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

% **Reserved on : 12th February, 2024**
Pronounced on: 10th May, 2024

\+ W.P.(C) 1555/2019
MUSTAFA ALAM ..... Petitioner
Through: Appearance not given.

versus

AT HOME INDIA PVT. LTD. AND ANR. .....Respondents
Through: Appearance not given.

\+ W.P.(C) 1570/2019
ASHOK KUMAR ..... Petitioner
Through: Appearance not given.

versus

AT HOME INDIA PVT. LTD. AND ANR. .....Respondents
Through: Appearance not given.

\+ W.P.(C) 1571/2019
ANIL MAURYA ..... Petitioner
Through: Appearance not given.

versus

AT HOME INDIA PVT. LTD. AND ANR. ..... Respondents
Through: Appearance not given.

\+ W.P.(C) 1579/2019
SANTOSH KUMAR ..... Petitioner
Through: Appearance not given.

versus

AT HOME INDIA PVT. LTD. AND ANR. ..... Respondents
Through: Mr. Divyam Nandrajog, panel

counsel for GNCTD with Mr. Mayank Kamra, Advocates for R-2.

\+ W.P.(C) 1585/2019

RAMA SHANKAR ..... Petitioner

Through: Appearance not given.

versus

AT HOME INDIA PVT. LTD. AND ANR. .....Respondents

Through: Appearance not given.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant batch of petitions has been filed by individual workmen/claimants who were working at various positions such as Sample Tailor, Press Man, Embroidery Operator, Sampling Embroidery, Helper with the respondent management namely M/s AT Home Pvt. Ltd.

2. The petitioners/claimants in their respective petitions have assailed the award passed by the learned Labour Court by virtue of which they have been denied reinstatement to their services since the learned Labour Court was of the opinion that the respondent management never terminated their services as alleged by the workmen/claimants rather, they themselves abandoned their jobs and remained absent without any authorization.

3. Being aggrieved by the above, the petitioners/claimants have approached this Court seeking quashing of the impugned awards under Articles 226 and 227 of the Constitution of India.

4. Since the grievance of the petitioners/claimants/workmen in the instant batch of petitions involve common questions of law, this Court deems it appropriate to decide the same by way of this common judgment.

5. Hence, for the sake of convenience and for the purposes of adjudication of the issues involved, this Court has culled out the facts and submissions from writ petition bearing W.P. (C) No. 1555/2019.

FACTUAL MATRIX

6. The petitioner joined the respondent organization as 'Sample Tailor' on 19th February, 2002 with last drawn monthly salary @ Rs.4,107/-.

7. It is stated that the petitioner requested the respondent management to give him benefits such as legal facilities, double overtime, leave, etc. which was denied by the respondent management. Subsequently, the petitioner filed a case to seek the above said benefits before the Labour Conciliation Officer through its Union and the said matter was later transferred to the Labour Court on 1st October, 2008. It is stated that the management tried to pressurize the petitioner to withdraw the above said case.

8. It is further stated that on 8th December, 2008, when the petitioner went to attend his work, the respondent management illegally terminated his services without giving him any notice/charge sheet and without conducting any domestic enquiry.

9. Pursuant to the above, the petitioner sent a legal notice regarding illegal termination on 15th December, 2008 to which respondent did not give any reply. On 15th December, 2008, the petitioner filed a complaint

before the Assistant Labour Commissioner, whereupon, the Labour Inspector visited the respondent management and they gave the earned wages to the petitioner, however, the petitioner was not reinstated. Thereafter, the Labour Inspector in his report dated 24th December, 2008 recorded that the petitioner was not reinstated and no settlement was arrived at.

10. The petitioner then raised another industrial dispute bearing LID no. 726/2016 seeking his reinstatement. Vide the impugned award dated 7th September, 2018, the said industrial dispute as raised by the petitioner for reinstatement was rejected.

11. Being aggrieved by the same, the petitioner has approached this Court seeking quashing of the same.

PLEADINGS

12. The instant petition was filed on 11th February, 2019 assailing the impugned award dated 7th September, 2018 on the following grounds:

> "*...5.17 That the Ld. Presiding officer has also overlooked the fact that the petitioner could not have kept the bus/taxi ticket pending with them years after they have visited the factory premise of the respondent. I Even otherwise the respondent should be put under the same onus of proving that the petitioner did not visit the premise of the respondent if a specific pleading in this regards has been made by the petitioner.*
>
> *5.18 Ld. Presiding officer has also overlooked the fact that the respondent themselves have offered a monetary settlement to the petitioner which was a meagre amount and it was completely not acceptable to the petitioner, however it clearly indicates that the respondent themselves have agreed that they have committed wrong towards the petitioner which' was needed to be compensated by the respondent.*

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A. Because the petitioner ;is highly aggrieved and dissatisfied by award passed by the Ld. Presiding officer which has warranted violation of fundamental rights of the petitioner as enshrined under Article 14, 19 and 21 of the Constitution of India, for protection of which the present petition is being instituted.

