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

+ **W.P.(C) 15349/2004**

DHAL BHADUR

..... Petitioner

Through: Appearance not given.

versus

P.O. LABOUR COURT & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

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24.04.2024

1. The petitioner filed the instant petition under Article 226 and 227 of the Constitution of India, 1950 seeking following relief:

“It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to issue a writ of certiorari calling for the records of the I D No. 246/1989 between M/s Vinko Auto Industries and Shri Dhal Bahadur from the Labour Court No II, Delhi and set aside cancel and quash the award dated 28.5.2002 and the order dated 21.1.2003 made therein and make such other order or relief as this Hon'ble Court may deem fit and proper for doing complete justice to the Petitioner in the facts and circumstances of the case by allowing the claim of the Petitioner straight way or remanding the case to the court of the Respondent No. 1 for disposal of the same in accordance with law, equity, justice and good conscience;”



2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner has never been served the charge sheet and he was not given fair opportunity to represent his case before the concerned authority.
3. It is further submitted that the learned Tribunal has also not appreciated the fact that the petitioner was never been allowed to join the establishment i.e. the respondent no.2/M/s Vinko Auto Industries Limited.
4. It is contended the learned Labor Court have not been appreciated the contents stated in the evidence affidavit by the petitioner.
5. It is submitted that the petitioner is jobless since his termination and could not find any job despite several efforts.
6. It is further submitted that learned Labour Court erred in holding that the petitioner failed to report for duty inspite of various letters sent to him by the respondent no. 2 to join back his duty.
7. There is no appearance on behalf of the respondents and despite service no one has appeared.
8. Heard the learned counsel for the petitioner and perused the contents made in the petition as well as the documents of the record.
9. The instant petition has been filed by the petitioner challenging impugned award dated 28th May 2002 and the impugned review order dated 21st January, 2003.
10. This Court shall now peruse the impugned award dated 28th May 2002:

“8. During the course of arguments, it was contended on behalf of the workman that no domestic enquiry was conducted by the



management against the workman Dhal Bahadur regarding his absence from duties w.e.f., 20.2.1989 and as such the termination of his services by the management without giving any show cause notices to him is illegal and void and no presumption of abandonment of job can be raised. In support of these submissions, reliance has been placed on the case of Uptron India Ltd. Vs. Shammi Bhan 1998 (2) C.C. Cases (SSCI 53, Hindustan Tin Works Vs. Its Employee AIR 1979 SC Page 75 and Ishwar Singh Vs. DTC 1998 (VI A.D. (Delhi) 84. I have carefully perused the cases relied upon by Authorised Representative for the workman, but these cases relied upon are not much helpful to the workman, because of the distinguished facts and circumstances of this case. It is now well-settled proposition of law that failure of the workman to report for duty despite various opportunities given by the management by writing letters/notices etc., due to his unauthorized absence raises the presumption of abandonment of job which does not amount to misconduct calling for holding of enquiry. In this respect reference can be made to the cases of Syndicate Bank Vs. General Secretary. Syndicate Bank Staff Association AIR 2000 S.C. Page 2198 and Beena Kunju Vs. F.C.I. 2001 L.L.R. Page 743 (Kerala). In the instant case, it is established from the evidence adduced by the management that on 19.2.1989 a charge sheet was given to the workman, but workman refused to accept this charge sheet and thereafter, he started remaining absent and as such various letters to the workman were sent for joining the enquiry proceedings and in those letters it was also stated that his services were not terminated and he was free to report for duty. Even during the Conciliation proceedings, workman was again offered by the management to join his duties by filing his reply Ex.MW.1/15, but workman did not report for duty. Even this offer was again extended by the management to the workman by filing his written statement, but it was not accepted by the workman as he failed to report for duty. Although during his cross-examination



workman Dhal Bahadur stated that he along with the Labour Inspector had gone to join the duties, but he was not allowed to enter in the gate of the factory, but this plea appeared to me an after thought as no report of Labour Inspector to this effect has been proved. Hence, it is proved on record that workman started remaining absent from duties w.e.f., 20.2.1989 and he failed to report for duty in spite of various letters sent to him by the management and as such there is presumption of abandonment of job by the workman at his own accord. Accordingly, workman Dhal Bahadur is not entitled to any relief against the management. Accordingly, this Award is passed.”

11. The learned Tribunal observed that the evidence produced on record by the respondent no. 2 establishes the fact that the respondent no. 2 gave charge sheet dated 19th February, 1989 to the petitioner, however, he did not accept the same and was absent from his service w.e.f. 20th February, 1989. Moreover, the respondent no. 2 sent various letters to the petitioner for joining the enquiry proceedings, however the petitioner remained absent.

