



2024:DHC:2330



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 11th March, 2024**
+ **W.P.(C) 3576/2024 & CM APPL. 14555/2024 & CM APPL. 14556/2024**
M/S SHUBAN SAI HONDA Petitioner
Through: **Mr. Prashant Kumar Mittal, Advocate**
versus
RAJESH KUMAR Respondent
Through: *Nemo*

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

- “a) issue a writ in the nature of certiorari or any other writ, order or direction for quashing of and setting aside of award dated 17.01.2023 passed by the Labour Court-06 presided over by Sh. Ajay Goel, Rouse Avenue District Court, New Delhi in LIR No. 804/2018 titled as “RAJESH KUMAR VS M/S SHUBHAM SAI HONDA, and all proceedings emanating therefrom and the statement of claim of the Respondent may kindly be dismissed being not maintainable;*
b) award cost of the petition in favour of the Petitioner and against the Respondent; and
c) pass such other or further order(s) this Hon'ble Court deems fit and proper in the facts and circumstances of the present



case.”

2. It is stated by the petitioner entity that on 1st May, 2015, the respondent workman was appointed as an Assistant Parts Manager at the petitioner entity on gross emoluments of Rs. 10,010/- per month.
3. It is further stated that the respondent workman has always remained negligent and irregular towards his duties and subsequently, started to remain absent from his job since 9th August, 2017 and did not turn up to his duties despite repeated requests over phone calls as well as emails.
4. Thereafter, the respondent workman raised an industrial dispute challenging his illegal termination which was referred to the learned Labour Court on 5th April, 2018. Pursuant to the conclusion of arguments, the learned Labour Court passed an award dated 17th January, 2023, in favour of the respondent workman, thereby, awarding him Rs. 1,25,000/- in lieu of his reinstatement.
5. Being aggrieved by the award dated 17th January, 2023, the petitioner entity approached this Court seeking setting aside of the impugned award.
6. Leaned counsel appearing on behalf of the petitioner entity submitted that the impugned award is bad in law and has been passed without taking into consideration the entire facts and circumstances.
7. It is submitted that the learned Labour Court erred by not considering and appreciating that the present dispute is not covered under the provisions of Industrial Disputes Act, 1947 (hereinafter “the Act”) in as much as the respondent workman was working as Assistant Parts Manager and his job



was to manage the requirement of spare parts for the service of vehicles.

8. It is submitted that respondent workman had himself left the job by not coming on duty w.e.f. 9th August, 2017 and his services were never terminated by the petitioner, and the said fact has not been appreciated by the learned Labour Court.

9. It is submitted that learned Labour Court grossly erred in not appreciating that the petitioner at no point of time terminated the services of the petitioner and that it is the respondent workman who himself left the job of the petitioner as he had committed irregularities in the accounts and failed to respond even after calling him for the audit.

10. It is submitted that the learned Labour Court further failed to appreciate that during his cross examination, the respondent workman had admitted to refuse the re-joining, despite him being asked by the petitioner entity.

11. It is submitted that the impugned award, is arbitrary, perverse, irrational, and has no basis whatsoever in law, equity or justice.

12. Therefore, in view of the foregoing submissions, it is submitted that the instant petition be allowed and the reliefs be granted as prayed for.

13. Heard the learned counsel appearing on behalf of the petitioner and perused the record.

14. The petitioner has filed the instant petition seeking setting aside of the impugned award dated 17th January, 2023 on the ground that the respondent workman remained absent from the job since 9th August, 2017 and thereafter, did not turn up despite repeated requests and reminders.



Furthermore, the respondent workman committed irregularities while working with the management of the petitioner entity. Moreover, the petitioner entity asked the respondent workman to join the job but he did not turn up and filed a vexatious claim before the learned Labour Court when the management lodged a police complaint him.

15. It has been also submitted on behalf of the petitioner that the impugned award is liable to be set aside since the provisions of the Act are not applicable in the present case as the respondent workman was working as Assistant Parts Manger and he does not fall within the ambit of 'workman' under the Act. Therefore, it has been contended that the impugned award is erroneous and is liable to be quashed.