B. Because the Hon'ble Supreme Court has held in Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Ors. MANU/SC/0942/2013] that; "the very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life."

C. Because This Hon'ble High Court in Vijay Pal Vs. : Management of Panorma Export Pvt. Ltd (MANU/DE/2669/2012) has observed "Ordinarily, 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 litigating activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workman's demand, for revision of wages the termination may well amount to unfair labour practice."

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7. That the office of Ld. Presiding officer of labour court is located within the jurisdiction of this Court. The factory office at, the time of illegal termination of the employment of the petitioner was also located within the jurisdiction of this Court. Hence this Court has the competence and jurisdiction to entertain and try this present petition.

13. The written submissions dated 27th February, 2024 filed by the petitioner is on record.

14. The respondent's written submissions dated 17th February, 2024 is also on record wherein the contentions advanced in the petition have been vehemently opposed and the relevant paragraphs of the same are as under:

"*...3. It is submitted that in the cross examination conducted on behalf of Respondent no. 1 the Petitioner has inter alia admitted that during the course of his employment with the management, he was getting all the legal facilities such as minimum wages and bonus as per laws of the Land and has further admitted that during the course of his employment, he never made any complaint either to the management or to labour Office that the management was not providing the legal facilities. The claimant has admitted that he has no document to show that he had ever worked with the management for overtime during his service. During further cross-examination, the Petitioner also admitted that he had never instructed the Union to file the general demand case. Accordingly, the Petitioner himself was not willing to file the case of general demand against the Respondent no. 1. It is also admitted by the Petitioner in the cross examination that Management/ Respondent no. 1 called him on duty vide letter dt. 26.12.2008, 13.01.2009 and 11.02.2009. It is pertinent to mention that the management repeatedly sent reminders to the claimant intimating him regarding his unauthorized absence from his duties and apprised him that*

he had been absenting from the duties without any prior approval w.e.f. 08.12.2008 and in aforesaid letters, the management also asked the claimant to join his duties again with management within 48 hours and clarified that failing which, the management would presume that the claimant was no longer interested in joining his duties and mentioned that the management may initiate disciplinary action against him.

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6. The Ld. Labour Court has passed a well-reasoned order based upon the facts and evidences lead before the Ld. Labour Court. The decision rendered by the Ld. Labour Court cannot be · said to be contrary to the evidence or based on inferences that are impermissible in law.

7. It is well settled law that the scope of interference by a Supervisory Court on decisions of the fact-finding forum observed that a Supervisory Court may interfere with the findings of the appellate forum if they were found to be perverse i.e. (i) erroneous on account of non-consideration of material evidence; (ii) conclusions which are contrary to the evidence; or (iii) based on inferences that are impermissible in law.

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9. The Hon'ble Supreme Court in a catena of judgements has held that the findings of fact recorded ,by a fact finding authority (Tribunal) duly constituted for the purpose becomes final unless the findings are perverse or based upon no evidence. The jurisdiction of the High Court in such matters is quite limited.

10. The Hon'ble Supreme Court in ***State of Haryana vs. Devi Dutt & Ors., (2006) 13 SCC 32****, has · held that the writ Court can interfere with the factual findings of fact only if in case the Award is perverse; the Labour Court has applied wrong legal principles; the Labour Court has posed wrong questions; the Labour Court has not taken into consideration all the relevant facts; or the Labour Court has arrived at*

fmdings based upon irrelevant facts or on extraneous considerations.

11. In the present case, the finding of fact arrived at by the Ld. Labour Court having being minutely scanning the entire evidence, therefore, the question of interference by this Court with the award in the absence of any perversity, illegality or jurisdictional error, does not arise…"

SUBMISSIONS

(on behalf of the petitioner)

15. Learned counsel appearing on behalf of the petitioner submitted that the impugned award has been passed in violation of the settled position of law with respect to the principle of illegal termination and the learned Labour Court failed to take into consideration the entire facts and circumstances which makes the impugned award liable to be set aside.

16. It is submitted that the learned Labour Court completely overlooked the fact that vide his report dated 24th December, 2008, the Labour Inspector categorically stated that *"the management had given the salary of all 22 workers of month November 2008 to 07.12.2008 on 22.12.2008. The management has clearly denied keeping all 22 worker on job. The workers have been advised that they should file their job relayed dispute before the concerned officer labour court"*, a version which the Labour Inspector changed in his cross examination at a much later stage, i.e, after eight years.

17. It is submitted that learned Labour Court erroneously relied upon the fact that vide order dated 25th March, 2015, the management was ready to take back the petitioner on duty at its Manesar unit at Haryana,

and the petitioner did not report to his duties at Manesar Unit on 8th June, 2015.

18. It is further submitted that the learned Labour Court completely ignored the petitioner's submission which was recorded in the order dated 30th July, 2015 that *'On other hand AR for workman states that workman had reported with the management at Manaser unit but management had refused to reinstate him. Heard. In the controversy both the parties are putting allegation on each other and it shows that no one is ready either to join duty or to reinstate the workman'*. The said fact was completely overlooked by the learned Labour Court.

