



2024:DHC:406



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 12th January, 2024**
+ **W.P.(C) 6391/2018**

M/S MASS COMPUTERS PRIVATE LIMITED Petitioner
Through: **Mr. Gulshan Chawla, Advocate**

versus

MR. ARVIND KUMAR TIWARI Respondent
Through: **Appearance not given**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

- “i) Issue appropriate writ, order or direction in the nature of writ of certiorari or mandamus quashing the impugned award dated 7.4.2018 (Annexure P-1)*
- ii) Order cost in favour of the Petitioner.*
- iii) Pass any other order that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”*

2. The petitioner herein has assailed the order dated 7th April, 2018, passed by the learned Presiding Officer, Labour Court – V, Delhi in ID No. 3853/2016, whereby, the learned Labour Court had held that the present respondent was terminated illegally and is entitled to reinstatement with



continuity along with full back wages and all other consequential benefits thereto.

3. Learned counsel appearing on behalf of the petitioner submitted that the learned Labour Court erred in passing the impugned order since it failed to consider the entire facts and circumstances of the dispute.

4. It is submitted that the learned Labour Court while passing the impugned award dated 7th April, 2018 has awarded back wages to the respondent and while doing so it has misread the entire evidence on its record as there was no such evidence to establish that the respondent was illegally terminated from the services. It is submitted that the learned Labour Court erred in granting back wages when there was no termination of service by the petitioner management.

5. It is further submitted that the learned Labour Court neglected in recognizing the absence of termination, with the respondent acknowledging the receipt of letters dated 12th August, 2004, 11th October, 2004, 9th November, 2004, 10th December, 2004, and 27th December, 2004 from the petitioner management, requesting the respondent to return and join the work.

6. It is submitted that the petitioner never terminated the services of the respondent instead, the respondent was absent from duties despite being repeatedly called upon to resume them. It is submitted that the petitioner management had offered the respondent to resume his services, however, the respondent failed to re-join his duties.



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7. It is submitted that the learned Labour Court committed an error in awarding reinstatement with back wages to the respondent as it failed to consider that the petitioner had abandoned the services.

8. Learned counsel appearing on behalf of the petitioner submitted that granting of reinstatement by the learned Labour Court is unwarranted and contrary to the evidence on record and without considering that there is no evidence adduced by the respondent which would classify that respondent was terminated by the petitioner company.

9. Learned counsel appearing on behalf of the petitioner has placed reliance upon the judgment passed by the Hon'ble Supreme Court in the case of *State of Punjab v. Jagir Singh*, (2004) 8 SCC 129, whereby, the Hon'ble Supreme Court held that when an employee neglects to report for duties despite being summoned to do so, entitlement to back wages is not applicable. For strengthening his arguments, he has relied upon paragraph 19 of the aforesaid judgment.

10. It is submitted that there are several other legal pronouncements of several High Courts in which it has been held that when an employer offers reinstatement at any stage of the dispute or proceeding, and the workman does not accept the offer, even without prejudice to his rights and contentions, the workman is not entitled to pursue his claim for reinstatement or back wages.

11. Learned counsel appearing on behalf of the petitioner submitted that in view of the foregoing submissions, the impugned award passed by the Labour Court without considering the entirety of the matter and ignoring the



evidence as well as the pleadings placed on record before it. Therefore, the impugned award may be set aside and the instant writ petition may be allowed.

12. *Per contra*, learned counsel appearing on behalf of the respondent vehemently opposed the submissions made by the learned counsel for the petitioner and submitted that there are no illegalities in the impugned award passed by the learned Labour Court as it has considered entire evidence on record.

13. It is submitted that the instant petition is nothing but gross misuse of process of law and there are also no merits in the arguments advanced by the petitioner management. Hence, the instant petition is liable to be dismissed, being devoid of any merit.

14. It is submitted that the respondent served as a Field Worker in the Accounts Department with a monthly salary of Rs. 6,500/- since February 1993 and it is incorrect to say that the petitioner did not terminate the services of the respondent.

15. It is submitted that the respondent's services were abruptly terminated on 30th June, 2004, without any prior notice, charge sheet, warning, domestic inquiry, or adherence to the due legal process. Consequently, the respondent issued a demand notice on 14th July, 2014 to the concerned Assistant Labour Commissioner (hereinafter "ALC") and the petitioner management. Despite the efforts of the ALC, the intended reinstatement did not take place. The respondent was later sent to the petitioner company along with the Area



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Labour Inspector, where he was neither allowed to mark attendance nor entrusted with any work.

