



2025:DHC:8370



\$~3

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 25.08.2025

+

W.P.(C) 5003/2019

SH. SHIV KUMAR

...Petitioner

Through: Mr. Sunil Choudhary, Adv.

versus

M/S MURLIDHAR VIJAY KUMAR AND ORS ...Respondents

Through: Mr. Chirayu Jain, Adv. for R-1 & 2.
Mr. Jayesh Khandelwal and Mr. K.G
Gopalakrishnan, Advs. for R-3.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed under Article 226 and 227 of the Constitution of India impugning the award dated 05.01.2019 passed by the learned POLC-V, Dwarka Courts, Delhi [hereinafter referred to as "Impugned Award"]. By the Impugned Award, the learned Labour Court gave a finding that the Petitioner/Workman was not terminated by the Respondent No.1/Management No.1 but that the Petitioner/Workman had abandoned his job and thus, learned Labour Court declined the Claim Petition filed by the Petitioner/Workman.

2. At the outset, learned Counsel for the Petitioner/Workman submits that since the offer of the Respondent/Management to take back the Petitioner/Workman on its rolls was rejected by the Petitioner/Workman before the learned Labour Court, the issue qua reinstatement would not



2025:DHC:8370



survive. Accordingly, the challenge in the present Petition is limited by the learned Counsel for the Petitioner/Workman to the ground of alleged illegal termination of the Petitioner/Workman.

3. Learned Counsel for the Petitioner/Workman submits that although it was the case of the Respondent/Management that the Petitioner/Workman abandoned his job, the Respondent/Management failed to show any document/communication that was sent by the Respondent/Management to the Petitioner/Workman stating that he had abandoned the job. However, he fairly concedes that the Petitioner/Workman did not join services of the Respondent/Management despite the offer.

4. Learned Counsel for the Petitioner/Workman submits that his challenge in the present Petition is to the fact that the finding of abandonment of the job by the Petitioner/Workman was given by the learned Labour Court without the Respondent/Management leading any evidence, to show that the Petitioner had abandoned his job. Learned Counsel for the Respondent/ Management submits that learned Labour Court had found the Petitioner to be a Workman and had also given a finding that he was employed with the Respondent/Management but did not show as to how the Petitioner/Workman had abandoned his job. Relying on the judgment of the Bombay High Court in ***Ocean Creations v. Manohar Gangaram Kamble and Anr.***¹ the Petitioner/Workman has contended that where the workman claims that his services were terminated by the employer without notice or inquiry and the employer contends that the workman had abandoned his duty, the Coordinate Bench of the Bombay High Court has held that for the

¹ 2013 SCC OnLine Bom 1537



employer to claim abandonment of services by the workman, the employer must issue a notice allowing resumption of duty and if the workman is still absent, hold a domestic inquiry. It is thus contended that since no notice was given by the Respondent/Management to the Petitioner/Workman, the termination was illegal.

5. Learned Counsel for the Respondent/Management on the other hand submits that the Respondent/Management has in its written statement set out that one of the workmen who was previously working with them, namely Mr. Manoj Kumar @ Manphool Kumar had set up a competing business by the name of M/s Unique Petco India Pvt. Ltd. and that the Petitioner/Workman joined Mr. Manoj Kumar for the said business and hence the services were not terminated but it was a case of abandonment of services.

5.1 Learned Counsel for the Respondent/Management further submits that it is in view of this contention that the Petitioner/Workman, in his Statement of Claim, filed by the learned Labour Court did not seek any back wages.

6. In addition, it is contended by the Respondent/Management that although, the averment of abandonment of duty by the Petitioner/Workman and joining of M/s Unique Petco India Ltd. was set out in the Written Statement by the Respondent/Management, no evidence was led to dispel the same. It is in these circumstances, that the Impugned Award was passed.

7. Learned Counsel for the Respondent/Management further submits that the Petitioner/Workman has failed to show any ground for interference with the Impugned Award before this Court.



8. In addition, learned Counsel for the Respondent/Management contends that the Petitioner/Workman has admitted in his cross-examination that as on the date of termination, there is nothing due to him by the Respondent/Management. Thus, based on this statement, there can be no further claims by the Petitioner/Workman.

8.1 Learned Counsel for the Respondent/Management further submits that so far as concerns the contentions in respect of violation of Section 25G and 25H of the Industrial Disputes Act, 1947 [hereinafter referred to as "ID Act"], no evidence was led qua the same. The Petitioner/Workman has failed to prove that there were more than 20 employees employed with the Respondent/Management to be an establishment within either of these definitions.

