

**IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER  
LABOUR COURT ROUSE AVENUE COURTS , NEW DELHI**

**LIR No.- 1857/2016**

**INDUSTRIAL DISPUTE BETWEEN:-**

Smt. Kamla Devi w/o Sh. Prabhu Dayal saini  
R/o RZ-295 / 345, Gali No.4, Shiv Puri Sagar Pur,  
New Delhi-110046

Through:

All India General Mazdoor Trade Union (Regd.)  
170, Bal Mikund Khand, Giri Nagar  
Kalkaji, New Delhi-110019

.....Workman

**VERSUS**

1. M/s SDS Security Pvt. Ltd.  
AB-14B Safdarjung Enclave Market  
Near Kamal Cinema,  
New Delhi-110029
2. Managing Director M/s NEW ERA SCHOOL  
C-67, Rajouri Garden,  
New Delhi-110027

.....Management

<b>Date of Institution</b>	<b>:03-09-2013</b>
<b>Date of Final Arguments</b>	<b>:24-02-2020</b>
<b>Date of Award</b>	<b>:18-07-2020</b>

**AWARD**

1. The Workman has filed the present statement of claim under the Industrial Dispute Act. 1947, against the management-herein. The Dy. Labour Commissioner (CD), Government of NCT of Delhi vide its order No. F-24(147)/13/SWD/Lb./6341-6345 dated 19.07.13 referred an industrial dispute with the following terms of reference:

*"Whether the services of Smt. Kamla Devi w/o Sh. Prabhu Dayal Saini have been terminated illegally and / or unjustifiably by the management; and if so, what relief is she entitled?"*

  
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**VERSION OF THE CLAIMANT AS PER THE CLAIM:**

2. The claimant-herein has stated in his claim that she has been continuously working as Safai Karamchari with the management since March 2011 02.06.2006 at the last drawn wages of Rs.7,254/- per month. The claimant-herein has stated that he had been working to the satisfaction of the management without giving a chance of any complaint. However, the management kept the claimant deprived of her legal rights such as appointment letter, leave book, salary slip, attendance register, annual leave etc., double overtime rate wage, transportation allowance, earned leave etc. The claimant asked for her legal facilities which annoyed the management and the claimant-herein was terminated from the services on 04.04.2013 without any show cause notice or the charge sheet. The wages for the period 01.03.2013 till 03.04.2013 was paid to the claimant-herein. The claimant was employed with Management No.2 (New Era School) through the management no.1 (SDS Security)
3. The claimant had sent written notice dated 04.04.2013 vide Registered AD thereby demanding the legal rights but no response was given by the management.
4. The claimant has sought reinstatement along-with back wages.

**THE VERSION OF THE MANAGEMENT of M/s SDS Security**

5. The management-herein has filed the written Statement and has stated that the claimant-herein has not come with clean hands and had remained absent with effect w.e.f 1<sup>st</sup> April 2013 without any intimation or pre-sanctioned leave. The management had given so many chances to the claimant to rejoin the duty. The management has denied the version of the claimant with respect to the wages, bonus and other benefits etc. As per the WS the claimant-herein had abandoned his job on his own. The management has specifically asserted that the demands raised by the claimant are not sustainable as the workman had himself abandoned the job on his own.
6. The WS has not denied the fact of the claimant that the claimant was deployed with the M/s New Era School on 1<sup>st</sup> April 2011. As per the WS the claimant was enjoying all the legal facilities permitted under the law. The management never terminated the services of the claimant.

  
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**REJOINDER OF THE CLAIMANT:**

7. In the rejoinder the claimant has reiterated the averments of his claim and denied the version of the management-WS.

8. On the basis of the pleadings of the parties the following issues were framed :

**ISSUE No.1 : Whether the claimant abandoned the job on 01.04.2013? OPM**

**ISSUE No.2 : AS per terms of reference.**

**ISSUE No.3 – RELEIF**

**EVIDENCE OF THE PARTIES:**

9. The claimant has relied upon the following documents :

- i. Ex.WW-1/1 : Demand notice dated 04.04.2013;
- ii. Ex.WW-1/2 : Complaint to the Labour Office dated 21.10.2013;
- iii. Ex.WW-1/3: Memorandum of petition before the Asst. Labour Commissioner
- iv. Ex.WW-1/4 : Demand notice dated 04.04.2013;
- v. Ex.WW-1/5 : Postal Receipt;
- vi. Ex.WW-1/6: Postal Receipt;
- vii. Ex.WW-1/7 : A/D Card;
- viii. Ex.WW-1/8: ESIC Temporary Identification Certificate.

