

\$~12-13

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

+ LPA 132/2021 & CM APPL. 12013/2021 (for stay) & CM APPL.
12015/2021 (for delay of 386 days in filing)
SHIV SHAKTI TRACTOR CORPN Appellant

Through: Mr. Vivek Tandon with Mr. Ankit
Dwivedi, Advocates.

versus

BABLOO YADAV Respondent

Through: None.
AND

+ LPA 133/2021 & CM APPL. 12041/2021(for stay) & CM APPL.
12043/2021 (for delay of 365 days in filing)
SHIV SHAKTI TRACTOR CORPN Appellant

Through: Mr. Vivek Tandon with Mr. Ankit
Dwivedi, Advocates.

versus

RAM SHARMA Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **26.03.2021**

CM APPLs. 12014/2021 & 12042/2021 (both for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The applications are disposed of.

LPA 132/2021 & LPA 133/2021

3. These two appeals though arise from separate judgments in separate

LPA 132/2021 and connected matter

page 1 of 5

writ petitions filed by the appellant impugning separate awards of the Industrial Court in dispute separately raised by the respondent/workman in each of the appeals but the employer, that is the appellant, is the same and the counsel for the appellant states that the incident which led to the industrial dispute raised by respondent/workman in each of the appeals is also the same.

4. The claim of the respondent/workman in each of the appeals, before the Industrial Court was, (a) that the appellant employer had been taking work, without providing the facilities which the employer was obliged to provide; (b) when the respondent/workman demanded/complained, the employer started harassing and stopped the respondent/workmen from joining duty, took the signatures of respondent/workmen on blank paper and threatened to implicate them in a false theft case and lodged a report of theft with Police. On the said pleas, relief of reinstatement was claimed by each respondent/workman. On the contrary it was the case of appellant employer before the Industrial Court that the respondent/workmen, when confronted with theft, abandoned their employment and the services of respondent/workmen were terminated after proper inquiry but the respondent/workmen refused to participate in the inquiry and the complaint of theft was correct. Vide the awards impugned in the writ petitions from which these appeals arise, though the relief of reinstatement claimed by respondent/workman in each of the appeals was denied but lump-sum compensation of Rs. 4 lacs to the respondent/workman in LPA 132/2021 and of Rs. 6 lacs to the respondent/workman in LPA 133/2021, was awarded. The challenge before the Single Judge having not succeeded, these

LPA 132/2021 and connected matter

page 2 of 5

appeals have been preferred but with the applications for condonation of delay of 386 days and 365 days respectively in filing the appeals.

5. The cause pleaded for the delay is, owing to prevalent COVID-19 pandemic.

6. We have however asked the counsel for the appellant, whether not notwithstanding the pandemic, the courts have been functioning since April, 2020 and to which the counsel for the appellant fairly agrees.

7. Though there is no sufficient cause to condone the delay, particularly when the monetary awards in favour of the workmen have been upheld, but we have still, to satisfy our conscience, heard counsel for the appellant on merits.

8. It is the case of the appellant, that the respondent/workmen, when faced with the detection of theft committed by them in the shop of the appellant, stopped coming for work and abandoned their employment; however the appellant nevertheless conducted an inquiry on the charge of theft against the respondent/workmen and terminated their services.

9. The Industrial Court, *inter alia* reasoning that the Inquiry Officer appointed was/is the brother of the Manager of the appellant and that even the existence in the shop of the goods, of theft whereof the respondent/workmen were charged, had not been proved, held the inquiry to be vitiated. The Industrial Court further held that the appellant employer had failed to prove the charge of theft before the Industrial Court also and thus the appellant employer had illegally terminated the contracted employment of respondent/workmen.

10. The counsel for the appellant has contended that the Inquiry Officer

LPA 132/2021 and connected matter

page 3 of 5

was not the real brother but the maternal brother of the Manager of the appellant.

11. The same would however be immaterial in as much as once it is found that the Inquiry Officer was not impartial but was related to the employer, inquiry becomes suspect. Moreover, we have asked the counsel for the appellant, that if it is the case of the appellant that the respondent/workmen had abandoned their service, why was the inquiry on the charge of abandonment not conducted and inquiry conducted only on the charge of theft. We have further asked the counsel for the appellant that if it was the case of the appellant that the respondent/workmen had abandoned their employment, why did the appellant not call upon them to rejoin the service or present such an offer in conciliation proceedings or before the Industrial/Labour Court.

12. All the aforesaid facts show that appellant terminated the services of the respondent/workmen without following the procedure prescribed by law and once it is so, we, in exercise of Letters Patent jurisdiction, would be loath to interfere with the monetary award of lump-sum compensation in the sums of Rs. 4lacs and 6lacs respectively and which amounts cannot not be said to be shockingly disproportionate.

13. The counsel for the appellant has also drawn our attention to para 8 of the order impugned in LPA 133/2021 and has contended that the computation made by the Single Judge therein is contrary to the facts; the Single Judge has computed the amounts which would have been payable to the respondent/workman therein with effect from the year 1986 when it was

LPA 132/2021 and connected matter

page 4 of 5

not the case of the respondent/workman therein that awards had not been paid since then.

14. Even if the said reasoning given by the Single Judge were to be ignored, the remaining order as well as the record do not permit us to differ from opinion aforesaid.

15. There is no merit in the appeals.

Dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

MARCH 26, 2021/sr

LPA 132/2021 and connected matter

page 5 of 5