19. It is submitted that the learned Labour Court erroneously relied upon the three letters dated 26th December, 2008, 13th January, 2009 and 11th February, 2009 sent by the respondent management and held that the management sent a letter to the petitioner but there was no response from him, therefore, there was no will from the petitioner side to join the duties again.

20. It is also submitted that even though the management has the residing address of the petitioner, the above said letters were never sent directly to him and were sent to the Union instead.

21. It is further submitted that the petitioner through his Union had sent letters dated 8th July, 2015 and 7th October, 2015 exhibited as Ex MW1/W1 and MW1/W3 before the learned Court below, wherein, the petitioner had categorically mentioned that he was not allowed to enter the premises of the respondent management, however, the above said documents have not been discussed by the learned Labour Court in the entire award.

22. It is submitted that the impugned award has been passed in contravention to the law and the learned Court below failed to appreciate that the petitioner was illegally terminated from his services and that there was no unauthorized absence on his part, rather, it was the respondent management which did not allow him to join his duties.

23. It is submitted that the impugned award is erroneous, violates the petitioner's rights and the view taken therein is arbitrary which makes it liable to be set aside.

24. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed.

(on behalf of the respondent)

25. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the instant petition submitting to the effect that the same being devoid of any merit is liable to be dismissed.

26. It is submitted that the impugned award has been passed after taking into consideration the entire facts and circumstances of the case and there is no error apparent on the face of the same.

27. It is submitted that respondent no. 1 never terminated the services of petitioner and in fact, the petitioner himself remained absent unauthorizedly from his duties from 8th December, 2008 and accordingly, it is the petitioner himself who abandoned his services with the management.

28. It is submitted that in the cross-examination conducted on behalf of the respondent no. 1, the petitioner had *inter alia* admitted that during the course of his employment with the respondent management, he was

getting all the labour welfare benefits such as minimum wages and bonus as per the law and further admitted that during the course of his employment, he never made any complaint either to the management or to the labour office that the management was not providing the benefits to him.

29. It is further submitted that the claimant has admitted that he had no document to show that he ever worked with the management for overtime during his services.

30. It is submitted that during the cross-examination, the petitioner also admitted that he had never instructed the Union to file the general demand case. Accordingly, the petitioner himself was not willing to file the case of general demand against the respondent no. 1.

31. It is submitted that it has also been admitted by the petitioner in his cross-examination that the management had called him to join his duties vide letters dated 26th December, 2008, 13th January, 2009 and 11th February, 2009.

32. It is submitted that the management repeatedly sent reminders to the petitioner intimating him regarding his unauthorized absence from his duties and apprised him that he had been absenting from the duties since 8th December, 2008 and that too without any prior approval. In the aforesaid letters, the management also asked the petitioner to join his duties with the management within 48 hours and further clarified that failing the same would lead to the presumption that the petitioner was no longer interested in joining his duties and the management would initiate disciplinary action against him.

33. It is submitted that as per the settled position of law, the scope of interference of this Court on decisions of the fact-finding forum is limited and such findings can only be interfered with if found to be perverse, i.e., (i) erroneous on account of non-consideration of material evidence; (ii) conclusions which are contrary to the evidence; or (iii) based on inferences that are impermissible in law.

34. It is further submitted that no such errors of law are apparent on the face of the record of the learned Labour Court which implies that the impugned award has been passed in contravention of any settled law.

35. Therefore, in view of the foregoing submissions, the instant petition may be dismissed.

SCHEME OF THE ACT

36. The dispute in the instant petition pertains to the issue of illegal termination and abandonment of services by a workman. Therefore, this Court finds it imperative to discuss the settled position of law with regard to the principle *qua* illegal termination and abandonment of services.

37. It is a settled law that where an employee does not join back his duties after leave and remains absent for a long period of time, then such absence should be treated as misconduct whereupon it could be implied that the workman has remained absent without any authorization and the same is a valid ground for termination. Also, in ***Vijay S. Sathaye v. Indian Airlines Ltd.***[1], it was held by the Hon'ble Supreme Court that absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntary abandonment of service and in that eventuality, the bonds of

[1] **(2013) 10 SCC 253**

service comes to an end automatically without requiring any order to be passed by the employer.

38. For the purposes of termination, there has to be a positive action on the part of the employer while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Such an act cannot be termed as "retrenchment" from service.

39. In ***Syndicate Bank v. Staff Assn.***[2] and ***Aligarh Muslim University v. Mansoor Ali Khan***[3] , the Hon'ble Supreme Court ruled that if a person is absent beyond the prescribed period for which leave of any kind can be granted, he should be treated to have resigned and ceases to be in service.