12. The respondent no. 2 offered the petitioner to join back, during the conciliation proceedings as well as by way of filing the written statement, however the petitioner did not report to the duty.

13. It was averred by the petitioner that he along with the Labour Inspector tried to join back his service, however, he was not allowed by the respondent no. 2 to enter the premises, the learned Tribunal in this regard observed that no report of Labour Inspector had been produced on record by the petitioner and the same is merely an afterthought.



14. In view of the aforesaid discussion, the learned Tribunal upon considering the material produced on record held that the petitioner did not report to his duty from 20th February 1989, despite the fact that various letters were sent by the respondent no.2 to join back his service. Accordingly, learned Tribunal held that the petitioner is not entitled to any relief.

15. This Court is of the view that the learned Tribunal correctly held that Court that the respondent no. 2 by way of various letters requested the petitioner to join back however, the petitioner never joined back his service. Moreover, the petitioner had further asserted that he went alongwith with the Labour Inspector to join back, however, the respondent no.2 did not allow him to enter the premises, the learned Tribunal in this regard correctly held that no report of the Labour Inspector had been produced on record by the petitioner therefore, the aforesaid contention is merely an afterthought.

16. Since, there is no material produced on record by the petitioner to substantiate the fact that he was ready and willing to join the service, and the respondent no.2 did not allow him to join, hence, the learned Tribunal correctly held that the petitioner is not entitled to any relief.

17. In view of the foregoing discussion, this Court is of the view that the impugned award does not suffer from any illegality and does not warrant any intervention of this Court by way of issuance of writ of certiorari as the petitioner has not been able to make out a case in his favour.

18. Accordingly, this Court upholds the impugned award dated 28th May, 2002 passed by the learned Labour Court No II, Delhi.



19. The petitioner also filed review against the impugned award dated 28th May, 2002 which was dismissed by the learned Labour Court on 21st January, 2003. The relevant extract of the same is as follows:

“4. During the course of argument, Ld. Authorized Representative for the applicant/workman submitted that this Court has power U/S11 of I D Act to review its own orders and as such Award dated 28.5.2002 can also be reviewed by this Court. Reliance was placed on the case reported as Amarnath Vs. S.B. M. 1985 1 LLJ Page 39. I have carefully perused this case and this case instead of supporting the plea of applicant/claimant, supports the submissions made on behalf of the management/respondent. In this case it was held that the Indl. Tribunal/ Labour Court has got an implied power to review its own power, particularly when the orders are only procedural. Not only this, even in this case, cases of Narshv Thekershv and Grindlav Bank Ltd. were also discussed. In my view Award dated 28.5.2002 passed in this case on merits after considering the rival submissions made on behalf of the parties and by giving reasons for its conclusion cannot be said to be procedural Order. In the case of Grindlav Banks Ltd. the expression "Review" was considered in two senses namely (1) a j procedural review which is either inherent or implied in a Court or Tribunal and secondly. (2) a review on merits and it was also held that no review lies on merits unless a statute specifically provides for it. In the industrial dispute Act 1947 there is no specific provision which confers powers upon the Labour Court/ Indl. Tribunal to review its own Award passed on merits. In this respect Reference can also be made to the cases of P.S.T System Ltd. vs. PQ Labour Court (Supra) and M/s Expo Machineries Ltd. (Supra) which has also been relied upon on behalf of the Management/Respondent. In view of these reasons given coupled with the cases mentioned above. I am of the view that this Application moved on behalf of the workman/claimant for Review of the Award dated 28.5.2002 is



merit less and accordingly, it is dismissed. File be consigned to Record Room after necessary compliance.”

20. The learned Labour Court held that that the review can be entertained on two grounds i.e., review on procedure and review on merits however, there is no provision for review of the Award under Industrial Disputes Act, 1947. Accordingly, the learned Labour Court held that there is no ground made out by the petitioner for review of the impugned Award thereby, the review application was dismissed.

21. Upon perusal of the aforesaid review order, this Court is of the view that since there is no provision for review of the Award under Industrial Disputes Act, 1947 hence, the learned Labour Court rightly dismissed the impugned review order.

22. Accordingly, the impugned review order dated 21st January, 2003 is also upheld.

23. In view of the aforesaid discussion, the impugned award dated 28th May, 2002 and the impugned review order dated 21st January, 2003 is upheld.

24. Accordingly, the instant writ petition is dismissed alongwith the pending applications, if any.

CHANDRA DHARI SINGH, J

APRIL 24, 2024

rk/db

Click here to check corrigendum, if any