Conciliation officer. The Petitioner filed his Written Statement before the learned Labour Court denying the allegation that the service of the Respondent/Workman was terminated. It is the case of the Petitioner that the Respondent/Workman abandoned his work. The Petitioner further clarified that he is willing to take the Respondent/Workman back in service and that the said offer was also made to the Respondent/Workman before the Conciliation officer. However, the Respondent/Workman refused to accept the said offer.

5. Based on the pleadings of the parties, the Labour Court framed the following issue:

“To what relief, if any, is the workman entitled in terms of the reference?”

6. The parties led their evidence to substantiate their respective stands. The Respondent/Workman examined himself as WW-1. The Petitioner examined Dr. Baldev Singh as MW-1.
7. The Petitioner failed to attend the proceedings and hence the learned Labour Court passed an *ex-parte* Award dated 10.02.2000. However, on an application filed on behalf of the Petitioner, the learned Labour Court vide its order dated 20.02.2001 recalled the *ex-parte* Award.
8. The learned Labour Court, after hearing the parties vide the Impugned Award dated 15.01.2004, decided the terms of reference in favour of the Respondent/ Workman and against the Petitioner. Further, the learned Labour Court directed the



Petitioner to reinstate the Respondent/Workman with continuity of services along with full back wages and other legal benefits.

9. The Petitioner is aggrieved by the Impugned Award dated 15.01.2004 and preferred the present writ petition.

Submissions made on behalf of the Petitioner

10. Mr. Kailash Vasdev, learned senior counsel for the Petitioner argued that the Impugned Award is bad in law. The clinic run by the Petitioner does not fall under the definition of 'industry' as contemplated under Section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as "**I.D. Act**"). Therefore, learned Labour Court had no jurisdiction to adjudicate the present matter as no 'industrial dispute' exists at the first place. Learned senior counsel argued that M/s. Hemkunt Clinic & Laboratory is operated and run by Dr. Baldev Singh individually, who is a General Medical Practitioner. Therefore, the activity of running the clinic cannot be considered to be an 'industry' and hence the question of applicability of the I.D. Act does not arise. The Respondent/Workman was the only individual working in the clinic as a Compounder, and no such other workers/employees were working in the clinic. Learned senior counsel for the Petitioner placed reliance on *Som Vihar Apartment Owners' Housing Maintenance Society Ltd. v. Workmen* reported as (2002) 9 SCC 652, and *Bangalore Water Supply & Sewerage Board v. A. Rajappa* reported as (1978) 2 SCC 213 to substantiate his argument.



11. It is further contended on behalf of the Petitioner that this is not a case where the services of an employee had been terminated illegally. Learned senior counsel for the Petitioner submitted before this Court that the Respondent/Workman left the service on his own accord. The Petitioner granted one month's leave to the Respondent/Workman from 24.04.1994 to 24.05.1994 but the Respondent/Workman returned to duty on 27.07.1994 i.e., two months after expiry of period of leave without furnishing any reason for such delay. Thereafter, the Respondent/Workman worked for 2 days and intimated the Petitioner that he does not wish to re-join the Petitioner's clinic. The Respondent/Workman demanded compensation to the extent of twenty months' salary from the Petitioner for the period of service rendered by him since 1977 along with salary for the months from May to July 1994 (i.e., period for which he did not render any service or report on duty). The Respondent/Workman threatened the Petitioner that he would approach 'Workers' Trade Union' and initiate frivolous proceedings against the Petitioner.
12. During the hearing, learned senior counsel for the Petitioner further submitted that the Respondent/ Workman was never regarded as 'employee' by the Petitioner and there never existed any formal employer-employee relationship between them. The services rendered by the Workman were of personal nature. He, therefore, does not qualify as Workman defined under Section 2(s) of the I.D. Act.



