

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

Judgment reserved on: 17.03.2023.

% **Judgment delivered on: 05.04.2023.**

+ LPA 675/2022
RAM MEHAR

..... Appellant

Through: Mr. Anil Nauriya with Ms. Nazia
Ansari, Advocates.

versus

D.D.A.

..... Respondent

Through: Mr. Arun Birbal and Mr. Sanjay
Singh, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The Appellant before this Court has filed this present Appeal under Clause 10 of Letters Patent being aggrieved by the Judgment delivered on 12.09.2022 passed by Learned Single Judge in W.P.(C.) No. 12951/2006 titled *D. D. A vs. Ram Mehar*, by which the Learned Single Judge has set aside the Award passed by the Learned Presiding Officer, Labour Court-X, Karkardooma, Delhi in Industrial Dispute No. 274/ 1996 titled as *Management of Delhi Development Authority Vs. Its Workman Sh. Ram Meher*.

2. The facts of the case reveal that the Appellant before this Court was appointed as a Khalasi in the services of Delhi Development Authority (hereinafter to be referred as “DDA”) on 01.09.1983. He was drawing his salary in the regular Pay Scale, and he was posted in the Horticulture

Department under the Junior Engineer (Electrical). The Appellant worked in the Horticulture Department from 01.09.1983 to 07.08.1991 in Division No. 2 of the Horticulture Department.

3. The facts further reveal that the Appellant was transferred from Horticulture Department Division No. 2 to Division No. 5 vide order No. 1032 dated 08.08.1991.

4. The Appellant joined on 28.08.1991 at Division No. 5, and at the time of his joining, he was directed to report to work under Mr. M. C. Gupta, Assistant Engineer (Electrical).

5. The case of the Workman is that he was not allowed to resume duty by the Assistant Engineer Mr. M. C. Gupta, and the case of the management that the Workman never reported on duty before the Assistant Engineer Mr. M. C. Gupta in spite of the fact that clear directions were issued to him.

6. The Workman allegedly did not attend duty, and his name was struck off from the rolls of the DDA.

7. The facts of the case further reveal that the Workman took shelter of the statutory provisions as contained under the Industrial Disputes Act, 1947 (hereinafter to be referred as “**I.D. Act**”) by approaching the Labour Commissioner after about 3 years.

8. The facts of the case further reveal that the Workman after about 3 years served a demand notice dated 14.12.1994 claiming his reinstatement in service and the case of the Workman is that the DDA did not respond to the legal notice served in the matter.

9. The Workman thereafter took shelter of the provisions of I.D. Act and approached the Labour Commissioner/ Conciliation Officer. The conciliation proceedings resulted in failure.

10. Another important aspect of the case as reflected from the record is that the DDA / Management issued 2 legal notices dated 24.04.1996 and 23.05.1995 when the matter was pending before the Conciliation Officer directing the Workman to join back on duty. However, the Workman in spite of the receipt of legal notices did not resume his duties.

11. The conciliation proceedings resulted in failure and the appropriate government powered a reference for adjudication in terms of Section 10 (1) (c) and Section 12(5) of the I.D. Act. The reference forwarded vide order dated 24.10.1996 is reproduced as under:

“Whether Sh. Ram Meher has abandoned his job 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?”

12. The matter was adjudicated by the Labour Court and the Workman came up with the plea that he was not permitted to join Division No.5 in spite of the fact that he reported his joining before Mr. M. C. Gupta and the Management pleaded before the Labour Court that it is case of abandonment from service and the Workman never reported for joining and also never reported for joining even when 2 notices were served to him during conciliation proceedings.