16. The leaned Labour Court in the impugned award granted the respondent workman with a lumpsum compensation of Rs. 1,25,000/- in lieu of reinstatement and all the other consequential benefits. Relevant portions of the same is as under:

"...On the pleadings of parties, the following issues were framed on

29.08.2019:-

- 1. Whether the workman himself started absenting from the job of management since 09.08.2017 and thereafter, he did not turn up despite requests and reminders?OPM*
- 2. As per terms of reference?OPW*
- 3. Relief.*

12. As far as evidence led by workman is concerned, he has appeared in witness and filed his evidence by way of affidavit . In his chief examination, he has relied upon several documents in support of his case. The carbon copy of complaint addressed



to Asst. Labour Commissioner dated 28.08. 2017 was proved as Ex. WW-1/ 1, carbon copy of demand notice dated 01.10 .2017 was Ex. WW-1 /2, postal receipt thereof have been proved as Ex. WW-1/3 and acknowledgement card as Ex. WW- 1 /4. Further the statement of claim filed before the Conciliation Officer has been proved as Ex. WW- 1/5.

*13. The perusal of carbon copy of demand notice dated 01.10.2017 Ex. WW-1/2 and postal receipt thereof Ex. WW-1 /3 and acknowledgement card Ex. WW- 1 /4 shows that it bears the correct name and address of the management. Thus in these circumstances, **presumption of service of demand notice upon management on given address exists as per General Clauses Act .***

14. In cross-examination of WW- 1, he deposed that his relations with management during his working period were normal and he had worked with management till 08.08.2017. He further deposed that he was working with management as Store Keeper and spare parts of service station were under his control. WW-1 further deposed that during his working period, no audit of spare parts of service station of management was done till 08.08.2017 and he does not know when the audit spare parts of service station of management was done after 08.08.2017. WW- 1 further deposed that he had come to know about some missing spare parts of the management when he has filed case before the Conciliation Officer. He further deposed that he is aware about the police complaint against him regarding missing of some spare parts of management and he had visited the police post at Tilak Vihar on the call of police. He has denied suggestions put to him.

15. From his above cross-examination, it is clear that he had word V till 08.08.2017 and his relations with management during his working period were normal. It is further clear from



his cross-examination that during his working period, no audit of spare parts of service station of management was done till 08.08.2017. It is further clear that one police complaint was filed against him regarding missing of some spare parts of management and in this regard , he had visited the police post at Tilak Vihar on the call of police.

16. Management in support of its case has produced Sh. Vikram who was working with management as General Manager and he was examined as MW-1. In his evidence, he has relied upon only two documents i.e. office copy of police complaint Ex. MW- 1 /1 and appointment letter Ex. MW-1/ 2.

*17. In his cross-examination, he has deposed that **management had not sent any letter to workman to call him for duty** and voluntarily deposed that he was sent e-mail on 18.08.2017 but it was not proved that whether workman was having any e-mail. What was the e-mail address of workman has also not been produced on record. It has also not been proved as to from where the management got this address. The perusal of written statement filed by management shows that this plea of sending any e-mail dated 18.08.2017 to workman has nowhere been taken by management in written statement which was filed on 19.11.2018. So this plea of sending e-mail to workman by management seems to be after thought. MW-1 further admitted that **management had not conducted any domestic inquiry on the point of alleged absentism**. MW- 1 further could not tell in his cross-examination whether concerned police officer of PS-Tilak Nagar had lodged any FIR against workman or not on the basis of his complaint. So nothing material has come in his evidence which could help to the case of management and rather, he had demolished the case of management by admitting that no domestic inquiry was conducted by management before terminating the services of the workman.*

18. Further in para No. 4 of the claim and in para No. 5 of the



affidavit, the claimant has averred that his services were terminated by management without conducted any domestic enquiry. The management has failed to explain the same as to why no domestic inquiry was conducted before terminating the services of the workman.

25. Even if version of management is taken as gospel truth that workman has misused his managerial powers and committed irregularities in the accounts/goods, then it is not made out as to why no action was taken by management against workman except moving formal complaint to police and it is not made out whether said complaint was pursued further by management and no copy of FIR has been placed on record and it is not made out whether allegations made against the workman by management were found to be true during investigation and whether any case was registered against workman by police on the complaint of management. The management has failed to bring on record any such record.

26. Further the workman has specifically mentioned in his claim that management had not given any designation to him but it used to take work of Store Keeper, Job Card opening or closing, cashier to workman. Though he has denied issuance of appointment letter to him by management in his claim but management has filed on record the appointment letter which is proved on record as Ex. MW-1/2 and perusal of same shows that that though entire document is typed but column of designation and salary was not typed and it might have been filled later on as per their suitability and convenience.

27. The onus was upon management to prove its case to the effect that workman himself started absenting from the services of the management on its own but evidence led and produced before this court is not sufficient to hold that workman himself left the services of management on its own.