13. Having made the abovementioned submission the petitioner seek setting aside of the impugned award.

Submissions made on behalf of Respondent/Workman

14. *Per contra*, Mr. Manoj Kumar, learned counsel for the Respondent/Workman submitted that the Petitioner never raised an objection to the effect that the medical clinic run by the Petitioner was not an ‘industry’ as contemplated by section 2(j) of the I.D. Act. Whether the Petitioner is an ‘Industry’ or not is a question of fact and hence the said proposition requires evidence. In the present case, the Petitioner never raised such an objection and it was also not included as a term of reference. Hence at this stage, the Petitioner could not be allowed to take such a plea.
15. Learned counsel for the Respondent/Workman further submitted that he was working with the Petitioner as a Compounder since July 1977. It was argued that due to Respondent/Workman’s satisfactory service, the Petitioner awarded him with a Certificate of Experience dated 07.10.1991. Learned counsel further submitted that Respondent/Workman was a 5th class pass individual and was not eligible to obtain a Registered Medical Practice certificate.
16. Learned counsel for the Respondent/Workman further argued that he was not operating any medical clinic in his native place. As per the learned counsel for the Respondent/Workman, Petitioner’s claim that he himself visited the native place of Respondent/Workman to scrutinize his engagement as medical



practitioner was *prima facie* false, as the Petitioner failed to produce any proof regarding the same. The Respondent/Workman denied the medical prescription (**Exh. MW-1/3**) allegedly issued by him.

Legal Analysis based on the facts of the present case

17. Heard the arguments advanced by the learned counsel for the parties and perused the documents placed on record.
18. Learned senior counsel for the Petitioner vehemently argued before this Court that the Petitioner's clinic was not an 'industry' within the meaning of Section 2(j) of the I.D. Act and hence the learned Labour Court had no jurisdiction to decide the dispute between the parties.
19. This Court notes that the Petitioner never raised this plea before the Conciliation officer or before the learned Labour Court. The term of reference referred to the learned Labour Court by the appropriate Government was '*Whether Sh. Sohan Lal has left his service of his own accord or his services 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 this respect?*'"
20. The Petitioner never raised any objection qua this reference at any stage. The question whether the Petitioner's clinic is an 'industry' or not is a mixed question of fact and law. This issue can be decided based on the evidence adduced by the parties. Since the Petitioner did not raise this plea before the learned Labour Court, no such issue was framed and therefore no



evidence was led by the parties qua this aspect. Hence, in the absence of any evidence in this regard, this Court refrains from examining this issue at this stage and proceeds to examine the present matter on the basis of the terms of reference and the issue framed in this regard.

21. The moot question to be decided herein is whether the service of the Respondent/Workman was terminated illegally or he abandoned the service of the Petitioner.
22. The learned Single Judge of this Court had an occasion to examine the concept of ‘abandonment’ in ***M/s. Engineers India Ltd. Vs. Presiding Officer Labour Court*** reported as ***2018 SCC Online DEL 7572*** and culled out the broad principles from the leading authorities in this regard. The said principles are as follows:

“(i) Common law principles, on the issue of abandonment from service, would not apply, where the abandonment is by way of regulatory fiat, invoking any applicable Clause which contemplates “deemed abandonment”. In such cases, the clause itself would have to be interpreted, to discern whether a case of “deemed abandonment” can be said to have been made out, or not.

(ii) Intention, or animus, to abandon, is the necessary sine qua non, for any case of “abandonment” to be said to exist. In the absence of intention, there is no abandonment. Any clause contemplating “deemed abandonment”, even if it exists, cannot be so interpreted as to deem abandonment to have taken place, even where intention to abandon is not apparent.



(iii) Whether intention to abandon exists, or not, is a question of fact, to be determined in each case.

(iv) Termination, or removal, from service, is a positive act of the employer; per contra, abandonment is a positive act of the employee.

(v) The fact that the act, which, per Rule, Regulation or Standing Order, is deemed to amount to “abandonment of service”, also constitutes “misconduct”, within the said applicable rules or regulations, is not a ground to contend that the employer necessarily had to treat the act as “misconduct” and proceed against the employee by way of a domestic inquiry or disciplinary proceeding; the discretion, in this regard, vests with the employer.

(vi) Any evidence, to indicate that the employee, or workman, desired to join duty, but was prevented from doing so, would, by itself, militate against any presumption of “abandonment”.