13. The Labour Court after conducting full-fledged trial passed an Award in the matter directing reinstatement of the Workman without back-wages

and also awarded a cost of 10,000/- as cost of litigation. Paragraph Nos. 9, 10 & 11 of the Award read as under:

“9. From the above stated facts and circumstances of the matter, it is very clear that this workman has worked with the management for more than 240 days in one calendar year so he should not have been terminated by the management without following the established procedure under Industrial Dispute Act but the management case is that it is the workman who remained absented as he was not interested in joining the duty. The management on the other hand has proved that notice was served upon the workman for calling upon him for job on 22.5.1996 through Mr. S. M. Abid Naqvi, Advocate, as admitted by the workman himself but he did not join the same for that he says that since no settlement was arrived at between the parties before the Conciliation Officer so he was advised not to join.

10. The workman in his claim statement has mentioned that he is unemployed since 29.8.1991. He has not specifically claimed that he is not gainfully employed. Similar averments have been made by him in his affidavit that he is unemployed. It may be possible that he may be gainfully doing somewhere else so he was not interested in joining the management. In any case, since the management has failed to prove that why a notice was not issued to the workman immediately after 1991 when he stopped appearing nor any inquiry was conducted by the management against the workman. In these circumstances of the matter, the reference is answered against the management and in favour of the workman.

11. So far as relief is concerned, as per record the workman has not shown any reason that why he served the demand notice after three years of gap and why he did not resume duty after receiving the notice after 1996. He has only mentioned that he is un-employed by not said that he is not gainfully employed. In these facts and circumstances of the matter, I grant the workman reinstatement, but no back wages is granted. However, I grant a sum of Rs. 10,000/- as cost of litigation.

The management is directed to reinstate the workman and pay the said amount of Rs. Ten Thousand only. The reference is answered accordingly.”

14. The Employer being aggrieved by the Award preferred a Writ Petition before this Court, and after taking into account the contentions of both the parties, the Learned Single Judge has allowed the Writ Petition and the Award passed by the Labour Court has been set aside.

15. The Order dated 12.09.2022 passed in W.P.(C.) No. 12951/2006 by the Learned Single Judge as contained Paragraph 18 to 26 reads as under:

“18. I have heard learned counsels for the parties and perused the material available on record.

19. The issue to be decided in the present Petition is whether the Respondent/Workman abandoned his service or his services have been terminated illegally and unjustifiably by the Petitioner/Management. In order to decide the said issue, this Court examined the complete Labour Court records and noted the following facts:

(vi) The Petitioner/Management issued transfer order dated 08.08.1991 to the Respondent/Workman. Pursuant to the said transfer order the Respondent/Workman joined the Division-5 on 09.08.1991 and this fact is mentioned in the letter dated 29.08.1991 (Ex. WW1/14).

(ii) As per WW1/14, the Respondent/Workman was directed to report to the Assistant Engineer (Electrical). (iii) The Respondent/Workman placed on record WW1/15, to show that he reported to the Assistant Engineer (Electrical) for duty. This is a handwritten letter dated 29.08.1991. However, the said letter does not contain any endorsement from the Petitioner/Management.

(iv) It is the case of the Respondent/Workman that Mr. M.C. Gupta, Assistant Engineer (Electrical) did not allow him to join the duties.

However, the Respondent/Workman did not report this fact to any senior officer.

(v) The Petitioner/Management through their counsel issued a legal notice dated 22.05.1996 to the Respondent/Workman and asked him to join back on duty. Respondent/Workman admitted the receipt of the said legal notice. In the rejoinder he stated that he did not join back on duty as per the advice of the Union. However, during his cross examination, he deposed that in pursuance of the letter dated 22.05.1996, he went to the Petitioner/Management office but Mr. Ranvir Singh, Deputy Director (Horticulture) did not allow him to join duties. (vi) The Respondent/Workman approached the Management for his reinstatement after 3 years of his alleged termination.

