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

Date of decision: 18.04.2023

+ W.P.(C) 4831/2023

ROHIT PANJWANI

..... Petitioner

Through: Mr.K.C.Dubey with Mr.Vatan Kumar
Attri, Advs.

versus

M/S BSES RAJDHANI POWER LIMITED & ORS. Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

CM APPL. 18676/2023

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present writ petition under Article 226 and 227 of the Constitution of India preferred by the workman seeks to assail the award dated 28.10.2022 passed by the learned Labour Court in LID No.583/2016. Vide the impugned award, the learned Labour Court has rejected the petitioner's claim by holding that that the petitioner had voluntarily resigned from service on 20.09.2013. While arriving to the said conclusion, the learned Labour Court after taking into account that the petitioner had duly withdrawn his provident fund dues soon after tendering resignation, has rejected his plea that he was forced to tender his resignation.

4. In support of the petition, learned counsel for the petitioner submits that merely because the petitioner on account of lack of funds was compelled to withdraw his provident fund dues could not be a ground for the learned Labour Court to presume that he had voluntarily resigned from service. He submits that the petitioner had in fact sought to withdraw his resignation barely within three months from the date of resignation, this in itself shows that the resignation was given under duress which fact the learned Labour Court failed to appreciate.

5. Having considered the submissions of learned counsel for the petitioner and peruse the record, I find no merit in the petitioner's plea. I am unable to accept the petitioner's bald plea that he was forced to submit his resignation on 20.09.2013. If as sought to be contended by learned counsel for petitioner, the petitioner had indeed been forced to submit his resignation, there was no reason for him to seek release of his provident fund soon after submitting his resignation. There is also no explanation by the petitioner as to why he did not raise any grievance in this regard for more than four months and it was only on 27.01.2014 that he made a request for withdrawal of his resignation, which request was in my view rightly rejected.

6. In this regard, it may also be apposite to refer to the relevant findings of the learned Labour Court. The same read as under:-

The workman has himself admitted his signatures on resignation letter Ex M3W1/2 (wrongly mentioned as Mark WW1/1/XM1) at point A and B and accepted that he tendered it then the management was not bound to bring handwriting expert and the management discharged the onus. The workman has pleaded that it was taken

forcibly so in these circumstances, onus again shifted upon him to prove the force used in taking the resignation.

19. *It is also the case of the workman that he withdrew the resignation letter by sending letter dated 27.01.2014 however, the said letter has no significance because the resignation is dated 20.09.2013 and withdrawal is after four months, which is after thought. It has come on the record that he has withdrawn the PF and he cannot sail on two boats firstly by acting upon the resignation and withdrawing the PF and thereafter, withdrawing the resignation. He has admitted that he has applied for withdrawal of PF on 20.09.2013, which was credited to his account which was got opened by the management No. 2, within 20-22 days thereafter. So, mentally also, it is proved that he has voluntarily tendered the resignation. The arguments of workman that he should have been given three months notice by the management, does not hold water because it was he who has given the resignation. He has also argued that no inquiry was conducted against him. It is also of no use because the management has not terminated him by taking any penal action.*

Further the claimant has stated that he was forced to given the resignation however, the aspect of withdrawing the PF benefits is also relevant because it would indicate the 'voluntariness' of the resignation. It is clear that workman has acted upon his resignation and management has also proceeded further by employing other employees thus, the right of those employed persons will come in dock if any relief is given to the workman that too when he himself is at fault and had himself given the resignation. There is no force in the argument of the workman that resignation was got forcibly. He could have produced witnesses to show coercion if it was so. The management was required to prove only resignation and when particular fact of using the force by management was pleaded, the onus shifted on the workman as per section 101 to 104 of Indian Evidence Act. Even otherwise the workman has himself admitted his signatures on the resignation letter.

20. *The Ld.AR for the management has relied upon AIR Indian Express Ltd. Vs. Gurdarshan Kaur Sandhu Dated 22.08.2019,*

Hon'ble Supreme Court of India discussed the rights and limitations of an employee withdrawing the resignation tendered by her/him, which relying on the judgment of the Hon 'ble Supreme Court in case of Balram Gupta Vs. Union of India dated 01.09.1987 (Air 2354, 1987 SCR (3) 1173), has relied that in case the management had made arrangements acting on his/her resignation or letter of retirement to make other employee available for his job, that it would be another matter and the withdrawal of resignation shall have no consequence, In another case Union of India Vs. Gopal Chandra Mishra, (AIR 694, 1978 SCR (3) 12' the constitution bench of Hon'ble Supreme Court has held that :

“..... unrestricted choice of an employee withdraw may not be constrained if the employer had made arrangements acting on the resignation letter to make another employee available for the job.”

7. In the light of the aforesaid, I find no illegality or perversity in the approach adopted by the learned Labour Court warranting interference by this Court in exercise of its extraordinary writ jurisdiction under Article 227 of the Constitution of India.

8. The writ petition being meritless is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

APRIL 18, 2023
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