40. The Division Bench of Bombay High Court has further enunciated the concept of abandonment of service in the judgment of ***Gaurishanker Vishwakarma v. Eagle Spring Industries Pvt. Ltd.***[4] and observed as under:

> "*…….It is now well settled that even in the case* of *the* abandonment of *service, the employer has to give a notice to the* workman *calling upon him to resume his duty and also to hold an enquiry before terminating his service on that ground. In the present case the employer has done neither. It was for the employer to prove that the* workman *had abandoned the service……It is therefore difficult to believe that the* workman *who had worked continuously for six to seven years, would abandon his service for no rhyme or reason. It has also to be remembered that it was the* workman *who had approached the Government Labour Officer with a specific grievance that he was not allowed to join his duty. It was also his*

[2] **(2000) 5 SCC 65**
[3] **(2000) 7 SCC 529**
[4] **(1987) 55 FLR 689**

grievance that although he had approached the company for work from time to time, and the company's partner Anand had kept on promising him that he would be taken in service, he was not given work and hence he was forced to approach the Government Labour Officer. In the circumstances, it is difficult to believe that he would refuse the offer of *work when it was given to him before the Labour Officer……*"

41. Recently, the Division Bench of Kerala High Court in ***Suresh v Chief Engineer & Administrator***[5], on the aspect of abandonment of services observed as under:

"*..13. Abandonment of service means an act of intentionally or voluntarily abandoning service. It is seen that while the petitioner was transferred to Campbell Bay in 1998, he remained himself absent without any information. The act of the petitioner is nothing, but, abandonment of employment permanently and completely since for the past 17 years, he did not attend duties. No reason can be attributed for the absence of the petitioner from employment for such a longperiod, which cannot be found to be legally sustainable.*

14. In Vijay S. Sathaye v. Indian Airlines Ltd. & Others [(2013) 10 SCC 253], the apex court held that where an employee does not join duty and remains absent for long, then such absence is required to be treated as misconduct and if such absence is for a very long period, then, it amounts to voluntary abandonment of service resulting in termination of service automatically without requiring

15. The petitioner without any intimation has kept himself away from service for a long period of nearly 17 years. The claim of the petitioner that he was seeking extension of leave remains unsubstantiated. For the purpose of termination, there has to be positive action on the part of the employer while abandonment of service is a consequence of unilateral

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> *action on behalf of the employee and the employer has no role in it. We hold that long absence of nearly 17 years from service without any proper intimation or correspondence is nothing, but, abandonment of service. The petitioner is deemed to have abandoned his services with the respondents and is not entitled to get any benefits…*"

42. Upon perusal of the aforesaid judgments, it is made out that abandonment of services refers to an act where an employee leaves his services voluntarily and such leaving of services is of permanent nature. Further, abandonment of services has to constitute the element of clear intention on the part of the employee to not to return back to his services.

43. Mere allegation that an employee has abandoned his job does not amount to abandonment and the same has to be proved by the management coupled with the actual imputed intention on the part of the employee to abandon and relinquish his services. It is pertinent to mention that mere temporary absence for a certain period of time does not constitute 'abandonment of services'.

ANALYSIS AND FINDINGS

44. Since this Court has discussed the settled position of law relevant to the present dispute in the preceding paragraphs, this Court shall now delve into the merits of the case.

45. The relevant extracts of the impugned award dated 7th September, 2018 are as under:

> "*..5. On the basis of the pleadings, following issues were framed by my Ld. Predecessor vide order dated 12.07.2017:-*
> ***1. Whether the workman has abandoned his duties w.e.f. 08.12.2008 by remaining unauthorizedly absent? OPM***
> ***2. Whether the workman was terminated illegally and/ or unjustifiably by the management? OPW***

3. Relief.

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9…During his cross-examination as conducted on behalf of the management, the claimant/WW-1 has interalia admitted that during the course of his employment with the management, he was getting ail the legal facilities such as minimum wages PF, ESI and bonus as per laws of the Land and has further admitted that during the course of his employment, he never made any complaint either to the management or to labour Office that the management was not providing the legal facilities. The claimant has admitted that he has no document to show that he had ever worked with the management for overtime during his service.

At this juncture, it is pertinent to mention here that in his claim petition, the claimant has categorically stated that he used to work for 12 hours per day, however, management never gave him double overtime. It also needs to be discussed that the claimant himself has admitted that he has no document to show, if he ever worked for overtime for the management and on the other hand, the management has clearly denied if the claimant had ever worked for overtime. Hence, in the given facts and circumstances, admittedly, the claimant could not show anything on record even remotely, if he had ever worked 'for overtime with the management or if he is entitled to double overtime as claimed by him, hence, the only reasonable conclusion that can be drawn in the given facts and circumstances is that the claimant did not work for overtime for the management and hence, in considered opinion of the court, he is not entitled to double overtime as claimed by him.

10. During further cross-examination, the claimant/ WW-1 has also admitted that he had never instructed the Union to file the general demand case.

Now, from the same, it is clearly shown on record that the claimant himself has admitted that he never ever

instructed the Union to file any case of general demand on his behalf. Accordingly, the claimant himself was not willing to file the case of general demand against the management.