20. The burden is on the Respondent/Workman to prove that Mr. M.C. Gupta, Assistant Engineer (Electrical) did not allow him to join duty. There is no material on record to substantiate the said fact. In addition, the conduct of the Respondent/Workman does not support his version. If an employee is not allowed to join duty, it is the natural tendency that he will approach other senior officers and will make complaints. In the present case, the Assistant Engineer (Electrical) did not allow the Respondent/Workman to join his duties and he went back home without raising any question. He woke up from his slumber after 3 years and then raised an industrial dispute. During conciliation proceedings, the Petitioner/Management asked him to join his duties, however, he failed to join back. The stand of the Workman in the Rejoinder and during the cross-examination is contradictory to each other and the same casts doubt

on the credibility of the evidence of the Respondent/Workman. Hence, from the circumstances, this Court is of the view that the Respondent/Workman failed to prove that he was not allowed to join back duty by Mr. M.C. Gupta, Assistant Engineer (Electrical).

21. It is an admitted position that no termination order was issued against the Respondent/Workman. From the totality of the events as narrated herein above, it is evident that the Petitioner/Management was ready and willing to take the

Respondent/Workman on duty. However, the Respondent/Workman was not ready to join back the service. It is the case of the Petitioner/Management that the Respondent/Workman abandoned the services of the Petitioner. Since the Respondent/Workman failed to prove that he was prevented by the Assistant Engineer (Electrical) from joining back on duty, the natural conclusion which can be drawn is that the Respondent/Workman abandoned the work of the Petitioner. An unexplained delay of 3 years on the part of the Respondent/Workman in approaching for reinstatement also persuades this Court to think that the Respondent/Workman abandoned the service of the Petitioner/Management.

22. The learned Tribunal in the Impugned Award specifically noted that while the Respondent/Workman in the claim petition mentioned that he is unemployed, he did not specifically claim that he is not gainfully employed. The learned Tribunal further observes that „it may be possible that he may be gainfully doing somewhere else so he was not interested in joining the Management“. After making these observations, the learned Tribunal recorded the below finding with respect to the Petitioner/Management:

“.....In any case, since the Management has failed to prove that why a notice was not issued to the workman immediately after 1991 when he stopped appearing nor any enquiry was conducted by the Management against the workman. In these circumstances, the reference is answered against the Management and in favour of the Workman.

23. This Court finds no reason to accept such finding. Learned Tribunal also accepted the fact that the Respondent/Workman was not interested in the job with the Petitioner/Management. Merely because the Petitioner/Management failed to issue letters to the Respondent/Workman, illegal termination of the Respondent/Workman cannot be imputed to the Petitioner/Management.

24. In view of the detailed discussion herein above, this Court is of the considered view that the Respondent/Workman

abandoned the service of the Petitioner/Management. Hence the Impugned Award is set aside.

*25. This Court notes that the Respondent Workman received payments under Section 17-B of the Industrial Disputes Act, 1947. As held by the Hon'ble Supreme Court in **Dilip Mani Dubey Vs M/s SIEL Limited & Anr** reported as **2019(4) SCC 534**, the proceedings under Section 17-B of the Industrial Disputes Act, 1947 are independent in nature and not dependent upon the final order passed in the main proceedings. It is a well settled principle of law that even if the termination order is upheld by the Court/Tribunal, the employer will have no right to recover the amount already disbursed to the delinquent workman pursuant to the order passed under Section 17-B of the Industrial Disputes Act, 1947 during the pendency of the proceedings. Therefore, in view of the aforesaid settled position, it is clarified that the payment already made by the Petitioner/Management to the Respondent/Workman under Section 17-B of the Industrial Disputes Act, 1947 is neither recoverable nor adjustable.*

26. The present Writ Petition is allowed. No order as to costs. ”

16. Learned Counsel appearing for the Workman has vehemently argued before this Court that the services of the Workman were terminated without following the prescribed procedure, and, therefore, the Labour Court was justified in directing the reinstatement of the Workman without back-wages. It has been further argued that that Learned Single Judge has passed the impugned judgment in disregard of law laid down by the Hon'ble Supreme Court, especially in the **BSNL v. Bhurumal**, (2014) 7 SCC 177.