9. Briefly the facts are that the Petitioner/Workman was employed from the year 1990 as an assistant with the Respondent No.1/Management. The last drawn salary of the Petitioner/Workman was Rs.15,500/- per month. It is not disputed that apart from salary, the Respondent/Management would pay benefits such as LIC premium, however it is the contention of the Petitioner/Workman that he was not granted Bonus, gratuity, ESI or other statutory dues.

9.1 While it is the case of the Petitioner/Workman that his services were terminated on 31.12.2013 without a cause, it is the case of the Respondent/Management that the Petitioner/Workman abandoned his services on that day.

9.2 The Respondent has explained that between the end of December, 2013 and January/February, 2014, six Workmen abruptly left their jobs,



which included the Petitioner as well as the Petitioners in W.P.(C) 10718/2019, W.P.(C) 5028/2019 and W.P.(C) 6348/2019. It is contended that the Petitioner in W.P.(C) 6348/2019/Manoj Kumar@Manphool had started his own business, in competition with the Respondent/Management and the others, including the Petitioner in the present case, had left the services of the Respondent to join his business, which was called M/s Unique Petco India Pvt. Ltd.

10. The record reflects that a reference was sent to the learned Labour Court on 18.06.2015 which set out the following for adjudication:

“Whether there existed an employer employee relationship between the management and Sh. Shiv Kumar S/o Late Sh. Surendra Singh and if so, whether services of said Sh. Shiv Kumar have been terminated illegally and/or unjustifiably by the management; and if so, to what sum of money as monetary relief along with other consequential benefits in terms of existing Laws/Govt, Notification and to what other relief is he entitled and what directions are necessary in this respect?”

10.1 The Petitioner/Workman filed his Statement of Claim. The Respondent/Management filed its Written Statement admitting the employer-employee relationship between the parties as well as the year of the appointment. The Respondent/Management, however, as stated above, contended that the Petitioner/Workman has abandoned his job as Assistant in December, 2013. The learned Labour Court framed two issues. Firstly, whether the Claimant would fall within the definition of a ‘workman’ as defined under Section 2(s) of the ID Act. The second issue that was framed was in terms of the ‘Terms of Reference’ which are produced above in paragraph 10 above.

11. The learned Labour Court examined the evidence lead before it and



found that the Petitioner/Workman is covered under the definition of a Workman under Section 2(s) of the ID Act and also found that the Petitioner/Workman was an employee of Respondent No.1/Management No.1. The learned Labour Court gave a finding that the Petitioner/Workman was admittedly working with the Respondent/Management for the last 23 years while he was appointed at a salary of Rs.1,000/-, it had increased to Rs.15,500/- in the year 2013, which is more than the minimum wages applicable to a skilled Workman at that time. The learned Labour Court also gave a finding that the Workman was given some benefits, like a life insurance policy as well.

11.1 The learned Labour Court then relied on the evidence to give a finding that the Petitioner/Workman abandoned his job after obtaining his dues for the month of December, 2013, which was admitted by him during the course of his cross-examination. Thus, the Claim Petition was dismissed. The relevant extract of the Impugned Award is set out below:

“44. Infact it is an admission on the part of claimant himself that even the premium w.r.t insurance policy taken for his life was used to be paid by the management over and above his monthly salary.

45. Hence, seen from any angle, there remains no doubt that in these circumstances, it stand proved that the ground taken by the claimant which as per him led to the termination of his services cannot be accepted being not reasonable and the mere fact that the management has failed to prove that he has started a shop cannot be a ground to believe the version of the claimant in this respect, in view of the discussion made above as the court has come to the conclusion that his services were not terminated by the management but rather it was the claimant himself who abandoned/ resigned from the job in 2013 after obtaining his dues for the month of December, 2013 as admitted by him during the course of his cross examination.”

[Emphasis supplied]

12. It is settled law that in a Petition challenging an Award of the learned



Labour Court, the High Court is not to reappreciate the facts and evidence. All that is required to be done is to check jurisdictional errors or an error of law which is apparent on the face of the record. The Supreme Court in case of *Syed Yakooob v. K.S. Radhakrishnan & Ors.*², held that while exercising jurisdiction under Article 226, the High Court is not to reappreciate all the facts and evidence as an appellate court. The sufficiency or adequacy of evidence and factual inferences drawn therefrom are matters exclusively within the tribunal's domain and cannot be reopened in writ proceedings. The relevant extract is set out below:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals 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 properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in

² 1963 SCC OnLine SC 24



*proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. **The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.** It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque [(1955) 1 SCR 1104] Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam [(1958) SCR 1240] and Kaushalya Devi v. Bachittar Singh [AIR 1960 SC 1168])”*

[Emphasis Supplied]

13. The Respondent/Management has laid emphasis on the fact that no evidence was placed on record in respect of the contention of the Petitioner/Workman that he was entitled to gratuity, Provident Fund and other such benefits. It is thus contended that there is no proof that the Respondent/Management employed more than 20 persons so as to be statutorily liable to make these payments.