11. It is not out of place to discuss that during his further cross-examination, the claimant/WW-1 has also admitted that "it is correct that management called me on duty vide letter dt. 26.12.2008, 13.01.2009 and 11.02.2009".

It is surprising to note that the claimant himself has admitted that he had duly received all the said; three letters as sent to him by the management to resume to his duties and though, he has denied that after receiving the aforesaid letters, he never joined the duties, however, he himself has admitted that he has no document to show, if he had ever joined the services again with the management after receiving those letters dt. 26.12.2008, 13.01.2009 & 11.02.2009. He has also admitted that he had never made any complaint to the Labour Authorities in writing that the management did not allow him to join his duties again and stated-that he only verbally informed the Union.

12. Sh. Deepak Kumar who is examined as MW-1 has proved various letters dated 26.12.2008, 13.01.2009 and 11.02.2009 as sent by the management to the claimant as Ex. MW-1/1 to Ex.MW-1/3 respectively, whereby, the management repeatedly sent reminders to the claimant intimating him regarding his unauthorized absence from his duties and apprised him that he had been absenting from the duties without any prior approval w.e.f. 08.12.2008 and the management had also informed the claimant that his said absence is detrimental to the smooth working of the management and it caused huge losses and further, in aforesaid letters, the management also asked the claimant to join his duties again with management within 48 hours and clarified that failing which, the management would presume that the claimant was no longer interested him in joining his duties and mentioned that the management may initiate

disciplinary action against him.

It needs to be discussed that the claimant has fairly admitted receiving those letters and accordingly, the claimant has also admitted that vide said letters, the management also informed the claimant that he would not be entitled for wages for the period for his authorised absenteeism on "no work no wages" and the management asked the claimant to join his duties again. Hence, in the given facts and circumstances, the management through MW-1 has succeeded in proving the said letters on record and the claimant has also admitted that he had received all those letters, however, the claimant could not show that after receiving those letters from the management, he either joined his duties again with the management.

MW-1 has also proved on record a letter dt. 27.07.2015 as sent by it to the claimant as Ex.MW- 1/6 vide which the claimant through his Union Leader was informed that in pursuance of order dt. 06.06.2015 as passed by the then Ld. POLC, the claimant was directed to report for his duties at Plot no.195, Sector-8, Manesar, Haryana, at the office of the management wherein it was also mentioned that the claimant would report for work on 08.06.2015 but even then, the claimant did not report for work and did not join his duties and thereafter, vide letter dt.16.09.2015 which is Ex. M\N-l/7, the claimant was again directed to join his duties within 48 hours.

He has also stated that the letters Ex.MW 1/1 to Ex. MW-1/3 were sent at the address of the Union. The claimant has further admitted during his cross-examination that "it is correct that before the Labour Inspector, the management offered me to join the duties".

13. From the aforesaid, it is duly shown on record that time and again, the----management repeatedly asked the claimant to join his duties again with the management,

however, though, the claimant has contended that he joined the duties again but admittedly, he is not able to show anything on record that after receiving the letters dt. 26.12.2008, 13.01.2009 & 11..02.2009, he ever joined duties again with the management and though, he has simply stated that management did not permit him to join his duties again, however, admittedly, he never ever made any complaint to the labour Authority to the effect that the management did not permit him to join his duties again and further the claimant has nowhere whispered as to why he did not make any complaint to the Labour Authorities and in the given facts and circumstances, the only reasonable conclusion that can be drawn is the claimant himself did not join the duties again with the management even after receiving the letters dt. 26.12.2008, 13.01.2009 and 11.02.2009.

MW-1 has also proved on record the copy of muster-roll for the month of December 2016 showing the attendance of the claimant as Ex. MW-1/ 13 and Mark A to show that name of claimant still exists on the rolls of the management and his services have not been terminated.

During his detailed cross-examination as conducted on behalf of the claimant, MW-1 has interalia stated that he has no personal knowledge of the case and was deposing on the basis of record as maintained by the management. He has denied that since 08.12.2008, that the claimant had continuously reported for his duties and further denied that the management refused to allow him to work. He has also denied if the management had ever terminated the services of the claimant and MW-1, on the basis of documents as available on record stated that the management had paid earned wages to the claimant before the Labour Inspector and .the claimant has also admitted that the management had paid his earned wages.

During his further cross-examination, MW-1 has stated that the factory of management was shifted to

Manesar, Gurgaon in the month of April, 2015 (i.e. during the pendency of the present claim) and the panagement had never closed down its operations. MW-1 has also stated that regarding the said shifting, the management had duly intimated the Labour Department. He has also stated that the management did not offer any compensation to the workman when the management shifted its office to Manesar, Gurrgaon and further stated that at that time, the case was pending in the court and the management also moved an application vide which it offered the claimant to join his duties again.

The same in considered opinion of the court, accordingly goes to show that the management during the course of proceedings in the court had shifted its factory at Manesar about which the management had duly informed the Labour Department as well as the court and also filed an application in the court wherein, an offer was made to the claimant to join his duties again.