17. Learned Counsel appearing on behalf of the Workman has also argued before this Court that no dismissal order was passed against the Workman. He was not permitted to join his duty after his transfer. There was no compliance of Section 25F of the I.D. Act. No disciplinary proceedings

were initiated against him, and, therefore, it was a case of termination without following prescribed procedure, and, hence, the Award passed by the Labour Court could not have been interfered in the manner and method it has been done by the Learned Single Judge.

18. Learned Counsel has also argued another ground before the Court stating that Workman was not allowed to join his duty by his superior officer. He was not allowed to mark his attendance after 28.08.1991. He was a Khalasi, and as he was working on a regular post his service could not have been treated as abandoned, and the order passed by the Learned Single Judge deserves to be set aside.

19. Learned Counsel appearing on behalf of the Appellant has also brought to the notice of this Court that the DDA issued a notice on 22.05.1996 during the pendency of conciliation proceedings directing the Worker to join, and, therefore, the Management has condoned the delay in raising the dispute, and, hence the delay in raising the dispute cannot be fatal especially in light of the fact that the Management was making an attempt for a settlement outside the framework of the legal proceedings which was not acceptable to the Appellant.

20. It has been argued that the Workman cannot be non-suited for rejecting such an offer during the conciliation proceedings.

21. Heavy reliance has also been placed upon a judgment dated 09.12.2024 delivered in Civil Appeal No. 10856/2014 titled ***Durgapur Casual Workers Union vs. Food Corporation of India and Others***, (2015) 5 SCC 786. It has been stated that in light of the aforesaid judgment, the

services of the Workman could not have been put to an end without following the statutory provision as contained in Section 25F of the I.D. Act. The Termination of the services of the Workman amounts to unfair labour practice as Section 25F has not been followed and it is violative of Article 14 and 16 of the Constitution of India.

22. It has been reiterated that the Workman was regular and permanent employee of DDA and his services could not have been put to an end without following the due procedure. The Workman reported on duty pursuant to the transfer order, and it was the employer who did not permit the employee to mark his attendance, and, therefore, the Labour Court was justified in directing the reinstatement without back-wages. However, the Learned Single Judge has erroneously set aside the Award by holding that it is a case of abandonment from duty.

23. Learned Counsel for the Appellant Workman has placed reliance upon a judgment delivered in the case of ***HD Singh Vs. Reserve Bank of India and Ors.***, 29(1986), DLT 77, and his contention is that the Hon'ble Supreme Court in the aforesaid case has held that in case the name of Workman is struck-off from rolls, it amounts to termination of service and such a termination is a retrenchment, and, therefore, in the aforesaid case, as provisions of the I.D. Act, as contained under Section 25F, were not complied with, the Hon'ble Supreme Court has directed reinstatement of the employee as a regular employee.

24. Learned Counsel has vehemently argued before this Court that the Appellant before this Court was also a regular employee. His name was struck-off from the rolls without following prescribed procedure, and,

therefore, the Award was rightly passed directing the reinstatement in services without back-wages.

25. Learned Counsel for the Appellant Workman has vehemently argued before this Court that the Workman was not allowed to join duties and even if it is presumed for a moment that he was absent without leave, he could not have been terminated without following the provisions as contained under Section 25F of the I.D. Act, and without following principle of natural justice and fairplay (without holding a departmental enquiry).

26. Reliance has been placed upon Judgments delivered in the cases of (see) *GT Lad and Ors Vs. Chemical and Fibres of India Ltd.* [1979 (1) SCC 590], *HD Singh Vs Reserve Bank of India* [29(1986) DTL77], *Mohan Lal Vs. Management of M/s Bharat Electronics Ltd* [1981 SCC (3) 225], *Hindustan Times Ltd. Vs. Arun Kumar & Ors* [231 (2016) DLT 194 (DB)], *MCD Vs. Nirankar Singh & Ors* [2013] and *M/s Sentinels Security (P) Ltd. Vs. Smt. Sudha Singh* [2020 LawPack (Del) 76054].

