

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

% **W.P.(C) 6945/2007**

+ **Date of Decision: 30th November, 2011**

DAULAT SINGH GOSAIN **....Petitioner**

! Through: Mr. Thomas Ommen, Advocate

Versus

\$ **THE MANGT. OF S.M.S.
ASSOCIATES P. LTD.**

....Respondent

Through: Mr. A.K. Hajelay, Advocate

* **CORAM:
HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J: (ORAL)

The petitioner-workman (who shall hereinafter be referred to as 'the workman') is aggrieved by the award dated 14th March, 2007 passed by the Labour Court whereby the dispute raised by him that his services had been terminated illegally by his employer, the respondent herein (hereinafter referred to as 'the management') has been decided against him and the learned Presiding Officer of the Labour Court has come to the conclusion that the workman had failed to establish that his services were terminated illegally and in fact he himself had abandoned his job in order to avoid return of some loan amount which he had taken from the management.

2. After having heard learned counsel for the parties and going through the record, which includes the statement of claim filed by the workman before the Labour Court as well as management's written statement, I am of the view that the impugned award cannot be sustained. A perusal of the amended written statement filed by the management clearly shows that because of the unauthorized absence of the workman from duty for two weeks the management had sent a letter requiring him to show cause as to why necessary action be not taken against him, including holding of an enquiry against him, and then he was charge-sheeted also for his absence but before any disciplinary proceedings could be initiated the workman approached the labour authorities and got a reference made to the Labour Court for adjudication of the industrial dispute raised by him as to whether he himself had abandoned his job, as was the management's stand or the management had terminated his services illegally. The Labour Court decided the reference against the workman. Since the management itself had decided to charge-sheet the workman vide charge-sheet dated 25th May, 1994 its plea to the effect that the workman had abandoned his job with effect from 11th May, 1994 on the face of it is unsustainable and the learned Labour Court has totally ignored these averments made in the amended written statement of the management and without any cogent reason come to the conclusion that workman had abandoned his job.

3. In the amended written statement the respondent-management had also taken a plea that in case the Court would come to the conclusion that action of the management suffered from any technical defect or it was not in conformity with the principles of natural justice then it would lead

evidence before the Court itself to prove the charge levelled against the workman vide its charge-sheet dated 25th May, 1994. Even this averment in the written statement of the management confirms that even as per the management this is a case of the termination of services of the workman for misconduct and not of abandonment of job by the workman himself.

4. It was contended by the learned counsel for the management that though the workman was charge-sheeted but finally no proceedings were initiated against him as the management had presumed abandonment of job by him because of his not reporting for duty. That, in my view, would make no difference at all in view of the fact that after having come to the conclusion that it was a case of misconduct on the part of the workman the management could not have converted its case into that of abandonment of job by the workman by not proceeding further with the contemplated disciplinary proceedings against him. The fact that the workman was charge-sheeted on 25th May, 1994 shows that till that time even the management was treating the workman as its employee though he was not reporting for duty. Learned counsel for the workman had also stated that there are no rules and regulations framed by the management providing that an employee remaining continuously absent from duty for a particular period could be deemed to have abandoned his job. So, for this reason also the management's defence that the workman had himself abandoned his job could not be accepted. In taking this view I am fortified by the decision of the Hon'ble Supreme Court in ***"G.T.Lad & Others Vs. Chemical and Fibres of India Ltd."***, (1979) 1 SCC 590.

5. For the foregoing reasons, this writ petition is allowed and the impugned award of the Labour Court is set aside and it is held that the

workman had not abandoned his job with the management but in fact his services were terminated illegally as was his case.

6. Regarding the relief to be given to the workman, during the course of hearing counsel for the workman had stated that he would be satisfied in case reasonable payment is made to him by the management in lieu of the relief of reinstatement in the event of this Court coming to the conclusion that the impugned award was liable to be set aside.

7. So, considering all the facts and circumstances the workman is awarded compensation in lieu of the relief of reinstatement to the extent of ₹ 3 lacs considering the fact that undisputedly he was drawing a salary of ₹ 2800 per month which in normal course would have increased also as also the fact that sixteen years have gone by from the date of termination of his job. This much compensation is acceptable also to the workman, as stated by his counsel.

8. The management is also burdened with costs of ₹ 10,000.

P.K. BHASIN, J

NOVEMBER 30, 2011/pg