

**IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT,  
ROUSE AVENUE COURT COMPLEX, NEW DELHI  
LIR NO.4492/2016**

INDUSTRIAL DISPUTE BETWEEN:-

**Sh. Satya Bir S/o Sh. Gyani**

(Mali, Lastly posted in Horticulture Department),

Civil Line Zone, Delhi

through

Municipal Employees Union (Regd),

Aggarwal Bhawan, GT Road, Tis Hazari,

Delhi-110054

....Workman

VERSUS

North Delhi Municipal Corporation Through its Commissioner,

Dr. S.P. Mukherjee Civic Centre,

J.L.Nehru Marg, New Delhi-110002

....Management

**Date of institution : 06-01-2016**

**Date of Arguments : 14-02-2020**

**Date of Award : 14-08-2020 Through VC**

**AWARD**

1. The Dy. Labour Commissioner (CD), Govt. of NCT of Delhi vide its order No. F.24(07)16/L ab./ CD/33, dated 01-01-2016, referred an industrial dispute of Sh. Satya Bir with the above mentioned management to the Labour Court with the following terms of reference:

***"Whether the services of workman Sh. Satya Bir S/o Sh. Gyani have been terminated illegally and/or unjustifiably by the management vide termination/removal order dated 16-07-2010 and if so, to what relief is he entitled and what directions are necessary in this respect ?"***

**VERSION OF THE WORKMAN:**

2. As per the claim of the workman-herein he joined the management w.e.f. 01-01-1982 as a Mali as daily wager/muster roll worker and was being paid wages as fixed and revised from time to time under the Minimum Wages Act while his counter parts were getting their salary in proper pay scale and allowances. The workman was discharging his duties to the entire satisfaction of his superior and he has unblemished and uninterrupted record of services to his credit. The wife of the workman was suffering from breathing ailment and in order to get the treatment of his wife from his village the workman could not attend his duties w.e.f. 20-01-2010 onwards. Though the workman-herein did not furnish any written information, he verbally informed his Garden Chaudhary Namely Sh. Sukh Pal that for some days he will not be able to join his duties due to the aforesaid treatment of his wife. Consequently he was removed from the service vide termination order dated 16-07-2010.

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3. The case of the workman-herein is that It is stated that he was the regular employee of the management, therefore, he could not have been removed as he did not commit any 'misconduct'. No show cause notice/charge sheet was served upon the workman and no domestic enquiry was conducted against him. Workman has sought: setting aside of termination order dt. 16-07-2020; and reinstatement with continuity of services and full back wages along with the cost of the litigation.

**VERSION OF THE MANAGEMENT-MCD:**

4. The management filed written statement and raised preliminary objection that the no demand notice had been served upon the management prior to raising of the present dispute. Management stated that workman remained absent from duties w.e.f. 20-01-2010 without any intimation or prior approval /sanction from the competent authority. The workman-herein did not turn up despite service of show cause notices dated 05-05-2010, 08-06-2010 and 08-07-2010. The workman was terminated on 16-07-2010 and the present dispute has been raised after a passages of six years, therefore, the present dispute is barred by Limitation. It is denied that the workman has verbally informed his Garden Chaudhary Sh. Sukh Pal as alleged. In fact there was no Garden Chaudhary in the name of Sh. Sukh Pal in the concerned zone and the workman has concocted false story. It is denied that the termination of the workman is illegal or unjustified. It is also denied that the workman had not committed any misconduct or his termination is illegal or malafide. It is also denied that workman was removed from services without providing him opportunity of being heard. Many show cause notices, as stated above, have been issued to workman but he did not responded to them. It is denied that Deputy Commissioner was not the appointing authority or that he was not having power to remove or terminate the workman. Management denied other allegations of the workman and prayed that the claim of the workman may be dismissed with costs being devoid of any merit and being misconceived.

**REJOINDER OF THE WORKMAN:**

5. In his rejoinder the workman has reiterated his averments made in the statement of claim and denied the contentions of the management.

**FRAMING OF THE ISSUES:**

6. From the pleadings of the parties the following issues were framed on 23-09-2016:-
- i. Issue No.1 -Whether the claimant himself left the job by unauthorizedly absenting w.e.f. 20-01-2010 ? OPW
  - ii. ISSUE No.2 : Whether removal of claimant from service by management on 16-07-2010 is illegal and/or unjustifiable ? OPW
  - iii. (3) Relief.