16. It is further submitted that above said facts were duly communicated to the ALC. It is submitted that the authenticity and relevance of letters dated 12th August, 2004, 11th October, 2004, 9th November, 2004, 10th December, 2004, and 27th December, 2004 which is vehemently relied upon by the learned counsel for the petitioner before the Labour Court as well as during the arguments before this Court too is disputed by the learned counsel for the respondent, due to the reason that the respondent reported for duty each time but was not allowed to join his duty and further he was denied to mark his attendance in the staff register.

17. It is submitted that the petitioner offered the respondent to join services in one of its sister concerns, as the petitioner company ceased operations from the year 2010. It is submitted that the said offer of joining of the sister concern made by the petitioner before the Reconciliation Officer as well as before the learned Labour Court was during the final arguments.

18. It is submitted that this Court may not interfere with an award passed by the learned Labour Court which has been passed after determining the evidence and the facts of the case. It is submitted that learned Labour Court has passed a detailed and reasoned award after critically examining the oral evidence as well as the documentary evidence available on its record.

19. Learned counsel appearing on behalf of the respondent submitted that this Court, in its writ jurisdiction cannot act in an appellate jurisdiction and this Court may not interfere in the award by way of re-appreciating the entire



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evidence. It is further submitted that as per several judgments passed by the Hon'ble Supreme Court as well as different High Courts, it is a well settled law that the back wages upon reinstatement is the normal rule to be followed when the termination of the workman is deemed wrongful.

20. In view of the above facts and circumstances, there is no illegality in the award passed by the learned Labour Court and accordingly, the instant petition may be dismissed.

21. In rejoinder, the learned counsel appearing on behalf of the petitioner submitted that the respondent cannot be held to be entitled for back wages as after his alleged termination, he was working as a driver and driving some vehicle. He has also placed before this Court the photo of the Scorpio Car bearing Registration No. DL IC X 9133, submitting to the effect that the petitioner was driving the said vehicle which has also been admitted by the respondent during the arguments. The said photo is taken on record.

22. Learned counsel appearing on behalf of the petitioner submitted that as per the directions passed by the Predecessor bench of this Court in order dated 25th September, 2019, the respondent joined the petitioner company for a few days and the company paid the amount/salary for the respective days on which he worked in the company vide Cheque bearing No. 193231 dated 9th November, 2019 and Cheque bearing No. 193232 dated 2nd December, 2019, both issued by the Bank of India. He has placed on record the photocopy and the original copy of the Cheque bearing No. 193231 and original Cheque bearing No. 193232, before this Court during the course of the arguments, and the same are taken on record.



23. In response to the above, learned counsel for the respondent submitted that the cheque which has been referred by the learned counsel for the petitioner has been returned by the Banker and the returned cheque is also placed before this Court which has been taken on record.

24. Heard learned counsel for the parties and perused the record.

25. The crux of the petitioner's case lies in the grant of reinstatement, full back wages and other benefits to the respondent for the period of the respondent's alleged termination. The petitioner repeatedly contends that the respondent was never terminated *per se* and that it was the respondent who refused to resume his services with the petitioner despite repeated letters notifying the respondent of the same.

26. In rival submissions, the respondent has opposed the present petition and in response to the petitioner's contentions it has been submitted that such contentions of the petitioner are entirely premised upon a re-examination of the facts of the case at hand which has been already done by the learned Labour Court through the scrutiny of the oral and documentary evidence. It has been contended that this Court must give proper weight and consideration to the findings of the learned Labour Court and should not interfere with the award unless the conclusions reached by the learned Court below are palpably wrong, based on an erroneous view of the law, or likely to result in grave injustice. This Court should not re-evaluate the evidence unless the findings are perverse.

27. The learned Labour Court whilst adjudicating upon the claim of the respondent (claimant therein) held the workman to be entitled to reinstated



with continuity along with full back wages and all other consequential benefits thereto. The relevant portion of the impugned award is as under:

“..38. No doubt, the receipt of the letters in question served by the management upon the workman is admitted by the workman. But seen in the light of the above observation and specifically the complaint made by the workman to the Labour Commissioner vide letters Ex.WW1/12 and Ex.WW1/13 complaining/intimating that the management had not permitted him to join the duties, it becomes very clear that though the letters were written and served upon the workman, but on account of the action on the part of the management in only writing the letters but thereafter preventing the workman from joining the duties, the said letters can be branded as nothing but an elaborate plan on the part of the management to prepare a defence on receipt of the first notice dated 14.07.2004 by it from the side of the workman. The first letter bears the date of 12.08.2004 Ex.WW1/M1 whereas as per the management the workman absented himself from 30.06.2004. It very clearly shows that from 30.06.2004 till 12.08.2004 the management never cared for the workman to join the duties but as soon as it received the notice dated 14.07.2004 from the side of the workman, it realized the need to call the workman to join the duties.