MW-1 has also stated that though the claimant remained absent from his duties, but his name still exists in the muster-roll i.e. record of the management and hence, there was no need for the management to intimate ESI, EPF department regarding the claimant's absenteeism and the claimant could not show anything to the contrary on record.

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18. Accordingly, as already discussed at length, as per admission of the claimant himself, the management had sent him various letters/ reminders dt. 26.12.2008, 13.01.2009 & 11.02.2009 to join his duties again with the management, however, the claimant could not .show anything on record that after receiving the aforesaid letters, he ever joined his duties again with the management and he could not show if management did not permit him to join his duties again.

19. Hence, from the record, it is duly shown that time and again, the management had offered the claimant to join his services again with the management as clearly shown from letters dt. 26.12.2008, 13.01.2009 and 11.02.2009, however, though, the claimant has admitted receiving all the said letters, however, he could not show that he joined his duties again with the management and accordingly, it can be stated that claimant did not join his duties again with the management.

20. At this juncture, it is also needs to be discussed that on perusal of the record, it is revealed that vide order dt. 25.03.2015, Ld_AR for the management had made a submission before my Ld. Predecessor that management is under the process of shifting its unit from Delhi to Manesar, Haryana and also that the management is ready to take back the claimant on duty at Manesar unit at Haryana and further submitted that the management would pay minimum wages to the claimant from time to time and the management would .also provide him transportation expenses whereupon the claimant expressed his willingness to join the management at Manesar Unit at Haryana, however, the claimant also stated that the management was still running its business from Okhla, New Delhi and the aforesaid was only a harassment tactic of management and thereafter, my Ld. Predecessor directed the Labour Inspector to file status report to the effect whether the management was running its business from Okhla, New Delhi or not and from the ordersheet dt. 06.06.2015, it is revealed that my Ld. Predecessor observed that the management was not running its business from Okhla, Phase-ll, New Delhi. It is also needs to be discussed that thereafter, from ordershseet dt. 30.07.2015, it is revealed that as per 1 the management, the claimant did not report to his duties at Manesar Unit on 08.06.2015, whereas, the claimant stated that he went to report to his duty at Manesar but the management refused to reinstate him. It may be mentioned even at the cost of repetition that during his cross-examination, the claimant

has admitted that during' course of proceedings in the court, the factory of the management was shifted to Manesar, Haryana, however, he has admitted that he has no bus ticket, railway ticket or photograph to show that he had I gone to the factory of the management at Manesar, Haryana to join his duties. Further, as already discussed earlier the claimant could not show that after receiving letters dt.26.12.2008, 13.01.2009 & 11.02.2009 from the management to join duties again, the claimant had ever resumed his duties.

The claimant has also admitted that "It is correct that I never moved any application before the Labour court in which my case was pending regarding management not allowing me to Join duties at Manesar, Haryana from 25.03.2015 onwards. Vol:- I told this fact to my Union Leader Sh.Ranjeet Singh."

Accordingly, admittedly, it is shown on record that the claimant never filed any application ever in the Labour Court where the trial was going on to the effect that the management did not allow him to join his duties at Manesar, Harayana from 25.03.2015 onwards and simply on his own, the claimant stated that he told about it only to the Union Leader Sh. Ranjeet Singh. Accordingly, in the given facts and circumstances, the claimant has very clearly admitted that though, his case/ claim petition was pending before the Ld. POLC, where he had been appearing and during course of the said proceedings, the factory of the management was shifted to Manesar, Haryana, however, it is surprising to note that as per the claimant himself, when he was not permitted to join his duties again with the management at Manesar, Haryana, then, why he did not inform the then Ld.POLC or why he did not move any appropriate application before the Ld. POLC to the effect that the management was not allowing him to join his duties at Manesar, Haryana from 25.03.2015 onwards. It is also surprising to note that as per the claimant himself, he had simply Informed I his Union Leader namely Sh. Ranjeet

Singh, however, even the said Union Leader or anybody else on his behalf never moved any such application before the court in this regard and never brought it to notice of the court. Accordingly, the only reasonable conclusion that can be drawn in the given facts and circumstances and on the basis of material as placed on record, is that there is no truth in the aforesaid contention of the claimant. Whatever, may be the case, it cannot be over-looked that even if the aforesaid is ignored, still admittedly, the management had sent various letters dt. 26.12.2008, 13.01.2009 and 11.02.2009 to the claimant repeatedly asking him to join his duties again with the management, however, though the claimant received those letters but did not join his duties. Accordingly, as per settled law as already discussed earlier, it is duly shown on record that time and again the management had made sincere "effort-s-whereby I it called the claimant time and again to join his duties with the management but the claimant did not join. As per record, it is also shown that the management vide its letter dt. 26.12.2008 had offered the claimant to join his duties again prior to filing of the present claim petition and even after filing of claim petition i.e. on 13.01.2009 and 11.01.2009, the management again asked the claimant to resume to his duties and it is shown on record that the claimant did not accept the said offer and did not resume to his duties.