28. *On the other hand , it is proved by workman that his services were terminated by management illegally and unjustifiably without conducting any domestic inquiry. Accordingly, these issues are decided in favour of workman and against the management.*

29. *As far as relief part is concerned, the claimant/workman has made a prayer in statement of claim that he is unemployed since the date of termination of his services and as such the management be directed to reinstate him in service with full back wages including benefits of continuity of service and all other consequential benefits.*

30. *However, it has to be kept in mind that workman has not placed on record any document as to what efforts he had made to get other job on his being unemployed and he must have done some work for his survival and it cannot be said that he is unemployed since the date of termination and thus, he is not entitled to back wages*

39. *This court grants a lump sum compensation of **Rs. 1,25,000/- (Rupees One Lac Twenty Five Thousand only)** to the claimant /work man in lieu of his reinstatement and all other consequential benefits. The amount of compensation shall be paid to the workman by the management within one month from the date when this award becomes enforceable failing which the amount shall carry' an interest @ 9% p.a . from the date it becomes due till the time it is realized....”*

17. Upon bare perusal of the above extracted paragraphs of the impugned award, it is made out that the primary issue before the learned Court below was to adjudicate whether the respondent workman remained absent from the job since 9th August, 2017 and did not turn up despite repeated requests



by the petitioner entity. While determining the same, the learned Court below perused the evidence filed by the workman which included a complaint dated 28th August, 2017 addressed to the Assistant Labour Commissioner (Ex. WW-1/1), a copy of the demand notice dated 1st October, 2017 (Ex. WW-1/2) including respondent workman's chief examination as well as his cross examination.

18. As per the cross examination of WW-1, i.e., the respondent workman, it was deduced by the learned Court below that his relations with the management were normal and that he was working as a 'Store Keeper', contrary to what has been alleged by the petitioner entity.

19. It was further observed by the learned Court below that the respondent workman did not know about the audit as alleged by the petitioner herein and that he came to know about the same only when the case was filed before the Conciliation Officer. On the basis of the above, the learned Labour Court held that respondent's relation with the petitioner was normal and that no audit was done until 8th August, 2017. Accordingly, the contention of the petitioner in this regard was rejected.

20. The petitioner has submitted before this Court that it had filed a police complaint against the workman with respect to the irregularities and had sent repeated requests and reminders to the respondent workman against his absenteeism, thereby, asking him to join his duties.

21. As far as the aforesaid contention is concerned, the same has been dealt with in paragraph no. 17 of the impugned award, whereby, the learned Court below observed that the petitioner entity's management had not



conducted any domestic inquiry on the point of alleged absenteeism and irregularity. Furthermore, upon his cross examination, the respondent workman could not tell whether the concerned police officer of Police Station, Tilak Nagar, had acted upon the complaint lodged by the petitioner entity.

22. Taking into account the above said observations, the learned Labour Court held that the petitioner entity's allegation of irregularity committed on behalf of the workman cannot be substantiated as the management failed to explain as to why no domestic inquiry or any other action was not taken against the workman. Moreover, the petitioner entity failed to produce any evidence in order to prove that the workman remained absent from the services on his own.

23. Therefore, this Court is inclined to agree with the view taken by the learned Labour Court and uphold the finding that the respondent workman was terminated illegally since the petitioner entity never conducted any inquiry before terminating the workman, as observed in paragraph no. 18 of the impugned award.

24. At this stage, it is also imperative to discuss another contention of the petitioner workman, whereby, it has been alleged that the respondent workman was working in the managerial capacity and has misused his position. In this regard, in paragraph no. 25 of the impugned award, the learned Court below had observed that even if the version of the management is taken to be true, it still cannot be entertained in the light of lack of evidence.



25. The aforesaid contention of the petitioner is merely based upon the police complaint, i.e., Ex MW-1/1, and with respect to the same, this Court is of the view that a mere police complaint does not substantiate the allegations advanced by the petitioner since neither any investigation nor an FIR was produced in this regard, therefore, lack of evidence.

26. Moreover, as far as the issue of position of the respondent workman is concerned, it was his stand before the learned Labour Court that he used to take up work of a '*Store Keeper, job card opening or closing, cashier to workman*' and the petitioner entity had produced an appointment letter stating that he was an '*Assistant Parts Manager*'. With regard to the same, the learned Court below held that the entire document is typed but the column of designation and salary was not typed and therefore, it was of the view that it might have been filled later as per the management's convenience. In this regard, this Court does not deem it appropriate to interfere as no illegality on the face of the same is apparent.

