IN THE COURT OF SHRI UMED SINGH GREWAL,
PILOT COURT / POLC-XVII, ROOM NO. 514:
DWARKA COURTS: NEW DELHI

LC No. 353/2018

Sh. Sunil Kumar Singh
S/o Sh. Sati Ram Singh,
aged about 41 years,
R/o H No. 270-B, Gali No. 8, Sandeep Garden,
Akbarpur, Bahrampur, Ghaziabad, Uttar Pradesh.
Mobile no. 9953901021

.....Workman

Versus

1. **The Managing Director/ Proprietor,**
   Nirula's Corner House Ltd., Regd. Office: 10185C,
   Arya Samaj, New Delhi-110005.

2. **The Managing Director/ Proprietor,**
   Nirula's Corner House Ltd., C-135, Sector II,
   Noida, Uttar Pradesh-201301.

.....Management

DATE OF INSTITUTION	:	06.06.2018
DATE ON WHICH AWARD RESERVED	:	24.09.2018
DATE ON WHICH AWARD PASSED	:	09.10.2018

A W A R D :-

1. This is a Direct Industrial Dispute filed by the workman under the Industrial Disputes Act, 1947 (hereinafter referred as "the

Act") for reinstatement with continuity of service and full back wages.

2. Claimant's case is that he was appointed by the management as Team member 5 on 12.03.1996 and he had unblemished and uninterrupted record. But the management had deprived him off legitimate dues like dearness allowance, leave encashment, increments and bonus since 2013. Finally, he sent a legal notice dated 20.04.2018 asking it to grant aforementioned benefits. But the notice went unreplied despite service and rather, it infuriated the management which terminated his service on 22.04.2018. Against termination, his demand notice dated 03.05.2018 went unreplied. By the date of termination, he had worked for more than 240 days and despite it, the management neither issued him notice nor tendered notice pay and retrenchment compensation and in this way, it violated provisions of Section 25F of ID Act 1947. Several juniors were still working when his job came to an end and fresh hands were engaged after termination. In this way, the provisions and section 25 G & H of ID Act 1947 were also violated. He had never misconducted and hence, there was no scope of any chargesheet. Moreover, no inquiry was conducted before terminating his service. He is completely unemployed since termination.

3. Written statement is to the effect that the claimant was required first to approach the Labour Commissioner before filing the present case but he did not file any complaint before Labour Inspector and it shows that his service was not terminated. The matter is liable to be dismissed on that ground alone. Moreover, this court has no jurisdiction to entertain the case as the claimant was posted and working in Noida, UP and cause of action, if any, arose at Noida and not in Delhi.

It has been admitted that the claimant was appointed as Team member 5 on 12.03.1996 but it has been denied that he had made any representation dated 20.04.2018. He stopped attending to duty w.e.f. 21.04.2018 without any reason or information and did not reply or come forward for duty despite service of call back letters and notices dated 05.05.2018, 12.05.2018 and 01.06.2018. Instead of joining back, he got sent a false reply to the show cause notice dated 12.05.2018.

4. Following issues were framed on 16.07.2018.

1. Whether this court has territorial jurisdiction to decided the matter? OPW

2. Whether claimant himself left job by remaining absent

unauthorizedly w.e.f. 21.04.2018? OPM

3. Whether termination of service of claimant by management w.e.f. 22.04.2018 is illegal and / or unjustifiable? OPW

4. Relief.

5. In order to substantiate the case, the claimant tendered his affidavit in evidence as Ex. WW-1/A mentioning all the facts stated in statement of claim. He relied upon following documents.

1. **Ex.WW1/1** (OSR) is chart of my privileged, casual and sick leave as on 11.2.2014.

2. **Ex.WW1/2** (OSR) is chart of my privileged, casual and sick leave.

3. **Ex.WW1/3** (OSR) is my pay slip for March 2013.

4. **Ex.WW1/4** (OSR) is copy of my ESI card.