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**EVIDENCE OF WORKMAN-HEREIN:**

7. Workman has examined himself as WW1 and filed his evidence by way of affidavit which is exhibited as Ex.WW1/A. In his evidenciary affidavit the workman has reiterated the contents of the statement of claim. WW1/workman has relied upon the documents i.e.
- i. Ex. WW-1/1 is the copy of legal demand notice dated 19.07.2011.
  - ii. Ex. WW-1/2 is the copy of postal receipt No. C-9918.
  - iii. Ex. WW-1/3 is the copy of acknowledgement card.
  - iv. Ex. WW-1/4 is the copy of removal / termination order dated 16.07.2010.
  - v. Ex. WW-1/5 is the copy of reply / written statement filed by the management of conciliation officer .
  - vi. Ex. WW-1/6 is the copy of the rejoinder filed by the workman before the conciliation officer.
8. The workman (WW-1) was duly cross examined by Shri Umesh Gupta, Ld. AR for the management. Thereafter the workman closed his evidence on 22-09-2017 and the case was fixed for management's evidence. However, despite opportunities the management has failed to lead its evidence and the management evidence was closed vide order dated 20-04-2018 and the case was fixed for final argument.
9. The Final arguments were heard on behalf of the workman on 05-12-2019 and ld. counsel for the management has addressed his final argument on 14-02-2020 and the case was fixed for final order. I have perused the material on record. My findings on the issues are as under:-
10. Though the management-herein has not adduced Management Evidence, all the defences of the management-herein are very well shown in the cross-examination and the relevant documents have also been adduced during the said cross-examination itself.

**Issue No.1 -Whether the claimant himself left the job by unauthorizedly absenting w.e.f. 20-01-2010 ? OPW****ISSUE No.2 : Whether removal of claimant from service by management on 16-07-2010 is illegal and/or unjustifiable ? OPW**

11. Both the issues shall be disposed of together.
12. As far as the service of the show cause notices is concerned the workman-herein has not denied the correctness of his address:

*"...As I was in my home town at Village Shekhpur, Distt. Bulandshahar and as such I have not received letter dated 05.05.2010, 08.06.2010 and 08.07.2010. It is correct that my address mentioned in these three letters at point 'A' is my correct address. These letters are marked as 'X', 'Y' and 'Z'... "...The termination order dated 16.07.2010 was received by me through my landlord when I came back from my home-town to my Delhi residence..."*

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13. It has also not been denied by the workman-herein that he received the termination letter through his landlord which again depicts that the management had sent the notices on the correct address of the workman-herein. In view of the facts of the present case it has to be held that the management-herein had duly sent the notices etc. to the workman on correct addresses. The contents of the said notices MARK 'X'(dated 05.05.2010), 'Y' (dated 08.06.2010)and 'Z'(dated 08.07.2010) (these copies of the letters are duly attested by the Asst. Director – Horticulture Department) reveal that enough opportunity was granted to the workman to explain and submit the reply). The removal / termination order dated 16.07.2010 also mentions about the chow cause notices being sent to the workman-herein.
14. The contract of service comes to an end where the workman abandons his job but 'abandonment of service' has not been defined in the Act. Etymologically, the work 'abandonment' has been explained to mean 'to leave completely and finally' ; forsake utterly; to relinquish, to renounce, to give up all concern in something; relinquishment of an interest or claim; abandonment when used in relation to an office means 'voluntary relinquishment'. In order to constitute an 'abandonment', therefore, there must be a total or complete giving up of the duties, so as to indicate an intention not to resume the same. Abandonment must be total and under circumstances which clearly indicate an absolute relinquishment. A failure to perform the duties pertaining to an office, must be with an actual or imputed, intention on the part of the officer to abandon and relinquish the office'. When an employee absents himself from duty without sanctioned leave the Authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorized. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. (see Delhi Transport Corporation vs Sardar Singh {Appeal (civil) 9600 of 2003 decided on 12 August, 2004}
15. In M/s Trina Engineering Company (P) Ltd. vs. The Secretary (Labour) & Others {2006 LLR 51} it was held that when the letters have been sent by registered post by the Management at the recorded address of the workman as given by him, it will not be necessary for the Management to produce the postman since the despatch of letters will be deemed to be proper service of the letters even when not delivered to the workman.
16. As the workman-herein has n admitted the correctness of the address hence in view of M/s Trina Engineering Company (P) Ltd. vs. The Secretary (Labour) & Others {(2006) ILLJ 307 Del} wherein it was found that the workman absented himself from the duty and did not join back the services despite of letters sent to him.

  
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17. In the case of Tejpal Vs. Gopal Narain and Sons & Anr. 2006, LLR 1142, it was held that in case workman fails to join duty after receipt of the letter of the management, he cannot be granted any relief. Same was the view in Mukesh Khanna Vs. Chandigarh Administration, Chandigarh & Anr. 2000 LLR 158.
18. The Hon'ble delhi High Court held in "Diamond Toys Co. (P) Ltd. Vs. Toofani Ram & Ors" it was laid down that in case, the workman remains absent for a long time without intimation and abandons his job, employer is not required to hold an enquiry. This was relied upon by the Hon'ble Delhi High Court in the case "Mehtab v. Municipal Corporation Of Delhi {W.P.(C) 1397/2011 decided on 20 January, 2014}
19. The workman-herein has averred that he had not applied for leave and verbally informed Shri Sukhpal, Garden Chaudhary telephonically. However, the said witness has not been examined as a witness by the workman. The workman had further admitted that no medical documents of his wife were produced by him. The cross-examination of the workman reveals:

*"It is correct that I have not worked with the management since 21.01.2010 till the date of my termination i.e. 16.07.2010. It is correct that I have not applied for leave w.e.f. 21.01.2010. Vol. I have informed Shri Sukhpal, Garden Chaudhary telephonically. It is wrong to suggest that no employee with the name of Sukhpal, Garden Chaudhary worked in the Horticulture Department of the Civil Line Zone of the management. It is correct that I have not filed any document to show that my wife was suffering from breathing disease and she was treated for the same. ..."*

20. As far as the 'leave without pay' is concerned on seeing the relevant pages of service book the workman has admitted, that he remained on leave without pay from 01.05.1991 to 31.05.1991.