27. The learned Labour Court also observed that the respondent workman has not been able to prove that he was not gainfully employed elsewhere and considering the same, it was of the opinion that respondent workman was not entitled for reinstatement and, therefore, he was awarded a lumpsum compensation of Rs. 1,25,000/- in lieu of reinstatement.

28. It is a settled principle of law that a degree of proof is required to be established by a management in case of wilful absence of an employee. The same has also been held in a catena of judgments by the Hon'ble Supreme Court and this Court as well. In the judgment titled *State of Uttarakhand v.*



Sureshwati, (2021) 3 SCC 108, the Hon'ble Supreme Court had given similar findings. Relevant portions of the same is as under:

“19. A four-Judge Bench of this Court in Workmen v. Motipur Sugar Factory (P) Ltd. [Workmen v. Motipur Sugar Factory (P) Ltd., AIR 1965 SC 1803] held that : (AIR p. 1808, para 11)

“11. It is now well settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic enquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic enquiry has been properly held (see Indian Iron & Steel Co. Ltd. v. Workmen [Indian Iron & Steel Co. Ltd. v. Workmen, AIR 1958 SC 130]) but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may in this connection refer to Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan [Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan, AIR 1959 SC 923] , Phulbari Tea Estate v. Workmen [Phulbari Tea Estate v. Workmen, AIR 1959 SC 1111] , and Punjab National Bank Ltd. v. Workmen [Punjab National Bank Ltd. v. Workmen, AIR 1960 SC 160] . These three cases were further considered by this Court in Bharat Sugar Mills Ltd. v. Jai Singh [Bharat Sugar Mills Ltd. v. Jai Singh, (1962) 3 SCR 684] , and reference was also made to the decision of the Labour Appellate Tribunal in Ram Swarath Sinha v. Belsund Sugar Co. [Ram Swarath Sinha v. Belsund Sugar Co., 1954 LAC 697] It was pointed out that ‘the important effect of omission to hold an enquiry was merely this : that the tribunal would not have



to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out'. It is true that three of these cases, except Phulbari Tea Estate case [Phulbari Tea Estate v. Workmen, AIR 1959 SC 1111] , were on applications under Section 33 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the tribunal for approval under Section 33 or on a reference under Section 10 of the Industrial Disputes Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. Phulbari Tea Estate case [Phulbari Tea Estate v. Workmen, AIR 1959 SC 1111] was on a reference under Section 10, and the same principle was applied there also, the only difference being that in that case there was an inquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper.”..”

29. Perusal of the above judgment states that without any adequate evidence, being absent cannot be attributed to an employee. Accordingly, this Court is of the view that mere accusation on the part of the petitioner entity that the workman remained absent from the job is not sufficient and the petitioner entity is required to substantiate the same by supplementing supporting evidence, however, it failed to do the same since the evidence and examination of the respondent workman nowhere suggest that the



workman intended to absent himself from his job.

30. At this juncture, this Court shall briefly revisit the scope of this Court's power under Article 226 of the Constitution of India. The jurisdiction of the High Court in matters where Article 226 has been invoked is limited. It is a well settled proposition of law that it is not for the High Courts to constitute itself into an Appellate Court over the decisions passed by the Tribunals/Courts/Authorities below, since, the concerned authority is constituted under special legislations to resolve the disputes of a kind.

31. A writ is issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals and such errors mean where orders passed by the Courts below or Tribunals are without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is against the principles of natural justice.

32. Considering the observations made herein above, this Court is of the considered view that the learned Labour Court took into account the entire facts and circumstances available on its record including the chief examination and cross examination of the parties where the petitioner has neither proved any misconduct as alleged by it at the behest of the respondent workman, nor established the deliberate absenteeism of the respondent workman on his own. Furthermore, the petitioner entity was



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given sufficient opportunity to substantiate its case by leading its evidence, both oral as well as documentary, however, it failed prove its case.

33. In light of the above discussions of facts as well as law, this Court does not find any merit in the instant petition and the same is liable to be dismissed. The impugned award dated 17th January, 2023, in LIR No. 804/2018, passed by the learned Presiding Officer-06, Labour Court, Rouse Avenue District Court, D.D.U Marg, New Delhi, is hereby, upheld.

34. Accordingly, the instant petition stands dismissed along with the pending applications, if any.

35. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 11, 2024
gs/ryp/av

Click here to check corrigendum, if any