5. **Ex.WW1/5** (OSR) is copy of my Adhar Card.

6. **Mark W1** is copy of my pay slip for June 2013.

7. **Mark W2** is copy of my pay slip for October 2013.

8. **Mark W3** is copy of demand notice dated 3.5.2018.

6. The management examined its Company Secretary and Legal Executive Mr. Biresh K Das as MW-1 who repeated the contents of written statement in affidavit in evidence Ex. MW-1/A and relied upon following documents:-

1. **Ex.MW1/1 (OSR)** is the copy of board resolution dated 6.7.2018.

2. **Ex.MW1/2 (OSR)** is the copy of show cause notice dated 5.5.2018 earlier marked as M1.

3. Copy of show cause notice dated 12.5.2018 already Ex.WW1/M1.

4. Copy of show cause notice dated 1.6.2018 already Ex.WW1/M2.

5. Copy of reply dated 19.5.2018 to show cause notice already Ex.WW1/M3.

Maintainability:-

7. Ld. ARM argued that the claimant should have first filed statement of claim before Conciliation Officer and after expiry of 45 days of filing of the case in that office, he should have approached this court U/s 2A (2) of ID Act 1947 but he did not approach the Conciliation Officer and hence, his case is not maintainable.

Ld. ARW replied that it is in the sweet will of the worker whether he wanted to proceed U/s 2A (2) of ID Act 1947 or under section 10 (4A) of the Act.

8. **In Rajendra Singh Vs. State Bank of India**

[2017(155)FLR746], the penalty of removal from service was imposed upon the workman on 24.08.2010. On 27.07.2011, he raised the dispute against removal order U/s 10 (4A) of ID Act 1947. The Industrial Tribunal passed order dated 23.04.2013 holding that the workman had not complied with the requirement of the sub-section 2 of Section 2A of the ID Act, 1947 and, therefore, the Tribunal could not invoke its jurisdiction to adjudicate upon the dispute. The order of Industrial Tribunal was assailed by filing writ petition in which the Hon'ble High Court up-held the order of Industrial Tribunal. But in LPA, the Hon'ble High Court held, in following words, that the case before Industrial Adjudicator was definitely maintainable:-

29. *Thus, the claim made by the appellant, which came to be registered as ID No. 52/2011, could not have been rejected on the ground that the appellant has not complied with the provisions of sub-section 2 of Section 2A of the Industrial Disputes Act. On the other hand, the Industrial Tribunal was bound to have considered the same and decided it on its merits.*

To the same effect are the facts of the case in hand. Taking cue from above citation, it is held that case U/s 10 (4A) of ID Act, 1947 is definitely maintainable even without complying with the provisions of section 2A (2) of the Act.

Issue No. 1:-

9. Ld. ARM argued that it is the admitted position of both parties that claimant's last working day was in Noida and hence, the Noida Court has the jurisdiction to try the case. This court lacks territorial Jurisdiction.

On the other hand, Ld. ARW admitted that the last working day of the claimant was in Noida. But control over his working was exercised by the registered office of the management which is situated in Delhi. In this regard, he relied upon:-

I. Raj Kumar Jaiswal Vs. Rangi International Pvt. Ltd., CM (M) 1337/2007 decided on 27.10.2009.

II. Mahipal Singh Vs. POIT-III and Ors., W.P.(C) 3802/1998 decided on 11.05.2010.

Ld. ARM replied that in above citations the Hon'ble High Court of Delhi had held that if the registered office was exercising control over the working of workman, the court having jurisdiction over place of registered office, shall have jurisdiction to decide the case provided that the management did not have any establishment where the workman was working. In the case in hand, the management had its factory in Noida and hence, it had a separate establishment at Noida and so, the citations relied upon by claimant are not applicable.

