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

% Date of Decision: 14.02.2013

\+ **W.P.(C) 470/2000**

M.C.D ..... Petitioner

Through: Ms. Amita Gupta and Ms. Zeva Parveen, Advs.

versus

NIRANKAR SINGH AND ORS. ..... Respondents

Through: Mr. Anuj Aggarwal, Adv.

**CORAM:**
**HON'BLE MR. JUSTICE V.K.JAIN**

**JUDGMENT**

**V.K.JAIN, J. (ORAL)**

1. The respondents before this Court namely Shri Nirankar Singh and Shri Onkar Singh were employed with the petitioner/MCD as casual unskilled workers. The case of the respondents is that Shri Nirankar Singh was employed with effect from 26.3.1983 whereas Shri Onkar Singh was employed with effect from 26.5.1985. On the allegations that their services were terminated with effect from 1.3.1987 and 30.6.1987 respectively, they raised an industrial dispute which was referred to the Labour Court for adjudication.

2. MCD filed reply admitting the employment of the respondent, though it claimed that Shri Nirankar Singh was employed with effect from 26.6.1983, whereas Shri Onkar Singh was employed with effect from 26.5.1985. Denying the termination of their services, it was stated in the reply that they had absented from duty without any intimation and had thus abandoned the employment.

3. The Labour Court vide award dated 4.2.1999 held that the respondents were entitled to reinstatement into service with continuity in service and full back-wages. It was noted by the Labour Court that during pendency of the matter before it, both these persons had already been taken back into service. Being aggrieved from the aforesaid order, the MCD is before this Court by way of this writ petition.

4. The learned counsel for the petitioner submits that the respondents had abandoned their duty without any intimation and their services were never terminated by MCD. The learned counsel for the respondents on the other hand maintains that the services of the respondents were orally terminated, which compelled them to approach the Labour for reinstatement with back-wages.

5. The plea of abandonment of service taken by the petitioner is based on the fact that despite Office Order dated 6.7.1988 (Ex.PW1/7 in respect of Shri Nirankar Singh and Ex.PW1/6 in respect of Shri Onkar Singh), the claimants/ respondents did not join duty. This is petitioner's own case that Shri Nirankar Singh had worked with them up to 1.7.1987 whereas Shri Onkar Singh had worked with them upto 30.6.1987 and thereafter both of them absented from the duty. Admittedly, no communication was issued by MCD to Shri Nirankar Singh between 2.7.1987 to 6.7.1988 intimating him that he was absent from duty and asking him to join his duty. No such notice admittedly was sent to Shri Onkar Singh between 1.7.1987 to 6.7.1988. No explanation was given by MCD for not sending any such notice to the workmen for such a long period. It is not in dispute that MCD had joined conciliation proceedings. No offer during conciliation proceedings was made to the claimants to join back on their respective duties. Again there is no explanation from MCD for not making such an offer to the workmen during conciliation proceedings. Admittedly, a notice of demand was served by the workmen upon MCD on 18.2.1988. Admittedly, no reply to that notice was sent by MCD. Had the

claimants been absent from duty as is alleged by MCD, it would certainly have responded to the demand notice dated 18.2.1988 and would have forthwith asked them to join back of their respective duties. On receipt of the Office Order dated 6.7.1988, the claimants sent a reply dated 4.8.1988 (Ex.PW1/9) stating therein that if MCD was ready to take them on duty, it could enter into a settlement before the Conciliation Officer by agreeing to reinstate them into service. Again, there was no positive response from MCD. It was in these circumstances that the Labour Court returned a finding in favour of the workmen, rejecting the plea of abandonment of service taken by MCD.

6. As held by the Supreme Court in ***G.T. Lad and others* vs. *Chemical and Fibres of India Ltd.*** [1979 SCC(L&S) 76]**,** to constitute abandonment of service, there must be total or complete giving up of duty so as to indicate an intention not to resume the same. Whether the workmen had abandoned or relinquished the services is question of his intention which cannot be inferred in the absence of positive evidence from the employer, which would justify drawing of such an inference. The next question which comes up for consideration is that the Labour Court having written a finding in favour of the workmen, how far this Court would be justified in interfering with such a finding of fact recorded by the Labour Court.