Accordingly, in view of settled proposition of law as discussed above, the nnanagement had not terminated the services of the claimant and wrote various letters to the claimant to come and join his duties and hence, no inference can be drawn that services of the claimant were terminated. Further, the contention of claimant that the management/ employer was supposed to initiate an inquiry regarding his absence before terminating his services is baseless as in the case in hand, it is shown that the management had not terminated his services as management had written various letters to the claimant to join his duties again since he was absent and so, management cannot be stated to have

terminated the services of the claimant. It may also be discussed that the claimant cannot show anything on record, if at all, he was not allowed to join his duties on his reporting with the management.

21. During his cross-examination, the claimant/ WW-1 has further stated that "It is correct that before the Labour Inspector, management offered me to join the duties. It is correct that during the relevant time I was accompanied with all the co- workmen.

Accordingly, the claimant himself has admitted that after his alleged termination by the management, he had visited the premises of the management where the management offered him to join the duties again.

Accordingly, admittedly, as per the claimant, the management offered him to join his duties again and management never refused him to join his duties and considering the observations made in the case of ***Shri Triloki Nath (supra)****, in the case in hand, it is shown on record that the claimant failed to join his duties again with the management when specific offers were repeatedly made by the management, hence, it is the claimant who is to be blamed and management cannot be stated to have terminated the services of the claimant.*

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24. In the case in hand, the claimant has admitted that he has not applied in writing for job in any of the establishment and further stated that he is doing his own agricultural work and whatever are the expenses, the same are borne out of the agricultural work. Accordingly, the claimant could not show if he could not get any other job despite best and since efforts on his part and it needs to be mentioned that as discussed earlier, the services of the claimant were never terminated by the management and the claimant Himself remained absent from his duties.

25. Accordingly, in the given facts and circumstances of the case, on the basis of material as placed and proved on record and in view of aforesaid discussion, in considered opinion of the court, the claimant himself had abandoned his duties with the management w.e.f. 08.12.2008 by remaining unauthorizedly absent and the services of claimant were never terminated by the management. Accordingly, both the issues are decided in favour of management and against the claimant.

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"Relief"

In view of detailed discussions on issues no. 1 & 2, in considered opinion of the court, there is no merit in the claim petition as filed by the claimant and the same is accordingly dismissed…"

46. Upon perusal of the above, it is made out that the learned Labour Court was to adjudicate upon two issues, i.e., whether the petitioner's services was terminated illegally and; whether he abandoned his job voluntarily.

47. During petitioner's cross examination, it came to light that he had received all the labour welfare benefits, including minimum wages, PF, ESI, and bonuses as per the law. Based on the testimonies of witness and the documentary evidence, it was noted by the learned Court below that he never complained to the respondent management or the concerned labour authorities about not receiving these benefits.

48. The petitioner had claimed that he worked overtime for the respondent management; however, he was not paid for the same. The said claim was refuted by the respondent on the ground of lack of documentary evidence. Given the lack of evidence, the learned Labour

Court held that it is reasonable to conclude that the petitioner did not work for the respondent management overtime and the said claim was rejected.

49. It is further observed that the petitioner before the learned Court below had accepted that he was called on duty by the respondent management *via* letters dated 26th December, 2008, 13th January, 2009, and 11th February, 2009 in which they sent reminders asking him to join his duties and informing him about his unauthorized absence from his duties. Further, the respondent had also informed the petitioner that his said absence was detrimental to the smooth working of the respondent management causing huge loss. Sh. Deepak Kumar, examined as MW-1, adduced evidence of letters sent by the manager of the respondent management to the petitioner on 26th December, 2008, 13th January, 2009, and 11th February, 2009 (Ex. MW-1/1–MW-1/3).

50. It was observed by the learned Labour Court that the respondent management had also sent a letter to the petitioner on 27th July, 2015 (Ex. MW-1/6) informing the petitioner, through his Union that in accordance with an order passed by the then learned POLC on 6th June, 2015, he was directed to report for work at Plot no.195, Sector-8, Manesar, Haryana. The petitioner was also instructed to report for work on 8th June, 2015, however, he did not do so.

51. As per the contents of the impugned award, it is observed that during the court proceedings, the petitioner acknowledged that the factory of the respondent management was relocated to Manesar, Haryana, however, he lacks any proof of travel, such as a bus ticket, railway ticket, or photograph, indicating that he went there to perform his duties.

52. Moreover, it is observed that the respondent management had shown the petitioner's name on the muster roll (Ex. MW-1/ 13) to prove that they have not terminated his services. Further, the petitioner's claim that the respondent should have inquired about his absence before terminating his services was found to be false.

53. Based on the above said observations and findings, the learned Labour Court was of the opinion that the petitioner/claimant's case that he was terminated illegally does not hold any water since the evidence and testimonies produced by the parties before it stated otherwise.

54. It was held by the learned Labour Court that there is nothing on record to show that the services of the petitioner were terminated illegally, rather, the evidence adduced before it clearly shows that despite numerous requests made to the petitioner by the respondent management to join duties, he did not join.