10. Both parties are agreeing that the last working day of the claimant was in Noida. Management's case is that it did not terminate claimant's service and that he started absenting from Noida. On the other hand, claimant's case is that his service was terminated when he was working in Noida. In **Raj Kumar Jaiswal Vs. Rangi International Pvt. Ltd. (supra),** the Hon'ble High Court of Delhi held that the Industrial Dispute arises at the place where the employer was exercising the effective control. In that case, the registered office of the company was at Delhi and nothing was shown that there was a separate establishment at Gurgaon. In that background, the Hon'bel High Court of Delhi held that the registered office of management at Delhi had effective control and so, Delhi Labour Court had jurisdiction to try the case. To the same effect is **Sh. Mahipal Singh Vs. POIT-III and Ors.** It is correct that in both above cases, the Hon'ble High Court had considered that the management had not placed on record any document to prove that it had a separate establishment at the place where the workman was residing. In the case in hand, it is the admitted position of parties, the management had factory in Noida where the claimant was working. But the management did not place on record a single document to show that the service of the claimant was being controlled / supervised or governed by that factory. In **Vinod Singh Yadav Vs. Securitans India Pvt. Ltd., W.P. (C) 185/2016,**

the management had sent a letter to the worker from Delhi office to intimate that Inquiry Officer had been appointed by the management. The Inquiry Officer was also informed by the management by writing a letter from its head office situated in Delhi that he had been appointed as Inquiry Officer. The Inquiry Officer sent a letter to the workman that he would conduct inquiry in Delhi. After the workman was found guilty, the management issued him a show cause notice from its office situated in Delhi for the proposed punishment. The Hon'ble High Court of Delhi held that those facts showed that the management was exercising control from Delhi over the working of the workman in Gurgaon. In the case in hand, it is the case of the management that it had sent letters dated 05.05.2018, 12.05.2018 and 01.06.2018 to the claimant to join back duty. Claimant's case is that he had replied one of the letter by addressing the same to the management at two addresses and one of the address is of Delhi. The management appointed its authorized representative by issuing authorization letter from Delhi. These documents show that though the claimant was working in Noida but control and supervision over his working was from its registered office situated in Delhi. That conclusion is further corroborated by the salary slips of the claimant which are bearing the round seal of the management in the address of its registered office i.e. Delhi office is mentioned.

In view of above discussion, it is held that this court has definitely territorial jurisdiction to decide the matter. Moreover, the management did not show or prove what prejudice would be caused to it if the case is decided by the Labour Court of Delhi. So, this issue is decided in favour of the management and against claimant.

Issue No. 2 & 3:-

11. Both these issues are inter-connected and hence, are being taken together.

12. Ld. ARW argued that the management's case is that the claimant was unauthorizedly absent and hence, he had abandoned the service and that the management had never terminated his service. He submitted that the termination was on the ground of misconduct and in such type of cases the management should conduct domestic inquiry which it did not conduct and hence, termination is illegal, He relied upon:-

I. Government of NCT of Delhi Vs. D.S. Bawa and Anr., W.P. (C) 3659/1996 decided on 17.05.2010.

II. MCD Vs. Sukhvir Singh & Ors., W.P.(C) 1684/1991 decided on 14.02.1994.

III. Gauri Shankar Vishwakarma Vs. Eagle Spring Industries Pvt Ltd. & Ors., W.P. 2904/1983 decided on 03.09.1987.

In alternative, he argued that if the management did not conduct inquiry, before proving the misconduct of the claimant in the court, it should seek permission of the court to do so but the management did not seek such permission and hence, evidence led on misconduct cannot be taken into account. In further alternative, he argued that the management has failed to prove authorized absence / abandonment because the claimant had replied the notice dated 12.05.2018 vide reply dated 19.05.2018 mentioning that he was never unauthorizedly absent and that on receipt of letter dated 12.05.2018, he had contacted the management to join back duty but he was not allowed to do so. He submitted that for abandonment, the absence should be long and intentional one. In the case in hand, the absence was not lengthy and the management has failed to prove intentional absence.