41. Accordingly, the court hereby hold that there was no wilful defiance on the part of the workman of the letters dated 12.08.2004, 11.10.2004, 09.11.2004, 10.12.2004 and 27.12.2004 but rather it was the management who prevented the workman from joining the duties.

42 Accordingly, in view of the above findings, issue no.i is decided against the management.



43. In view of the outcome of issue no. i, the court hereby hold that the services of workman were illegally terminated by the management.

46. The management has also relied upon various judgments in support of its arguments.

47. However, in view of the finding of the court with respect to issue no.i whereby the court has held that the said willingness on the part of the management to offer duties to the workman was nothing but a clever tactic adopted by it to overcome the legal liability which may be imposed upon it, but in effect it was the management itself which was preventing the workman from joining the duties, the said judgments relied upon by the management are of no help to it.

48. In view of the above findings, the court hereby held that the workman is entitled to relief of reinstatement with continuity along with full back wages and all other consequential benefits...”

28. At this stage, it is pertinent to understand the scope of a writ Court's jurisdiction in interference with an award passed by the Labour Court.

29. It is a settled law that the Labour Court is the final Court of facts in the disputes between a labour or a workman and employer or an industry. The Hon'ble Supreme Court in the matter of ***Hindustan Tin Works v. Employees, (1979) 2 SCC 80***, examined the aspect of perversity by the Labour Court in appreciation of facts, and observed that if *prima facie*, it is visible that the findings arrived at by the Labour Court is not based on some legal evidence, the High Court can go into the question of fact adjudicated and concluded by the Labour Court by exercising its power under Article 226 of the Constitution of India. In the event that there is no such error in the



decision that was passed by the Labour Court, the Writ Court will not go into the issue of factual disagreements and the findings that were based on those disputes. The relevant paragraphs are reproduced below:

“9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view



would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them. A Division Bench of the Gujarat High Court in *Dhari Gram Panchayat v. Safai Kamdar Mandal* [(1971) 1 LLJ 508 (Guj)] and a Division Bench of the Allahabad High Court in *Postal Seals Industrial Cooperative Society Ltd. v. Labour Court II, Lucknow* [(1971) 1 LLJ 327 (All)] have taken this view and we are of the opinion that the view taken therein is correct.”

30. Further, in the judgment of ***Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union***, (2000) 4 SCC 245, the Hon’ble Supreme Court



on the aspect of finding of the facts without evidence, observed that if on the facts proved, the findings recorded by the Tribunal are justified and could not be considered to be based upon “no evidence”, there is no justification for the High Court in exercising writ jurisdiction to interfere with the same. The said judgment was further reaffirmed by the Hon’ble Supreme Court in *Atlas Cycle v. Kitab Singh*, (2013) 12 SCC 573. As per the judgment by the Hon’ble Supreme Court in *Atlas Cycle (Supra)*, it is a well-established principle of law that a Labour Court cannot arrive at a finding by overlooking the materials on its record, as the same would amount to perversity and a writ Court would be fully justified in interfering with the said conclusion.

31. Upon perusal of the above cited judgments, this Court is of the view that the High Court exercising writ of certiorari jurisdiction shall not assume the role of the appellate court. However, if it can be proved that, in the process of recording the findings, the Labour Court committed an error while allowing or declining any admissible and material evidence, or if it can be shown that the Labour Court admitted any inadmissible evidence which is not permissible in law and has influenced the impugned finding, then the Court will be well within its power to interfere and overturn the impugned finding. In such a situation, the writ court would be justified in exercising its remedy. In other words, if finding of a fact is based on no evidence, which would be regarded as an error of law which can be corrected by a writ of certiorari.



32. Upon a bare perusal of the impugned award, it is apparent that the learned Labour Court had taken into consideration the letters dated 12th August, 2004, 11th October, 2004, 9th November, 2004, 10th December, 2004, and 27th December, 2004, as has been relied upon by the petitioner before this Court. The learned Court below had particularly dealt with the submissions of the petitioner management (respondent therein) that the said letters seem to be a sheer and blatant attempt to cleverly develop some sort of tactic for defense in order to refute the respondent workman's claim.