55. This Court is of the view that whether or not the petitioner had abandoned the service of the respondent management is a matter of inference to be drawn from the facts and circumstances of the case. Unless there is material available to show intimation on the part of the petitioner to totally give up duties, it will not be possible to arrive at the conclusion that the petitioner would have abandoned the service of the respondent management.

56. Based on the above, it is observed by this Court that the matter at hand shows that the respondent management did not terminate the petitioner's services and had written letters to him to resume his duties. Therefore, the respondent cannot be said to have terminated the petitioner's employment.

57. Further, during the cross-examination, the petitioner admitted that after being terminated by the respondent, he visited their facilities and was offered the opportunity to resume his activities. The same proves that the petitioner did not have any intention to join his services instead it crystalizes the fact that the petitioner voluntarily abandoned his job and did not intend to join his duties.

58. At this stage, this Court deems it imperative to set out the law with regard to Article 226 of the Constitution of India under which the instant petition has been filed. It is a settled position of law that in order to invoke the writ jurisdiction of this Court, it has to be proved that the Court below has exceeded or usurped its jurisdiction, or acted illegally; or in contravention to any law, or there is an error on the face of the record.

59. The law with regard to illegal termination is already settled and as per the same, an employer must provide adequate notice or payment in lieu of notice to employees being terminated. If an employee is terminated without appropriate notice, he is entitled to compensation/reinstatement in accordance with law. Taking the same into account, the learned Court below was of the view that the petitioner workman's stance, being evasive, could not be relied upon as the respondent management's plea that the petitioner had abandoned his services was found to be more probable.

60. Further, with regard to the contention of the respondent that the workman abandoned his services, this Court is of the view that as per the settled legal proposition pertaining to abandonment of service, the abandonment of service is always a question of intention of the said

employee which is usually deduced from the facts and circumstances of the case at hand.

61. The same is a question of fact which is to be determined in the light of peculiar facts of each case. Moreover, it is a well settled position of law that unless the service conditions make special provisions to the contrary, in the case of abandonment of service, an employer has to give notice to the workman calling upon him to resume duties and where he fails to resume duties, the employer must hold an enquiry before terminating his services on such ground.

62. The Trial Court's record evidently shows that the respondent management had taken all the means and all the possible attempts to call the petitioner workman to resume its duties, however, the petitioner workman stayed adamant on not to join the management's services.

63. Therefore, in the absence of any such evidence produced by the petitioner, this Court does not find any force in his arguments and therefore, is of the considered view that the reasoning given by the learned Labour Court is sufficient, and in accordance with the settled law.

CONCLUSION

64. Taking into account the limited scope of this Court's power under Article 226 of the Constitution of India, this Court is of the considered view that there is no error apparent on the face of the impugned award. There is nothing on record to show that the learned Labour Court has exceeded or usurped its jurisdiction, or acted illegally and in contravention to any law.

65. It is observed by this Court that the learned Labour Court provides detailed discussion in the impugned award which is based on the

testimony and evidence presented before it. The findings in the impugned award show that the petitioner admitted to receiving various letters from the respondent management urging him to return to work after unauthorized absence.

66. Despite receiving these letters, the petitioner did not provide evidence that he returned to work or that the respondent management prevented him from doing so. It has been categorically highlighted in the impugned award that the petitioner did not formally complain to any authority about not being allowed to return to work, nor did he file any application before forum of law regarding this matter. The petitioner also admitted to being offered the opportunity to return to work by the respondent management, however, he failed to do so.

67. In view of the above, it is held that the petitioner has failed to make out a case to show that the learned Court below has acted in an arbitrary manner. The petitioner had sufficient opportunity to lead evidence and the same is apparent from the impugned award. Taking note of the same, the learned Court has rightly held that the services of the workman were not terminated illegally and that the petitioner had abandoned his services.

68. In light of the above discussions of facts and law, this Court does not find any merit to interfere with the impugned award dated 7th September, 2018 passed in LID No. 726/2016 by the learned Labour Court – IX, Dwarka Courts, Delhi and the same is, hereby, upheld.

69. With regard to the instant batch, it is noted that the learned Labour Court in the respective writ petitions has given similar findings based upon similar observations wherein it was found that the individual

petitioners had abandoned their services and the allegation of illegal termination by the management was rejected.

70. Considering the above observations, it is held that the petitioners in the instant batch of petitions have failed to put forth any propositions to make out a case in their favour.

71. In view of the foregoing paragraphs, this Court does not find any merit in the instant batch of petitions and is of the view that there is no illegality in the findings as recorded by the learned Labour Court. Therefore, the impugned award in each of the connected petitions is upheld by this Court.

72. Accordingly, the instant batch of petitions stand dismissed. Pending applications, if any, also stand dismissed.

73. The judgment be uploaded on the website forthwith

(CHANDRA DHARI SINGH)
JUDGE

MAY 10, 2024
rk/ryp/av