

(2013) 01 DEL CK 0032

In the Delhi High Court

Case No : Writ Petition (C) No. 2236 of 1998

Personnel Manager, Central Warehousing Corpn.

APPELLANT

Vs

P.O., G.C.I.T. and Others

RESPONDENT

Date of Decision : 30-01-2013

Acts Referred:

Citation : (2013) LLR 309

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Jagat Arora, Mr. Rajat Arora, for the Appellant; Anuj Aggarwal, for R-2, for the Respondent

Judgement

Mukta Gupta, J.—By the present petition the Petitioner impugns the award dated 13th January, 1998 whereby it was held that the action of the Petitioner in terminating the services of the Respondent with effect from 15th November, 1982 was unjustified and it was directed that the Respondent continues in service with consequential benefits with effect from 15th November, 1982 which had accrued to her as if no termination had taken with back wages from 17th July, 1985. Learned counsel for the Petitioner contends that the facts of the case being admitted, on expiry of the three months notice from 23rd March, 1983 when the Respondent submitted her resignation, the Respondent lost lien on the job. The withdrawal of the resignation on 2nd April, 1985 more than two years later was meaningless. The learned Trial Court failed to notice that it was a clear case of abandonment and the non-acceptance of the resignation had no bearing thereon. The time taken in acceptance of the resignation was due to the communication with Respondent regarding the adjustment of her dues for the notice period for which the Respondent did not reply and thus the Respondent cannot get benefit of her own wrong. Reliance is placed on Kanpur Electricity Supply Co. Ltd. Vs. Shamim Mirza, ; Dr. Prabha Atri Vs. The State of U.P. and Others, ; Rajasthan State Electricity Board and Others Vs. Brij Mohan Parihar, and State of U.P. and Ors. Vs. Ved Prakash Sharma, 1996 (2) SLR 146 . In the

alternative it is prayed that even if it is held that the resignation was not accepted before its withdrawal then also the relief of reinstatement with back wages was illegal. Admittedly, the Respondent had worked only for a period of 2 and a half to 3 years and was on probation when she abandoned her job. Hence the impugned award be set aside.

2. Leaned counsel for the Respondent on the other hand contends that until the resignation is accepted the jural relationship of employer and employee continues. Since the resignation was accepted only on 17th July, 1985 before which date the Respondent had withdrawn the resignation i.e. 2nd April, 1985, it cannot be said that the Respondent had resigned from the job. As regards the plea of abandonment, no action could have been taken against the Respondent without conducting an enquiry. No enquiry having been conducted, the termination was illegal. Reliance is placed on Srikantha S.M. Vs. Bharath Earth Movers Ltd., ; Bank of India Vs. Kalidas Haribhau More, ; Shri Balley Vs. M.C.D. and Others, ; Government of NCT of Delhi Vs. Sh. D.S. Bawa and Another and Managing Committee Daisy Dales Sr. Section School and Another Vs. Rajinder Singh Malik and Others . It is further contended that the scope of interference with the award passed by the Tribunal in a petition under Article 226 of the Constitution of India is limited. There being no perversity in the finding or the relief granted, this Court will not set aside the same. Reliance is placed on Municipal Corporation of Delhi Vs. Asha Ram and Another, .