7. It was held by the Supreme Court in ***Management of Madurantakam Co-op Sugar Mills Ltd.* Vs.** Viswanathan [AIR 2005 SC 1954] that normally the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 of under Article 227 of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an

exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. In ***Executive Engineer and another*** **Vs.** ***Suresh Chandra Sharma*** [(2004) 13 SCC 410], the Supreme Court held that sufficiency of the evidence is not a question which the High Court can decide in exercise of the jurisdiction under Article 226 of the Constitution.

8. The findings returned by the Labour Court in favour of the respondents being based on cogent facts and circumstances and there being no positive evidence indicating an intention to abandon the services on the part of the respondents, there is no ground for this Court to interfere with the findings recorded by the Labour Court on the question as to whether the respondents had abandoned their services or not. The fact that the respondents sent a show cause notice and also took the matter to Labour Court by raising an industrial dispute is a clear indicator that they never intended to abandon their respective services. Therefore, the writ petition is liable to be dismissed as far as the findings recorded by the Labour Court is concerned.

9. As regards back-wages, a perusal of order dated 16.1.2001 would show that in fact entire back-wages in terms of the award passed by the Labour Court had been paid to the respondents vide two separate cheques, one of Rs.70,445/- and Rs.70,460/- . Thus, entire back-wages thus already stand paid to the workmen.

10. The issue relating to the payment of back-wages in such matters came to be considered by us in a recent decision in ***Delhi Transport Corporation*** **Vs.** ***Sarjeevan Kumar*** [LPA No.24/2013 decided on 21.01.2013]. After reviewing the case law on the subject, the following view was taken by us:

> "20. The above discussions lead to the following discussions:
>
> i. Payment of full backwages is not automatic on Labour Court/Tribunal granting reinstatement of workman.
>
> ii. The same principle is equally applicable in case an order of dismissal is set aside by the Labour Court/Tribunal on the ground of non-compliance of Section 25F of the I.D. Act.
>
> iii. The Labour Court/Tribunal shall give reasons for determining the specified quantum of backwages.
>
> iv. The burden is on the workman to show that he is entitled to full backwages or to a reasonable backwages and he is not gainfully employed during the period he was not in service of the management.
>
> v. Once materials are placed by workman on the above, the burden shifts on to the Management to disprove such claim.
>
> vi. In the event, the Labour Court/Tribunal fails to give any reason to quantify backwages, the High Court can go into the said issue and decide on quantum."

11. It would be seen from a perusal of the award passed by the Labour Court that no reason at all has been given by the Labour Court for awarding full back-wages to the respondents. As noted by us in **Sarjeevan Kumar (supra)**, the absence of reasons for awarding full back-wages itself is a sufficient ground for not sustaining such an award. In paragraph 23 of the above judgment, we held as under:

> 23. In the case of ***Municipal Corporation of Delhi Vs. Prem Chand Gupta*** *(2000) 10 SCC 115*, the Apex Court took into consideration the fact that the Industrial dispute lingered on for as long as 33 years and nobody was really to blame for the delay, except the justice delivery system and hence only 50%

backwages were awarded to the workman. A similar view was taken in ***Bharat Cooking Coal Ltd. Vs. Presiding Officer& Anr.*** *(1994) ILLJ 453 SC*, while awarding only 50% of backwages.

12. Therefore, in my opinion, awarding of full back-wages to the respondents cannot be sustained and they would be entitled only to 50% of the back-wages. To this extent, the award passed by the Labour Court needs modification.

13. For the reasons stated hereinabove, the writ petition is allowed to the extent that the full back-wages awarded by the Labour Court to the respondents are reduced to 50%.

The writ petition stands disposed of.

**V.K. JAIN, J**

**FEBRUARY 14, 2013**
***rd***