(vii) Unless and until it could attract one or more of the exceptions statutorily engrafted in Section 2(oo) of the ID Act, striking, of the name of a workman, off the rolls of an establishment, on the ground of the workman having “abandoned” his services, would tantamount to “retrenchment” within the meaning of the said Act.

(viii) The principles of natural justice have, in all cases, to be observed before treating an employee to have abandoned his service, even if the Rule, or Clause, deeming “abandonment” to have taken place, does not expressly contemplate compliance with any such principles. At the same time, if an employee unequivocally expresses his desire to abandon the services of the employer, by entirely failing to turn up for work or otherwise, then, no notice, prior to removal of the name of the employee from the rolls of the



employer, would be necessary, as any such notice would only be an empty formality.

(ix) Exclusion, from the ambit thereof, of the principles of natural justice, would render the provision of “deemed abandonment”, itself unconstitutional.

(x) Cases of abandonment, by invocation of the provisions of Bipartite Settlements, between Banks and their employees, may stand on a different footing, as they are based on an inter se, between employer and employee (s), and have to be examined separately.

23. Hence, in a case of abandonment of service, the intention of the Respondent/Workman to return to duty is to be assessed. This can be gathered from the circumstances of each case. Based on this legal principle, this Court examined the present case and noted the following admitted facts:

- (i) The Respondent/Workman was working with the Petitioner from 1977 onwards.
- (ii) The Respondent/Workman was getting Rs.1200/- p.m as his wages during the 1994 period.
- (iii) The Respondent/Workman took Rs.5000/- from the Petitioner on 30.05.1993 and executed a receipt dated 30.05.1993
- (iv) The Petitioner issued a Certificate dated 07.10.1991 to the Respondent/Workman indicating that he was in his service for 17 years.
- (v) Both the parties were having a cordial relationship with each other. The relationship between the parties was



informal in nature. The Petitioner admitted in his evidence that the Respondent/Workman was like his own child to him. The Respondent/ Workman also admitted that the Petitioner was very nice to him and used to help him financially and otherwise also. He also admitted that the Petitioner helped him a lot by giving medical treatment to his wife who was unable to bear the child and because of the treatment provided by the Petitioner, the couple now had 4 children.

24. It is the case of the Respondent/Workman that he was on authorised leave from 31.05.1994 to 30.06.1994. He joined back the service on 01.07.1994 and worked with the Petitioner till the end of July 1994. He asked for his monthly salary (For June and July) on 06.08.1994 but the Petitioner refused to pay the salary and further asked him not to come for work. Hence, his services have been illegally terminated by the Petitioner. *Per contra*, it is the version of the Petitioner that one-month leave has been sanctioned to the Respondent/Workman from 24.04.1994 to 24.05.1994. However, the Respondent/Workman joined back his duty on 27.07.1994 after 2 months. The Respondent/Workman worked for 2 days, i.e., 27.07.1994 and 28.07.1994 and thereafter abandoned the work with the Petitioner. MW-1/Dr. Baldev Singh in his cross-examination stated that the Respondent/Workman was like his own child and he never kept any attendance register. He also stated that



there is no record maintained by him regarding the leave taken by the Respondent/Workman. He further stated that he used to make payment to the Respondent/Workman in cash but never took his signatures. There is no documentary evidence produced by both the parties to prove their respective versions.

25. It is important to examine the other circumstances to gather and analyse the intention of the Respondent/ Workman. In this regard, this Court notes the following facts:

- (i) It is the case of the Respondent/Workman that on 06.08.1994, he asked for the salary dues and the Petitioner terminated his services. There is no demand notice issued by the Respondent/ Workman and that he directly approached the Conciliation officer vide complaints dated 10.08.1994 and 15.09.1994.
- (ii) It is the consistent stand of the Petitioner that he never terminated the service of the Respondent/ Workman and asked him to return to duty on various occasions.
- (iii) From the record, it appears that the Petitioner made this offer before the Conciliation officer. However, the Respondent/Workman was not ready to re-join without settlement of the salary issue and subsequently did not join back in service.
- (iv) The Petitioner, in his reply to the Statement of Claim filed before the learned Labour Court, categorically stated that *'It is again submitted that Management never turned the petitioner out of services and in*



keeping with its initial stand it is till date willing to take him back'. In response to the said offer, the Respondent/Workman, in his Rejoinder Affidavit stated that 'it is submitted that the Management is not at all willing to keep the workman in service with full back wages and continuity of service and all other benefits as are available to him while in service and as announced by the Govt, from time to time.'