3. I have heard learned counsel for the parties. The facts in brief leading to the filing of the present petition are that Respondent No. 2 was appointed as a Warehouse Assistant Gr. II in the pay scale of 260-400 vide order dated 11th June, 1979. She was promoted to Warehouse Assistant Gr. I in the pay scale of 330-560 on 13th September, 1982 and was put on probation for a period of one year vide order dated 9th September, 1982 and was posted at Sonipat in Haryana. Respondent No. 2 reported for duty at Central Warehouse Sonipat on 13th September, 1982 and applied for 60 days earned leave with effect from 14th September, 1982 to 12th November, 1982. Thereafter also Respondent No. 2 did not report for duty and remained unauthorizedly absent from 15th November, 1982. No leave application was sent to the Petitioner in this regard. On 23rd March, 1983 Respondent No. 2 submitted her resignation from the service of the Petitioner citing physical illness and compelling domestic circumstances as the reasons. The Petitioner sent letters to her so as to reply regarding the deduction of the notice period of three months, however no reply was forthcoming except that Respondent No. 2 wrote a letter requesting therein that one months notice was sufficient and thus one month's pay in lieu of notice period be adjusted from dues payable to the Corporation. On 2nd April, 1985 the Respondent No. 2 sent another letter requesting cancellation of her letter of resignation dated 23rd March, 1983. A letter dated 17th July, 1985 was sent to Respondent No. 2 stating that her resignation had been accepted with effect from 15th November, 1982 i.e. from the date of her unauthorized absence. Respondent No. 2 raised a dispute on which the following terms of reference

were sent for adjudication:

Whether the action of the Management of Central Warehousing Corporation, New Delhi in terminating the services of Smt. Neelam Kumari, Warehouse Assistant Gr. II w.e.f. 15.11.82 is justified? If not what relief is she entitled to?

4. In her claim statement Respondent No. 2 stated that the Petitioner had terminated her services with effect from 15th November, 1982 vide order dated 17th July, 1985. It was stated that the cause of termination of service was bad. Respondent No. 2 for certain domestic reasons tendered her resignation on 23rd March 1983, however before the same could be accepted by the management she withdrew the same vide letter dated 2nd April, 1985. The acceptance of resignation with retrospective effect from 15th November, 1982 vide order dated 17th July, 1985 was wholly illegal, bad, unjust and mala-fide. The Petitioner in response to the claim statement raised a preliminary objection that no dispute ever existed or could arise. Respondent No. 2 having voluntarily resigned could not raise an industrial dispute as the same concerned only to discharge, retrenchment and termination. The resignation tendered by Respondent No. 2 was out of her own free volition and she forfeited her right to withdraw the resignation letter after the expiry of three months period as required under the Statutory Regulations of the Corporation. Respondent No. 2 continued to be absent for 2 and a half years without any reason and thus abandoned the job and resigned of her own free will. The order dated 17th July, 1985 of the management removing her name from the roll of the workmen was merely a formal recognition of the factual position pre-existing for a number of years. The same did not attract Section 25 of the Industrial Disputes Act, 1947 (in short the ID Act).

5. After the evidence of the parties, learned Trial Court came to the conclusion that it was a case where resignation had been withdrawn before acceptance was communicated to Respondent No. 2 and as the resignation could be withdrawn before acceptance at any time, there was no resignation in the eyes of law by Respondent No. 2. However, further what was not adverted by the learned Trial Court was whether the present was a case of abandonment or not. Admittedly, Respondent No. 2 did not join the duty with effect from 15th November, 1982 for more than two and a half years after the 60 days leave taken by her. No doubt, the plea of abandonment requires enquiry, however in the present case this position is not disputed. It is admitted that after the expiry of leave period on 15th November, 1982, Respondent No. 2 never reported for duty till 2nd April, 1985 when she withdrew the resignation. In *State of U.P. & Ors. Vs. Ved Prakash Sharma* (supra) their Lordships considering a similar situation held:

5. We are afraid we cannot allow the impugned order of the High Court to stand. The facts clearly reveal that under the terms of the contract the respondent was entitled as of right to terminate the contract by one month's notice. That he did and, therefore, on the expiry of the period of one month the relationship came to an end. Under the contract that was a right conferred on the respondent which