On the other hand, Ld. ARM argued that the management is not bound to conduct domestic inquiry even if, the service of an employee is terminated on the ground of misconduct as it was held by Apex Court ***in the Workman of M/s. Firestone Tyre & Rubber Company of India (Ltd.) Vs. The Management & Ors.*** **AIR 1973 SC 1227** that it is not mandatory to conduct domestic enquiry before terminating the service of a worker on the ground of misconduct. In that eventuality, the management can prove misconduct in the court directly. He next argued that the claimant

had started absenting himself from duty and hence, the management wrote him letters dated 05.05.2018, 12.05.2018 and 01.06.2018 to join back duty but he did not produce himself to perform duty. Such default on his part shows that he was absent from duty with an intention to abandon the job.

13. In ***Government of NCT of Delhi Vs. D.S. Bawa and Anr. (supra), MCD Vs. Sukhvir Singh & Ors. (Supra) and Gauri Shankar Vishwakarma Vs. Eagle Spring Industries Pvt Ltd. & Ors. (supra),*** it was held by the Hon'ble High Court of Delhi that the abandonment of service amounts to misconduct which required proper inquiry. It is further held that if the workman had abandoned employment, that could have been a ground for holding inquiry against him. But those citations are squarely covered by ***Workman of M/s. Firestone Tyre & Rubber Company of India (Ltd.) Vs. The Management & Ors.*** **AIR 1973 SC 1227** in which it was held by the Apex Court that when service of an employee is terminated in the ground of misconduct, the management should conduct domestic inquiry against him. Simultaneously, it was held that if such inquiry was not conducted, the management can prove misconduct of that employee in court itself. So, by not conducting domestic inquiry against claimant before terminating his service on the ground of unauthorized absence, the management did not

commit any illegality. But before proving misconduct in the court, it was obligatory upon the management to seek permission of the court to lead evidence on the misconduct of the claimant. It was held in ***Director, Central and State Farm, Jetsar Vs. The State of Rajasthan and others, Special Appeal No. 740/1994*** *decided by Hon'ble High Court of Rajasthan, Jodhpur Bench on 29.08.1995 that before proving misconduct, the management is required to obtain permission of the court that it would prove misconduct against worker in the court. Perusal of written statement shows that management never sought leave of the court to prove misconduct of the claimant. So, the court cannot rely upon the evidence of MW1 and MW2 on misconduct of the claimant.*

To the similar effect is ***DTC Vs. Rakesh Kumar, W.P. (C) 8237/2015 decided by Hon'ble High Court of Delhi on 14.05.2018*** with following observations:-

11. Since the petitioner/ management has admittedly not retained its right in its written statement to adduce evidence in case the findings on enquiry are vitiated, and the petitioner/ management having not adduced any evidence to prove the misconduct and thus the findings of the Industrial Adjudicator in setting aside the punishment inflicted upon the respondent/ workmen by order dated 08.07.1996 cannot be faulted with.

14. Perusal of written statement shows that the management did not take the plea that it wanted the permission of the court to prove misconduct of the claimant. Even thereafter, it did not move an application for that relief. So, the management has not sought permission of the court to lead evidence on the misconduct of the claimant. Due to that reason, evidence of MW-1 on unauthorized absence of the claimant is being ignored.

15. Even if evidence of MW-1 and documents of the management on unauthorized absence of the claimant are taken into account, that would not help the case of the management because those are falling short of proving the point that the claimant had abandoned the job and that abandonment was intentional one.

It was held in **Filmistan Exhibitors Ltd. Vs NCT, Through Secy. Labour & Ors., 131 (2006) DLT 648** that inference of abandonment or relinquishment of service is not easily drawn. Circumstances are to be examined. Intention to abandon the service is to be gathered from the period of absence. Such intention may be inferred from the acts and conduct of a party and same is the pure question of fact. In **Buckingham Co. Vs Venkatiah, AIR 1964, SC 1272,** the Hon'ble Apex Court held that the length of absence is one of the factor to know whether the abandonment is intentional or not. In **G.T. Lad & Ors. Vs Chemicals & Fibres of India Ltd.,**

1979 Labour I.C 290, the appellants alongwith 229 other workmen had gone on indefinite strike in response to the strike notice given by the union to the company to press its demand for reinstatement of its three dismissed leaders. They had sent intimation letters to the company that they did not intend to abandon the service. Hon'ble Apex Court held that intention of abandonment was absent.