- (v) Thereafter, the Petitioner filed an Application dated 15.02.2001 before the learned Labour Court, inter alia, with the following prayer:

"It is, therefore, most respectfully prayed that this Hon'ble Court be pleased to direct the Claimant to immediately report for his duties with his Employer, Dr Baldev Singh, and to continue to work there as a Compounder, on the same terms and conditions, of employment where he was so last employed."

Apparently, it appears that no decision has been taken by the learned Labour Court on the said Application.

- (vi) After passing of the ex-parte Award dated 10.02.2000, the Respondent/Workman approached the Petitioner on 10.10.2000 and 11.10.2000 for joining back on duties. It is the case of the Respondent/Workman that the Petitioner made him wait and did not allot him any work. Further, he was informed by the Petitioner that the Petitioner approached the learned Labour Court for



setting aside the ex-parte order. Thereafter, he left the Petitioner's premises.

- (vi) Vide letter dated 12.10.2000 (Exh. WW-1/M-3), the Petitioner asked the Respondent/Workman to join back on duties. The Respondent/Workman admitted the receipt of this letter but did not join back on duties. WW-1 specifically deposed in his Affidavit that '*after receiving the letter of 12.10.2000 I did nothing*'.
(v) During course of the evidence again the Petitioner made his offer to the Respondent/Workman to join back his duty. The relevant portion as recorded by the learned Labour Court as part of the cross-examination of WW-1 dated 10.02.2001, reads, inter alia, as follows:

"I am still willing to work as Compounder with the Management. Volunteered - I am ready if my dispute is adjudicated and I am paid my dues. (At this stage the AR or the Workman insisted that some adhoc compensation be paid to the Workman before joining his duties. At this stage Management offered one month's salary to the Workmen so that he may join his duties, but the Workman expressed his unwillingness. Even workman refused work to join duties even when Workman has been offered three months' salary by the Management.

26. Hence, the record shows that the Petitioner constantly and at every stage expressed his intention and willingness to take the Respondent/Workman back in service. However, the Respondent/Workman was adamant in not joining the service of the Petitioner.



27. It is the case of the Respondent/Workman that his services were terminated illegally. The burden is on the Respondent/Workman to prove the said allegation. The Respondent/Workman deposed in his evidence that the Petitioner terminated his service orally on 06.08.1994. However, no demand notice was sent by the Respondent/Workman to the Petitioner demanding the reinstatement. He approached the Conciliation Officer 4 days after the alleged illegal termination vide complaint dated 10.08.1994. However, before the Conciliation Officer, the Petitioner expressed his willingness to take him back in service. However, the said offer was not reciprocated. From the overall facts and circumstances of the present case, it is evident that at every stage the Petitioner showed his willingness to take the Respondent/Workman back in service but the Respondent/Workman never joined the Petitioner. The Respondent/Workman was not interested in re-joining the service of the Petitioner.
28. The learned Labour Court proceeded on the basis that the conduct of the Respondent/Workman reveals that he has all intention to return to duty. The learned Labour Court was of the opinion that the continuous offer made by the Petitioner was only on papers and actually there was no intention for the Petitioner in letting him join back on duties. This Court is of the considered opinion that there is no justification for arriving at such a finding. The Petitioner at every stage expressed his willingness to take the Respondent back in service and it was



the Respondent/Workman who was never willing to return to duty. Hence, this Court is of the considered view that the Impugned Award is perverse and contrary to the evidence on record.

29. In view of the detailed discussions hereinabove, the Impugned Award is hereby set aside.
30. The present writ Petition is allowed. No order as to costs.

GAURANG KANTH, J.

SEPTEMBER 20, 2022