was not dependent on the management's goodwill. The management did not come in the picture as the right was absolute and on the expiry of 30 days the relationship came to an end. His continuance up to August 1983 makes no difference. It is also an admitted fact that after August 1983 he ceased to report for work which is indicative of his desire to terminate the contract of employment. Till 1987, i.e., for over four years he remained quiet and thereafter it suddenly occurred to him that he could take advantage of the fact that there was no formal acceptance of his resignation. He, therefore, dashed off a letter dated December 10, 1987 with a view to withdrawing his resignation letter of March 14, 1983. Even thereafter he did nothing and went on making periodical representations, the last of which was rejected on June 13, 1990. Treating that as a cause of action he filed the writ petition in question. We think that in the circumstances it is absolutely clear that he had the animus to terminate his relationship by the letter of March 14, 1983. There was, therefore, no question of his being taken back in service after such a long lapse merely because of want of a formal communication accepting the resignation. The conduct of the parties has also relevance and the conduct of the respondent in particular shows his intention to terminate the contract. Counsel, however, relied on the decision of this Court in Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, and referred to paragraph 33 thereof, but we find that the said decision has no application to the facts of this case. That was a case which turned on the interpretation of Article 217 proviso (a) and not a case of the present type where under the terms of the contract, the respondent had a right to sever relationship by one month's notice.

6. Applying the law laid down it is clear that Respondent No. 2 had an animus to terminate the relationship by the letter dated 23rd March, 1983. Respondent No. 2 could terminate the contract with a three months notice, though according to Respondent No. 2 only one month's notice was required as the Respondent No. 2 wrote to the Personnel Manager of the Petitioner vide her letter dated NIL in response to the letter of the Petitioner dated 27th June, 1983 that she had not completed her probation period as Warehouse Attendant Gr. I as on 23rd March, 1983 when she resigned and thus only one months notice period pay was required to be deducted as per the rules and laid down procedure. The intention of abandonment being clear, the learned Trial Court could not have directed reinstatement with back wages as a consequential relief. In the present case when Respondent No. 2 submitted her resignation, she was a probationer Warehouse Attendant Gr. I and before that a regular employee as Warehouse Gr. II. In my opinion the order directing reinstatement with back wages was illegal in view of the fact that it was a clear case of abandonment and hence Respondent No. 2 was not entitled to any relief. As regards the contention of the learned counsel for Respondent No. 2 that for treating her absence as abandonment an enquiry was required, it may be noted that in the present case the facts speak for themselves and the principle of *res ipsa loquitur* will apply. Respondent No. 2 does not dispute the position.

7. The decision in Managing Committee Daisy Dales Senior Section School (supra) has no application to the facts of the present case as the same related to the Delhi School Education Rules, 1973 wherein there were no rules permitting termination of services of an employee of a school on the ground of abandonment of the job. In Govt. of NCT Vs. D.S. Bawa (supra) this Court was dealing with a case where the Petitioner therein failed to establish a case of abandonment and on the basis of un rebutted evidence it was held that the workman had offered his services. In Balley Vs. MCD (supra) this Court held that no such standing orders had been shown nor any procedure in the said standing orders which was followed and since no enquiry was conducted the defence of the Respondent therein of termination of service on the ground of abandonment of employment was not tenable.

8. In the present case Regulation 9X of the Central Warehousing Corporation (Staff Regulation) 1966 provides an employee to leave or discontinue his service by giving three months notice in case of a regular employee and by giving one months notice in case of a temporary employee. It also provides termination of the services of an employee other than the Managing Director by giving a notice of three months in case of a regular employee and one month in case of a temporary employee. In the case in hand since the facts are admitted, the requirement of principles of natural justice is met with. However, the Petitioner for termination due to abandonment was required to give three months notice to Respondent No. 2 and could not have terminated the services with effect from 15th November, 1982 as though the Respondent No. 2 was a probationer as Warehousing Attendant Gr. I but before that she was a regular employee as Warehousing Attendant Gr. II. In view of the fact that three months notice was not given, the Respondent No. 2 is entitled to compensation. The impugned award is set aside. The Petitioner is directed to pay a sum of Rs. 50,000/- as compensation in lieu of three months notice and the protracted litigation the Respondent had to face. The amount be paid within 8 weeks failing which it will entail interest @ 9% P.A. Petition is disposed of accordingly.