27. A prayer has been made for setting aside the order passed by the Learned Single Judge.

28. On the other hand, Learned Counsel appearing for the Employer has vehemently argued before this Court that the Workman pursuant to his transfer to Division No. 5, Rohini, did not report on duty and he also did not file any complaint stating that he is not being permitted to join, and, therefore, as it was a case of abandonment from duty, he was rightly struck-off from rolls, and as it was a case of abandonment from duty, the Labour Court has erred in law and facts in passing an Award directing the reinstatement of the Workman. It has been vehemently argued that as it was

a case of abandonment of from duty, the Learned Single Judge has rightly set aside the Award Passed by the Labour Court.

29. Learned Counsel for the Management has placed reliance upon judgments delivered by the Hon'ble Supreme Court in *Manju Saxena vs. Union of India and Others* [(2019) 2 SCC 628], *Engineering Laghu Udyog Employees Union vs. Labour Court* [2003 (12) SCC 1], *Sukhdev Singh vs. DDA* [2011 SCC OnLine Del 4680], *MCD vs. Chatarbhuj Bhushan Sharma* [2006 SCC OnLine Del 1265]. His contention is that in the present case, the Workman has, in fact, never reported on duty after he was transferred before the Assistant Engineer and took shelter of the statutory provisions as contained under the I.D Act after a period of 3 years. It has been stated that during the pendency of the conciliation proceedings efforts were made by the Management to resolve the issue. However, in spite of the service of the legal notices, the Worker never rejoined the post in question, and, therefore, as he was not interested in rejoining the duty, and it was a case of abandonment of service, the Learned Single Judge was justified in setting aside the Award and the question of interference by this Court in the impugned judgment does not arise.

30. Learned Counsel appearing on behalf of the DDA has lastly informed this Court that the Workman during the pendency of the legal proceedings has been paid approximately Rs. 25 lakhs as back-wages for not doing any work, and, as it was a case of abandonment of duty, though the Workman was not entitled to single rupee, the Management was left with no other choice than to pay him wages keeping in view the Section 17B of the I.D. Act.

31. Lastly it has been argued that the present case is the case of abandonment from duty and, the Learned Single Judge, after careful consideration of the Award of the Labour Court, has rightly arrived at a conclusion that the Workman is not entitled to any relief. A prayer has been made for dismissal of the present LPA.

32. Heard Learned Counsel for the parties at length and perused the record. The Workman in question appearing before this Court was undisputedly appointed in the services of DDA on 01.09.1983 and he was drawing salary in a regular Pay Scale. He was posted in the Horticulture Department under the Junior Engineer (Electrical), and has served in Department from 01.09.1983 to 07.08.1991, and, thereafter, he was transferred by an order dated 08.08.1991 to Horticulture Division No. 5.

33. The contentions of the Workman is that he reported before the Assistant Engineer (Electrical) Mr. M. C. Gupta. However, he was not permitted to join/ he was not permitted to mark his attendance, and finally his name was struck-off from the rolls.

34. The Workman for the first time after expiry of the period of about three years served a demand notice on 14.12.1994 claiming reinstatement. However, the same was not accepted by the DDA, and, thereafter, the Workman took shelter of the provisions of the I.D. Act by raising a dispute before the Conciliation Officer on 12.01.1995.

35. It is also an undisputed fact that the Management served two legal notices dated 24.09.1996 and 25.09.1996 to the Workman to resume his duty. However, the Workman failed to resume his duties and in those circumstances finally when conciliation proceedings resulted in failure and a reference was forwarded by the Appropriate Government under Section

10(1)(c) and Section 12 under the I.D. Act for adjudication to the Labour Court.

