

(2011) 06 DEL CK 0040

In the Delhi High Court

Case No : Letters Patent Appeal No. 62 of 2011

Indra Kali

APPELLANT

Vs

Director Social Welfare

RESPONDENT

Date of Decision : 01-06-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 06 DEL CK 0040

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Deepali Gupta, for the Appellant; Anjum Javed and Nirbhay Sharma, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—In this intra-Court appeal filed by Indra Kali, the challenge is to the order dated 28th September, 2010 dismissing the writ petition, which was filed by the Appellant.

2. The Appellant was engaged in June, 1980 and continued to work till 3rd May, 1996 as an honorary helper in the Anganwari Scheme. The Appellant claims that she had availed of three days leave from 3rd May, 1996 to 5th May, 1996 but when she reported for duty on 6th May, 1996, she was not taken back and in her place one Suman was engaged. The Appellant was performing duty for four/five hours daily as an unskilled worker and was paid only Rs. 200/- per month.

3. The contention of the Respondent-management was that on 6th May, 1996, the Appellant was caught red handed, while stealing a box of 10 Kgs of biscuits by the Supervisor and thereafter she stopped coming. It was stated that the services of the Appellant were never terminated.

4. The Presiding Officer, Labour Court decided the reference against the Appellant, inter alia, recording as under:

10. The claim of the workman is that she was terminated from the service on 6.5.96. The management has denied categorically in the written statement that she was terminated. It is claimed that the workman marked her presence on 6.5.96 and she was caught red handed while stealing one box of 10 k.g. biscuits and thereafter she herself stopped coming to the centre. In the replication, the workman has not disputed this but simply stated that it is incorrect. In the witness box, she has examined herself as MW1. On the other hand, management has examined MW1 Smt. Dayawati Gaur and MW2 Sh. V.K. Sharma. Both have admitted in the cross-examination that her services were not terminated on 6.5.96. MW2 Sh. V.K. Sharma has stated in the cross-examination also that she stopped coming for the job when she was caught committing theft.

11. When the consistent stand of the management is that she was not terminated but she herself stopped coming to work out of guilty conscience and the workman has not placed on record any reliable evidence to the effect that she had been terminated, I find that the evidence of the management is much more categorical and reliable than that of the workman that she herself stopped coming to work. Management has placed documents on the record vide Ex.MW1/1 to 4 showing her misconduct. In the light of these documents, it is quite possible that she herself stopped coming to the work and ended her employment. Considering the nature of employment, it is not obligatory on the management to issue notice to the workman for joining her duties as the job was not of regular nature. Accordingly, I find that her services were not terminated rather she abandoned the employment herself as claimed by the management. The authorities cited by the Ld. AR for the workman are of no avail as they are entirely different. The reference is answered accordingly. Six copies of the award be sent to the appropriate Govt. File be consigned to record room.

5. The Appellant filed a Writ Petition (C) No. 716/2007 against the said order but has been unsuccessful and the writ petition has been dismissed by the impugned order dated 28th September, 2010. Learned Single Judge has held that in view of the finding of facts recorded by the Labour Court, there was no merit in the writ petition and the Court refused to exercise discretion under Article 226 of the Constitution of India.

6. The stand of the Respondent-management, which has been accepted by the Labour Court, was that the Appellant had abandoned her job and she did not report for duty on or after 6th May, 1996. On the said date, she was caught stealing a box of 10 Kgs of biscuits. It is accepted that no charge sheet/show cause notice was issued on the said account and no proceedings were initiated. It is accepted that there is no termination order by which the services of the Appellant were terminated.

7. On the question of abandonment of service, it has come on record that it is accepted that the Appellant had signed the attendance register on 6th May, 1996. This shows that she had reported for duty on 6th May, 1996. Abandonment of service in labour law requires intendment. The Supreme Court

in *G. T. Lad and Others Vs. Chemical and Fibres of India Ltd.*, expounded and explained the meaning of abandonment in the industrial law. The relevant paragraphs are reproduced below:

5a. Re Question 1: In the Act, we do not find any definition of the expression "abandonment of service". In the absence of any clue as to the meaning of the said expression, we have to depend on meaning assigned to it in the dictionary of English language. In the unabridged edition of the Random House Dictionary, the word "abandon" has been explained as meaning "to leave completely and finally; forsake utterly; to relinquish, renounce; to give up all concern in something". According to the Dictionary of English Law by Earl Jowitt (1959 Edn.) "abandonment" means "relinquishment of an interest or claim". According to Black's Law Dictionary "abandonment" when used in relation to an office means "voluntary relinquishment". It must be total and under such circumstances as clearly to indicate an absolute relinquishment. The failure to perform the duties pertaining to the office must be with actual or imputed intention, on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Temporary absence is not ordinarily sufficient to constitute an "abandonment of office".

6. From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In *Buckingham & Carnatic Co. v. Venkatiah* it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to a employee without adequate evidence in that behalf. Thus, whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.

(emphasis supplied)

8. In the present case, the aforesaid condition of intention has not been examined by the Labour Court before reaching and giving the conclusion quoted in paragraphs 10 and 11 of the order dated 29th November, 2005. The Appellant has rightly contented that the failure to examine and consider the aspect of intention has vitiated and impaired the impugned orders. The Appellant has highlighted that she had worked for about sixteen years from June, 1980 upto at least 3rd May, 1996. As noticed above, she had signed the attendance register on 6th May, 1996. The Appellant has also produced on record a representation dated 27th May, 1996 made by her requesting the Respondent to restore her duties followed by another representation dated 26th July, 1996. On 9th October,

1996, she raised a dispute before the Conciliation Officer. As the conciliation proceedings had failed, on 14th July, 1997, reference was made to the Labour Court. The facts narrated above do not indicate or suggest that the Appellant had intention and desire to abandon the service.

9. It may be relevant to reproduce here the terms of reference made on 14th July, 1997, which are reproduced below:

Whether the services of Smt. Indra Kali have been terminated illegally and/or unjustifiably by the management and if so, to what relief is she entitled and what directions are necessary in this respect?

10. The Labour Court was required to answer the reference whether the services of the Appellant were illegally or justifiably terminated by the Respondent-management. The stand of the Respondent management in the written reply and before the Labour Court through the evidence of MW-1, Dayawati Gaur and MW-2, V.K. Sharma was that they had never terminated the services of the Appellant. In these circumstances, the reference should have been answered in favour of the Appellant.

11. The last question is of the relief, which should be allowed to the Appellant. We are not inclined to direct reinstatement with back wages in the present case. The services of the Appellant were terminated way back in 1996. The Appellant was working on part-time basis in the Anganwari Scheme and as per her own case she had to work for about five hours per day. The said scheme has a social objective and purpose behind it. Keeping in view the aforesaid facts, we direct that the Appellant will be entitled to compensation of Rs. 1 lac from the Respondent in lieu of reinstatement and back wages. The view we are taking is in consonance with the decision of the Supreme Court in Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, wherein it has been observed that a pragmatic approach must be adopted and consequently there has been a change in the legal position with regard to the grant of back wages and reinstatement. Reinstatement with back wages is no longer automatic in nature. (See Municipal Council, Sujanpur Vs. Surinder Kumar, Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others, ; Incharge Officer and Another Vs. Shankar Shetty, and Ashok Kumar Sharma Vs. Oberoi Flight Services,

12. In view of the above, we allow the appeal to the extent indicated above. In the facts and circumstances of the case, there will be no order as to costs.