10. The Management has relied upon the following documents :

- i. Ex.MW-1/1 : Letter of Labour Office dated 21.10.2013

**ISSUE No.1 : Whether the claimant abandoned the job on 01.04.2013? OPM**

1. The management has not denied that the claimant was deployed with the M/s New Era School on 1st April 2011. The only defence of the management is that had remained absent with effect w.e.f 1st April 2013 without any intimation or pre-sanctioned leave. Therefore the only aspect that remains to be examined is whether the management had followed the due process or not.

2. The cross-examination of the MW-1 has revealed :

A handwritten signature in blue ink, followed by the date '18/7/2020' written in the same ink.

*“ It is correct that the workman joined with the management no.1 i.e. SDS Security Pvt. Ltd. in the month of March 2011 and lastly worked till 31.03.2013. ....The management had not sent any call letter to the workman to resume duty. Vol. Workman was called telephonically. I do not know the mobile number of the workman. No domestic enquiry has been conducted against the workman.....”*

3. In the case of Shiv Dayal Soin and Sons vs., The Presiding Officer, Labour Court in LPA 801/2002 decided on 20.12.2007, the Division Bench of the Hon'ble Delhi High Court has held in para 11 thereof which is as follows:-

*“However, it is pertinent to note that a mere accusation that the Workers had abandoned their jobs is not enough to accept the said imputation, degree of proof required to establish abandonment of service, is rather strict and the management in this case has failed miserably to discharge the said burden of proof...”*

4. Observation of the Hon'ble Supreme Court in the Case of G.T.Lad v. Chemical and Fibres of India Ltd., reported in (1979) 1 SCC 590 throws great deal of light on this aspect, The Court noted as under:

*“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 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 of 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 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'.”*

*Qee*  
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5. In Shiv Dayal Soin and Sons (supra) also relied upon in Buckingham and Carnatic Co. vs. Venkatiah AIR 1964 SC 1272 it was observed :

*“abandoning or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf and 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”.*

6. The Division Bench of The Hon'ble Delhi Court in Shakuntala's Export House (P) Ltd Vs. Secretary (Labour) MANU/DE/0541/2005 has held that abandonment amounts to misconduct which requires proper inquiry. The judgment of the Single Judge was upheld by the Division Bench is reported as 117 (2005) DLT 479. To the same effect is another judgment in MCD Vs. Begh Raj 117(2005) DLT 438 laying down that if the workman had abandoned employment, that would be a ground for holding an enquiry and passing an appropriate order and that having not been done, the action of MCD could not have been sustained.
7. The Hon'ble Supreme Court also in D.K. Yadav Vs J.M.A. Industries Ltd (1993) 3 SCC 259 has held that even where the standing orders of the employer provide for dismissing the workman from service for unexplained absence, the same has to be read with the principles of natural justice and without conducting domestic inquiry and without giving an opportunity of being heard, termination of service on the said ground cannot be effected. The same view was reiterated in Lakshmi Precision Screws Ltd. Vs. Ram Bahagat AIR 2002 SC 2914 (in this judgment Sakattar Singh mentioned below was distinguished). In V.C. Banaras Hindu University Vs. Shrikant AIR 2006 SC 2304 it was held that although laying down a provision providing for deemed abandonment from service may be permissible in law, it is not disputed that that an action taken thereunder must be fair and reasonable so as to satisfy the requirements of Article 14 of Constitution of India; if the action is found to be illogical in nature, the same cannot be sustained.
8. In M/s Fateh Chand vs Presiding Officer Labour Court & Anr. 2012 LLR 468 Delhi, our own the Hon'ble High Court observed that the management has to bring on record sufficient material to show that the employee has abandoned the service and abandonment cannot be attributed to the employee without there being sufficient evidence. On

  
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failure to report for duty, the management has to call upon the employee and if he refuses to report, then an enquiry is required to be ordered against him and accordingly action taken. In the absence of anything placed on record by the petitioner management, no presumption against the respondent can be drawn. It was held to be a case of violation of Section 25F of the Act.