36. Statement of claim was filed by the Workman. Management has also filed a written statement and issues were framed in the matter. The Workman examined himself as WW-1 and the Management examined Sh. J. P. Sharma as Deputy Director of Horticulture Department Division 5 as MW-1.

37. The Workman has also produced documentary evidence in support of his Statement of claim Ex. WW-1/A to Ex. WW-1/16. Exhibit WW-1/4 is a letter dated 29.08.1991, which reflects that the Workman did join the Division No. 5 on 09.08.1991. Exhibit WW-1/14 further reflects that the Workman was directed to report to the Assistant Engineer (Electrical). Another document placed on record before the Labour Court is letter dated 29.08.1991 which is marked as Ex. WW-1/15 filed by the Workman to demonstrate that he reported to the Assistant Engineer, however, there is no receiving in support of the aforesaid document nor there is any endorsement by the DDA/ Management/ any Officer of the DDA.

38. The Workman after 29.08.1991 took no steps in the matter. He was struck-off strength, and after about 3 years of his alleged discontinuance, the Workman started agitating the matter, and for the first time served a demand notice on 14.12.1994 through the Municipal Employees' Union for his reinstatement, and thereafter, took shelter of the statutory provisions as contained under the ID Act on 12.01.1995.

39. It will not be out of place to mention that the management served 2 legal notices dated 24.04.1996 and 23.05.1996 while the matter was pending before conciliation officer. However, the Workman did not resume his

duties and the Labour Court after scanning the evidence has directed reinstatement of the Workman without back-wages.

40. This Court has carefully gone through the Award passed by the Labour Court and the reasoning assigned by the Labour Court in directing the reinstatement of the Workman without back-wages is that the Management has failed to prove as to why the notice was not issued to the Workman immediately after 1991 when he stopped appearing and no enquiry was conducted in the matter.

41. The Learned Single Judge after taking into account the fact that it was Workman who had abandoned the service, who took no steps for almost 3 years after he was allegedly not permitted to rejoin, has arrived at a conclusion that the Workman is not entitled for any relief of whatsoever kind.

42. The DDA in exercise of powers conferred by Section 57 of the Delhi Development Act, 1957 (hereinafter to be referred as “**the DDA Act**”) has framed rules with the previous approval of the Central Government with respect to salaries, allowances and conditions of service known as Delhi Development Authority (Salaries, Allowances and Conditions of Service) Regulations, 1961. The Rule 11 of the aforesaid regulations reads as under.

“11. The provisions of the Central Civil Services (Conduct) Rules, 1964, as amended by the Central Government from time to time, shall apply mutatis mutandis to the services and posts under the Authority; and unless the context otherwise required, all reference to Central Government shall be construed as reference to the Authority and all references to head of department or head of office shall be construed as references to the Vice-Chairman.”

43. The aforesaid statutory provision makes it very clear that provisions of Central Services (Conduct) Rules, 1955 as amended by the Central Government from time to time are applicable *mutatis mutandis* to the services and posts under the Authority.

44. The DDA in exercise of powers conferred under Section 57 of the DDA Act with the approval of the Central Government has framed the D.D.A. Conduct, Disciplinary and Appeal Regulations, 1999 (hereinafter to be referred as “**The Regulations, 1999**”), and misconduct is defined under Regulation 5 which reads as under:

*“5. **Misconduct.** – Without prejudice to the generally of the term “misconduct” the following acts of omission and commission shall be treated as “Misconduct”.*

1. Theft, fraud or dishonesty in connection with the business or property of the Authority or property of another person/within the premises of the Authority.

2. talking or giving bribes or any illegal gratification.

3. possession of pecuniary resources or property disproportionate to the known sources of income by the employee or on his behalf by another person, which the employees can not satisfactorily account for.

4. furnishing false information regarding name, age, father’s name, qualification, ability or previous service or any other matter germane to the employment at the time of employment or during the course of employment.