14. The evidence of the Petitioner/Workman lead before the learned Labour Court shows that so far as concerns the factum of the salary as well as the insurance policy the same was not denied by the Petitioner/Workman. It was also not denied during his cross-examination that 5 other Workmen left the services around the same time, although it is stated therein that he is not aware of when they left the services. However, the Petitioner/Workman has admitted that they all initiated legal proceedings at the same time. The evidence further sets out that the Claim Petition was filed before the learned Labour Court seeking relief of allowances such as gratuity, provident fund, bonus and overtime. It is apposite to extract the relevant cross-examination of the Petitioner/WW-1 which is set out below:

“I cannot tell exactly the responsibility assigned to 20 different workers



employed by the management as per my affidavit during my tenure. **Though I have not asked in written w.r.t. the non grant of facilities/allowances viz gratuity and PF etc but whenever I demanded the same verbally from the management no. 1, I was always told that the same will be paid to me whenever I will be relieved from the services.** It is correct to suggest that the total amount recoverable from the management no.1 has not been specified in the claim petition and demand notice. I cannot understand the English language properly. I was made to understand the contents of my demand notice, claim petition as well as my affidavit filed in lieu of my evidence. There was no agreement executed between us w.r.t my hours of working. **It is correct to suggest that the address given on my LIC policy bearing the address of the management no.1 is having no concern with the management no.1 but the same was provided by me for my own convenience. I do not remember as to on which date the threats were extended by the management w.r.t. termination of my services w.e.f. 31.12.2013 as mentioned in para no.6 of my affidavit in lieu of examination in chief. Most probably my salary in the year 2010 was Rs.12,000/- which was increased to Rs.15,500/- after around one and a half year of 2010. I had the knowledge w.r.t. the legal facilities required to be provided to me by the management on the basis of my experience in the field.** I am not a law literate person. I have never complained with management no.1 w.r.t. their practice of extracting work from myself regarding all the firms belonging to management no.1 as it was made clear to me by them that all the other firms being sister concerns of management no. 1, I have to perform the work relating to them.

xxx

xxx

xxx

M/s Tayal Oils Solvents and Chemical was owned by Sh. Nawal Kishore Aggarwal management no.1 and lastly Sh. Ravi Aggarwal as the composition of the same was changed from time to time. The said details, as mentioned above, has not found place in my affidavit filed in my examination in chief. I cannot give the details of the total hours of overtime put by me with the managements. **As I made repeated demands w.r.t. my dues which was not acceded by the management but being myself raising the demand again and again, the management terminated my services. However, I do not remember the exact date of my said termination nor the day of the same but the same was in December, 2013.**

The workers namely Sh. Manoj Kumar, Sh. Babbau Singh, Sh. Birender, Sh. Bijender and Sh. Ram Niwas left the job with management no.1 after the date of my alleged termination. I am not aware about the month in which they left the services. **It is correct to suggest that we have initiated the legal proceedings at the very same time. The present case has been filed seeking the relief of allowances consisting of gratuity, PF, bonus, overtime charges etc.** The tenanted premises as relied upon in my list of



documents is owned by Sh. Aditya Rana and I started paying the rent of Rs.4,725/- p.m. since 01.06.2013. With respect to the rent agreement qua the said premises, I had given my address as of the Kilokari but I do not remember the date / year since when I was residing at the said address. It is correct to suggest that I have not mentioned about the above stated tenanted premises in any of the proceedings/documents filed in the present petition.”