9. In MCD vs Sukhbir Singh 1994 ILR 332, in case of abandonment of service, it was held that the management was duty bound to conduct an inquiry. Reference in this regard may also be made to Shakuntala Export House (P) Ltd. vs P.O. Labour Court X & Anr. 117(2005) DLT 479.
10. In view of the above discussion, it cannot be said that the workman-herein abandoned his job with the management. The management-herein has not been able to discharge their onus to show that the workmen had abandoned the job by remaining absent. This issue is decided in favour of workman and against the management. The onus to prove the ISSUE No.1 was on the management and same could not be discharged by the management.
11. Thus the ISSUE No.1 is decided in favour of the workman and against the management-herein.

**ISSUE No.2 – As per the terms of reference.**

12. Since the ISSUE No.1 has been decided in favour of the workman and against the management the present ISSUE No.2 has to be decided in favour of the workman and against the management. Accordingly, the ISSUE No.2 has to be decided in favour of the workman and against the management.

**RELIEF:**

13. The workman-herein has sought the relief of reinstatement in the service with full back wages along with the continuity of service and all the consequential benefits.
14. The term "reinstatement" has not been elucidated in the Industrial Disputes Act, 1947. The Shorter Oxford English Dictionary, Vol. II, 3rd Edition stated that, the word "re- instate" means to reinstall or re-establish (a person or thing in a place, station, condition etc.); to restore to its proper and original state; to reinstate afresh and the word "reinstatement means the action of reinstating; re-establishment. "As per Black's Law Dictionary, 6th Edition, "reinstatement" means 'to reinstall, to re-establish, to place again in a former state, condition, or office, to restore to a

  
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state or position from which the object or person had been removed'. In cases of wrongful termination of service, reinstatement with continuity and back wages is the normal rule.

15. Held by the Hon'ble Supreme Court in Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324. The concept of reinstatement was also discussed therein:

*"17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer."*

16. The services of the workman Smt. Kamla Devi w/o Sh. Prabhu Dyal Saini has been terminated illegally and / or unjustifiably by the management and Smt. Kamla Devi w/o Sh. Prabhu Dyal Saini is entitled to reinstatement with full back wages alongwith consequential benefits.

17. The ISSUE No.3 pertaining to RELIEF is decided in favour of the workman and against the management-herein with the following directions to the Management no.1 ( M/s SDS Security Pvt. Ltd.) & Management no.2 (M/s NEW ERA SCHOOL):

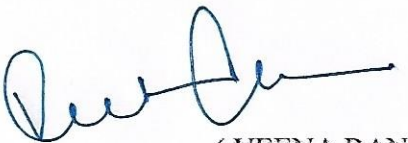
- i. Relief of reinstatement with full back wages granted / ordered from the 01.04.2013 till date as per the "last drawn of Rs.7,254/- per month" salary;
- ii. Relief of the continuity of service alongwith all the consequential benefits etc.

18. Reference answered accordingly. Disposed of with the above-said directions. Matter disposed of.

19. A copy of the award be uploaded on the website of RADDC through Incharge Computer Branch. 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.

20. 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.

Dated:18-07-2020



( VEENA RANI )

Presiding Officer Labour Court  
Rouse Avenue Courts, New Delhi

Judge Code : DL0271

Note:- Digital signature expired on 22-02-2020. Already applied for renewal but not renewed till today.

**IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT ROUSE**

**AVENUE COURTS , NEW DELHI**

**LIR No.- 1857/2016**

**INDUSTRIAL DISPUTE BETWEEN:-**

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.....Workman

**VERSUS**

1. M/s SDS Security Pvt. Ltd.
2. Managing Director M/s NEW ERA SCHOOL

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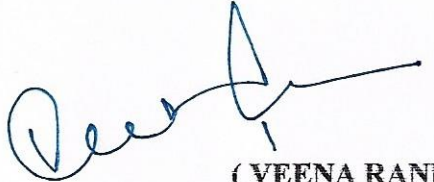
Present : Sh. Anil Rajput ARW for the workman through video conferencing had already given consent to pass final order in this case.

Sh. K.K. Pandey Authorized Representative of Management through through video conferencing had already given consent to pass final order in this case.

Vide my separate detailed AWARD the award is passed in favour Smt. Kamla Devi w/o Sh. Prabhu Dayal Saini for the relief as stated in the said AWARD. 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: 18-07-2020



( VEENA RANI )

**Presiding Officer Labour Court**

**Rouse Avenue Courts, New Delhi**

**Judge Code : DL0271**