5. action in a manner prejudicial to the interest of the Authority.

6. wilful insubordination or disobedience, whether or not in combination with others, of any lawful and reasonable order of his superior.

7. absence without leave or overstaying the sanctioned leave for more than four consecutive days without sufficient grounds of proper or satisfactory explanation.

8. habitual late or irregular attendance

9. neglect of work or negligence in the performance of duty including lingering or slowing down of work.

10. damage to any property of the Authority.

11. interference or tampering with any safety devices installed in or around the premises of the Authority.

3. No employee shall in the discharge of his official duties deal with any matter or give or sanction any contract to any company or firm or any other person if any member of his family is employed in that company or firm or under that person or if he or any member of his family is interested in such matter or contract in any other manner the employee shall refer every such matter or contract to his superior official and the matter or the contract shall thereafter be disposed of according to the instructions of the authority to whom the reference is made.”.

45. The aforesaid regulation deals with absence without leave or overstaying the sanctioned leave. Meaning thereby, the act of an Officer of being unauthorisedly absent, is a misconduct and the Rules also provide for a procedure of imposing minor and major penalties. Rule 23 of the Regulations, 1999 reads as under:

“23. Penalties. – *The following penalties may be imposed on an employee, as hereinafter provided for misconduct committed by him of for any other good and sufficient reasons.*

Minor Penalties. -

(a) Censure

(b) With-holding of increments of pay

(c) With-holding of promotion

(d) Recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Authority by negligence or breach of orders.

(e) Reductions to a lower stage in the time scale of pay for period of not exceeding 3 years without cumulative effect and not adversely affecting his pension.

Major Penalties. –

(f) save as provided for in clause (e) reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the employee will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay.

(g) reduction to lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the employee to the time scale of pay, grade, post of service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the employee was reduced and his seniority and pay on such restoration to that grade post or service.

(h) Compulsory retirement.

(i) removal from service which shall not be a disqualification for further employment.

(j) Dismissal from service which shall ordinarily be a disqualification for further employment under the Government.

Provided that in every case in which the charge of acceptance from any person of any gratification other than legal remuneration as a motive or reward for doing or forbearing to

do any official act is established the penalty mentioned in clauses (i) or clause (j) shall be imposed.

46. The aforesaid statutory provision of law makes it very clear that removal from service is a major punishment and for inflicting a major punishment, procedure for imposing major penalties has to be followed as provided under the Rule 25 of the Regulations, 1999.

47. In the present case, the employee in question was undisputedly, as alleged by the management, unauthorisedly absent, and therefore, he could not have been terminated without following the due process of law.

48. Another important aspect of the case is that during the pendency of the Writ Petition before the Learned Single Judge, the employer has treated the employee in service, and as he has attained the age of superannuation on 31.05.2020, an Office Order has been passed on 13.12.2019 superannuating him from the post of Khalasi with effect from 31.05.2020. The Office Order passed by the employer is reproduced as under:

*“Delhi Development Authority
Horticulture Div -5, Rohini*

Establishment Order No. 848 Date 13.12.19

Office Order

*Sh Ram Mehar S/o Sh. Hukum Chand (UID No____)
Workcharge Regular Khalasi Horticulture Div -5, Rohini is in
service of DDA. According to the entry recorded in the service
book, his date of birth is 08.05.1960. Therefore, on completion
of the retirement age of 60 on 31.05.2020, he shall be retired
from the service of DDA. Sh. Ram Mehar s/o Hukum Chand
shall consider himself as retired from the service of DDA from
31.05.2020 (after noon). According to the recorded entry of
03.01.1985 on the duplicate service book, workman was
appointed in the DDA on the workcharge of Khalasi.*

*Dy, Director (Hort.) Div 5
DDA*

No. F 10(06)/91/Hort. Div 5/3513

Date 13.12.19”

49. This Court has carefully gone through the judgment delivered by the Hon’ble Supreme Court in the case of ***D. K. Yadav Vs. J.M.A. Industries Ltd.***, 1993 3 SCC 259, wherein it has been held that an employee cannot be terminated without holding any domestic enquiry. The Hon’ble Supreme Court in the aforesaid case has held as under:

“14. It is thus well-settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice. In D.T.C. v. D.T.C. Mazdoor Congress [1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213] the Constitution Bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without inquiry offended Article 14. The order terminating the service of the employees was set aside.