[Emphasis supplied]

15. This Court has also examined the order sheet before the learned Labour Court. The order dated 14.07.2016 records that the authorised representative of the Management states that the Management is ready to take the Workman back to work without prejudice to the rights in the matter. It further sets out that the representative of the Workman would inform the Court as to whether the Workman is ready to join his duties or not. The matter was thereafter adjourned. However, the order dated 16.03.2017 records that the Workman is present in Court and he states that he is not willing to return back to his duties. It is apposite to extract the relevant extract of the orders dated 14.07.2016 and 16.03.2017 in this behalf below:

“Order dated 14.07.2016

File perused. Vide order dt. 11.04.2016, management no.1 & 2 were directed to file their W.S within one month of the order. W.S filed by management no.1 on 11.05.2016 has been put up today. AR for the management no.1 & states that same is accompanied by affidavit of Sh. Nawal Kishore, Proprietor of management no.2, whereby, he has adopted the said W.S on behalf of management no.2.

Since, the management no.1 has filed the W.S within the stipulated time and the same has been adopted by management no.2 as well, matter be now listed for filing of rejoinder/documents, if any, consideration of issues.

At this stage, AR for the management states that without prejudice to the right to the management, the management is ready to take the workman back on work and that the issue of back wages is disputed by the management.

AR for the workman states that he shall inform the court on the next date as to whether the workman is ready to join duties or not.



Order dated 16.03.2017

Ld. AR for management has submitted that on 14.07.2016 management had offered to take the workman back on duty without prejudice to its rights regarding payment of back wages and that no reply has come from the side of the workman to said offer.

The workman is present today in person and states that he is not willing to return-back to his duties with the management and prays that matter be proceeded with.

Affidavit of workman alongwith some documents has already been filed on 09.02.2016 when the management was ex-parte. Copy of said affidavit and documents supplied to AR for management today.

Be listed for tender affidavit of workman and his cross-examination as well as remaining WE for 07.09.2017. AR for workman is directed to supply advance copies of affidavits of his remaining witnesses to the AR for management at least one week before the next date of hearing."

[Emphasis supplied]

16. An examination of the Statement of Claim that has been filed along with the Petition clearly shows that the Petitioner/Workman has only sought his dues in the matter, pertaining to provident fund, gratuity, bonus, etc. No claim for back wages or other demands has been made. Given the fact that the Petitioner/Workman did not join the services of the Respondent/Management even though they were offered to take him back in the year 2017. This reflects the intention of the Petitioner.

17. The Petitioner/Workman has relied on the judgment of the Bombay High Court in the ***Ocean Creation*** case to submit that a notice must be given in the case of plea of abandonment of services is taken by the Management and in the present circumstances, the Respondent/Management has not given any notice after the job was abandoned. Admittedly, no notice was given by the Respondent/Management, however it is the contention of the Respondent/Management that once the Management became aware that



these 5 or 6 employees had left the services of the Respondent/Management to set up their own competing business and also since the Petitioner/Workman left of his own accord after collecting his salary and dues, there was no requirement of giving any such notice.

17.1 Undisputably however, once a dispute was raised by the Petitioner/Workman, the Respondent/Management did offer the job back to the Petitioner/Workman, as is recorded above and this offer was rejected by the Petitioner/Workman.

18. No doubt that it is settled law that abandonment is a question of intention and has to be decided in light of surrounding circumstances of each case, as has been held by the Coordinate Bench of the Bombay High Court in the *Ocean Creations* case. The surrounding circumstances in the present case however are that six persons, [four of whose petitions are listed before this Court] were working on several posts such as assistants, accountants, field representatives, etc. for an extended period of time, all six persons leave the services. Two of those persons Petitioner Shiv Kumar and Petitioner Bijender settled their dues and left their employment. All six persons file a statement of claim not for back wages but for allowances such as over time, bonus etc. The Respondent/Management finds out that one of the persons has set up his own competing business. The offer of reinstatement that was made to the Petitioner after the Claim Petition was filed, was also rejected.

19. No evidence is adduced in respect of over time work, bonus or other requirements. The Workmen have been unable to show that the Respondent/Management employed more than 20 persons, so as to be liable



2025:DHC:8370



for payments of statutory dues such as provident fund, bonus, gratuity, etc.

20. As set out above, it is settled law that this Court is not required to act as an Appellate Court to re-examine and reappreciate the evidence unless jurisdictional error or errors of law apparent on the face of the record can be seen. In the *Syed Yakoob* case, the Supreme Court has held that although the jurisdiction of the Writ Court is supervisory in nature, it is not entitled to act as the Appellate Court. If there is a finding based on no evidence, then this Court can interfere with the Award passed by the learned Labour Court. The findings which have been discussed above have been made based on the evidence produced before the learned Labour Court.

21. The examination by this Court does not show any jurisdictional error so as to interfere with the Award passed by the learned Labour Court.

22. The Petition is accordingly dismissed.

23. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

AUGUST 25, 2025/r