16. These are 9 cases filed by the workmen separately. Some of them admitted in cross-examination that they had received call back letters from the management but some have denied. Some replied that they had sent reply dated 19.05.2018 to the call back letters of the management.

It is mentioned in first letter dated 05.05.2018 sent by management to the claimant that he was absent from duty and that he should join back immediately. To the same effect is the second call back letter dated 12.05.2018. The claimant had sent reply dated 19.05.2018 to that letter mentioning that on receipt of the show cause notice dated 12.05.2018 in which allegation of unauthorized absence was levelled against him, he had presented himself for duty which was again refused verbally. It is further mentioned that he was always ready and willing to perform duty. In that reply, the claimant had countered the call back letter mentioning that he was never absent from duty and that he was always ready and willing to

perform duty but it was management who was not willing him to perform his job.

Had claimant been absent from duty unauthorizedly or had he abandoned the job, he would not have sent such reply to the management. Moreover, till the date of reply i.e. 19.05.2018, not even one month had elapsed from the date of absence (even if it is presumed that he was unauthorizedly absent). Sending of reply by claimant to the management that he was willing and ready to work with it and that he had presented himself for duty, shows that if there was any absence, the same was not intentional one.

He had joined the management on 12.03.1996 and till 21.04.2018, he had worked for about 22 years. Worker of such a long association cannot be expected to abandon the job without taking full benefit from the management. It is the admitted of both parties that nothing was paid to the claimant in the name of full and final settlement, gratuity and PF etc. Length of service also suggests that the claimant had not abandoned the job.

Industrial Dispute Act, 1947 is a benevolent statute. In case there is doubt whether the workman had abandoned the job or he was removed from service by the management, benefit of doubt should go to the weaker section i.e. workman as held in ***The K.P.C. Employees' Association, Madras Vs. The Management of K.P.C. Ltd., Madras and Ors, Civil Appeal Nos. 2142-2143/1970 decided***

on 24.01.1978. In the case in hand, there is no doubt that the service of the claimant was terminated by the management. Even if, it is presumed that there is some doubt, the benefit of doubt is extended to him to hold that he had not abandoned the job.

17. In view of above discussion, both these issues are decided in favour of claimant and against management.

Issue No. 4:-

18. The Hon'ble Apex Court held in the ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors., Civil Appeal No. 6767/2013 (Arising out of SLP (C) No. 6778/2012), decided on 12.08.2013*** that if the termination of a worker is found illegal, the natural consequence is reinstatement. In the case in hand, service of the claimant was terminated only about five months ago. He has a length of service of about 22 years. There is no allegation of loss of confidence. Taking into account these factors, the management is directed to reinstate claimant with continuity of service.

Though, it has been deposed by the claimant that he was jobless since termination of service. But he did not pin-point any employer visited by him in connection with re-employment. He had an experience of 22 years and such an experienced person would

have definitely got job of an equal status and salary, had he tried seriously. So, the management is directed to pay him 50% of the back wages from the date of termination till the date of award. The Management is directed to pay that amount to claimant within one month from today failing which it shall be liable to pay interest @ 9% per annum from today till realization. Parties to bear their own costs. Award is passed accordingly.

19. The requisite number of copies be sent to the Govt. of NCT of Delhi for publication of the award. File be consigned to record room.

Dictated & announced **(UMED SINGH GREWAL)**
in the open Court on 09.10.2018 **PILOT COURT/ POLC-XVII**
DWARKA COURTS, NEW DELHI