15. In this case admittedly no opportunity was given to the appellant and no inquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented from reporting to duty, nor was he permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Clause 13 of the Certified Standing Orders to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the Standing Order No. 13(2)(iv). Otherwise it would become arbitrary, unjust and unfair violating Article 14. When

so read the impugned action is violative of the principles of natural justice.

16. This conclusion leads us to the question as to what relief the appellant is entitled to. The management did not conduct any domestic inquiry nor gave the appellant any opportunity to put forth his case. Equally the appellant is to blame himself for the impugned action. Under those circumstances 50 per cent of the back wages would meet the ends of justice. The appeal is accordingly allowed. The award of the Labour Court is set aside and the letter dated December 12, 1980 of the management is quashed. There shall be a direction to the respondent to reinstate the appellant forthwith and pay him back wages within a period of three months from the date of the receipt of this order. The appeal is allowed accordingly. The parties would bear their own costs.”

50. In light of the aforesaid judgment, this Court is of the considered opinion that no opportunity of hearing was granted to the employee in question, and, therefore, the services of a regular employee could not have been terminated in the manner and method it has been done in the present case.

51. Learned Counsel for the Management has placed heavy reliance upon a judgment delivered in the case of **Vijay S. Sathaye Vs. Indian Airlines Limited and Others**, (2013) 10 SCC 253. His contention is that abandonment of service is a unilateral action of employee and such an act cannot be termed as a retrenchment, and, therefore, in light of the aforesaid judgment, the question of interference by this Court, as the Worker has abandoned his services, does not arise.

52. This Court has carefully gone through the judgment delivered by the Hon'ble Supreme Court. In the present case, the Workman was terminated/struck-off rolls by the management. The Workman in question was a

regular employee, and, in light of the judgment delivered in the case of **D. K. Yadav** (Supra), his services could not have been put to an end without following due process of law. The judgment delivered in the case of **D.K. Yadav** (Supra), has been delivered by the Bench of three Judges of the Hon'ble Supreme Court, and is a judgment prior in time, and, therefore, in light of the judgment delivered in the case of **D. K. Yadav** (Supra), the judgment delivered in the case of **Vijay S. Sathaye** (Supra) does not help the employer in any manner.

53. The undisputed facts as stated earlier makes it very clear that the Workman was treated in service by the employer, and an order of retirement has been passed, and, therefore, this Court is of the considered opinion that the Workman was dismissed from service/ struck-off from rolls and as the prescribed procedure was not followed, the Labour Court was justified in directing the reinstatement of the Workman without back-wages.

54. In order to give quietus to the *lis*, as the Workman has already attained the age of superannuation, this Court is of the considered opinion that the order passed by the Learned Single Judge deserves to be set aside, and, is accordingly set aside.

55. The Workman will be entitled for terminal dues by treating him in service till the age of superannuation. However, it is made clear that the Workman will not be entitled for back-wages and there will not be any recovery from the Workman in respect of the amount paid towards compliance of Section 17B of the I.D. Act. His services till the date of superannuation shall be taken into account only for the purpose of grant of terminal dues i.e. pension and other retiral dues.

56. The Respondent Employer shall after notional fixation of salary, shall grant all terminal dues to the Workman for which other regular employees are entitled, in accordance with law, within a period of 90 days from today.

57. With the aforesaid, the present LPA stands disposed of.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

APRIL 05, 2023

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