*".....Relevant pages of my service book are Ex. WW-1/M-1 (colly. 9 pages). It is wrong to suggest that I remained on leave without pay for the period from 01.05.1991 to 31.05.1991, 15.12.2007 to 31.12.2007, 14.01.2008 to 11.02.2008, 17.08.2008 to 25.08.2008, 05.09.2008 to 02.07.2009. The witness is shown original service book. On seeing the same, witness states that he remained on leave without pay from 01.05.1991 to 31.05.1991. I cannot say, if I remained on leave without pay on medical ground for the period from 15.12.2007 to 31.12.2007, 14.01.2008 to 11.02.2008, 17.08.2008 to 25.08.2008 and 05.09.2008 to 02.07.2009, even after seeing my service book which is now Ex.WW-1/M-2.*

21. The management-herein has been able to drive home a point that the workman-herein avoided his police verification. The workman-herein stated the following in his cross-examination:

*"It is correct that the management had introduced biometric system of attendance. It is correct that for the said purpose, all the employees have to give their thumb impressions and thereafter, police verification of the employees was carried out. It is correct that I did not*

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*present myself for police verification. Vol. (my wife was suffering from breathing problem during that period.) She suffering from the said disease since the year 2001 till date and she is under Desi treatment but I have no documents showing her such ailment in this regard. I do not know if any Writ Petition bearing no. 854/2010 titled as Jagrook Welfare society(regd.) Vs Govt. of NCT of Delhi & Ors. Regarding those employees in MCD. I do not know if MCD has submitted any affidavit in the said matter to the effect that services of employees who were not reporting for duties and not presenting themselves for identification and verification for the purpose of Biometric Machine, would be dispensed with..."*

22. The above-said cross-examination reveals that the management-herein has been able to shake the entire case of the workman-herein. Furthermore, the management-MCD has followed the due process according to the assurance given to the Hon'ble Delhi High Court through an affidavit filed by it in the CWP No. 854 / 2010 titled "Jagrook Welfare Society (Regd.) v. Govt. of NCT of Delhi and Ors." This has been also clearly mentioned in the termination / removal order dated 16.07.2010. There is absolutely nothing to disbelieve the MCD-herein who had given assurance on affidavit to the Hon'ble Delhi High Court regarding dispensation of services of workmen placed in the similar situation. In this regard it will not be out of place to cite the judgment of the Hon'ble Delhi High Court titled "North Delhi Municipal v. Jaswant Singh {W.P.(C) 3242 of 2017 decided on 2 August, 2019} wherein the Labour Court had reinstated the workman whose services were dispensed with by the MCD in the similar fashion as in the present case. The workman-therein too, remained absent for a long time without explanation. The broad facts of the present are similar fashion. In view of the facts of the present case, admission on part of the workman-herein and the relevant case laws cited herein-above it is held that the management-herein had done enough by sending the notices and seeking reply. The termination / removal of the workman-herein is justified.

23. Thus the ISSUES No. 1 & 2 are decided against the workman and in favour of the management.


**ISSUE No.3 :Relief.**

24. The workman-herein is not entitled to any relief. No directions to the management-MCD. Matter disposed of.

Announced as per the advisory / orders of the Hon'ble High Court vide its order/letter No.R-235/RG/DHC/2020 DATED 16-05-2020 and the Amended Protocol Letter No:24/DJ/RADC.2020 dated 07-05-2020 of Ld. District & Sessions Judge-Cum-Special Judge (PC-Act),CBI, Rouse Avenue District Courts, New Delhi.

Announced through Video Conferencing.

Dated:14-08-2020



( VEENA RANI )  
Presiding Officer Labour Court  
Rouse Avenue Courts, New Delhi  
Judge Code : DL0271

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.....Management

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Present : None for the workman despite information / intimation through VC.

Sh. Vinay Kumar, AR of the management through VC.

**Vide my separate detailed AWARD the workman Sh. Satya Bir S/o Sh. Gyani is not found entitled to any relief and his claim is dismissed accordingly.**

A copy of the award be uploaded on the website of RADC. A copy of the same be also delivered to both the parties as well as to the concerned Department through electronic mode or through Dak, if possible. File be consigned to Record Room.

Announced in the open court.

Dated:14-08-2020



( VEENA RANI )

Presiding Officer Labour Court

Rouse Avenue Courts, New Delhi

Judge Code : DL0271