33. The learned Labour Court had particularly noted that the upon examination of the documents and oral evidences/depositions, it reached to the conclusion that the alleged willingness on the part of the petitioner management to offer duties is only to escape from its legal liabilities when in reality the management has been actually preventing the workman from joining his duties.

34. The learned Labour Court arrived at the above said conclusion after duly examining the EX - WW1/12&13, i.e., the intimation dated 21st December, 2004 and 28th December, 2004 respectively, from the side of the workman to the Assistant Labour Commissioner regarding the management not permitting him to join the duties. The perusal of the impugned award further crystalizes the fact that the petitioner management had failed to prove that the respondent workman had himself voluntarily left the services after 30th June, 2004 as the petitioner management did not produce any attendance/wages record before the learned Labour Court.



35. The stand taken by the management is to the effect that it never terminated the services of the workman but rather it was the workman himself who absented from his services without any authorization despite being called over vide various letters. The said contention of the petitioner management was rejected by the learned Labour Court due to the observations cited in the preceding paragraph.

36. The petitioner herein has also submitted that the respondent is not entitled to the back wages. In this regard, it is observed by this Court that the learned Court below held that the respondent workman was terminated illegally and accordingly awarded the back wages to him. This Court is of the view that the contention of the petitioner that the respondent workman is not entitled to the back wages cannot be accepted.

37. With regard to the entitlement of back wages to a workman who was terminated illegally, the Hon'ble Supreme Court in the matter of ***U.P. SRTC Ltd. v. Sarada Prasad Misra, (2006) 4 SCC 733***, held as under:

“16. From the above cases, it is clear that no precise formula can be adopted nor “cast-iron rule” can be laid down as to when payment of full back wages should be allowed by the court or tribunal. It depends upon the facts and circumstances of each case. The approach of the court/tribunal should not be rigid or mechanical but flexible and realistic. The court or tribunal dealing with cases of industrial disputes may find force in the contention of the employee as to illegal termination of his services and may come to the conclusion that the action has been taken otherwise than in accordance with law. In such cases obviously, the workman would be entitled to reinstatement but the question regarding payment of back wages would be independent of the first question as to



entitlement of reinstatement in service. While considering and determining the second question, the court or tribunal would consider all relevant circumstances referred to above and keeping in view the principles of justice, equity and good conscience, should pass an appropriate order.”

38. Adverting back to the facts of the matter at hand, the learned Court below while deciding the question whether the respondent workman was terminated illegally or not held that the management had not permitted the workman to join his duties and the same can be corroborated by perusing Ex. WW1/12 and Ex.WW1/13. It further held that the management had sent the letters whereby it asked the workman to join duties, is only a part of preparation of its defence against the workman.

39. Upon perusal of the impugned award, it can be inferred that the learned Court below had stated that the first letter sent by the management is dated 12th August, 2004 whereas as per the management the workman absented himself from 30th June, 2004. Therefore, it is evident that management's defence has no merit since it did not take any action against the workman or sent the letters purported to be sent to the workman, asking him to rejoin his duties. Accordingly, this Court is of the considered view that the learned Labour Court rightly held that the workman's services were terminated illegally and that he is entitled to the back wages.

40. As per the law settled by the Hon'ble Supreme Court, this Court cannot undertake an exercise, impermissible for this Court in exercising the writ jurisdiction, by liberally re-appreciating the evidence and drawing



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conclusion on pure questions of fact, as this Court does not sit in an appellate jurisdiction over the awards passed by the Labour Court.

41. In view of the above discussions of facts and law, it is held that the learned Labour Court has rightly arrived at the findings given in the impugned award. This Court discerns no material to establish the propositions put forth by the petitioner as there is no material to characterize the award of the learned Labour Court as perverse. It is held that the learned Labour Court is well justified in passing the impugned award.

42. Therefore, this Court finds no force in the propositions put forth by the petitioner. It is, hereby, held that there is no infirmity in the impugned award dated 7th April, 2018 passed by the learned Presiding Officer-V, Dwarka Courts, Delhi, in ID No. 3853/2016.

43. In light of the foregoing paragraphs, this Court does not find any merit in the instant petition. Accordingly, the instant petition stands dismissed along with pending applications, if any.

44. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JANUARY 12, 2024
gs/ryp/ds

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
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