

12.03.2010

Present:- Mr. H.K. Chaturvedi for the petitioner.

Mr. Amiet Andlay for the respondent No. 1.

Ms. Arati Mahajan Shedha for respondent no. 2/DTC.

W.P.(C.) No. 759/2010

The petitioner workman, in this writ petition, seeks directions against the respondent, being the implementing authority, to release the pay order of Rs. 10,61,394/- being the award amount realised by the SDM in recovery proceedings pursuant to industrial award dated 03.08.2004 in favour of the workman.

The award in favour of the workman had attained finality up to the Division Bench of this Court. Aggrieved from the order of the Division Bench of this Court affirming the award in favour of the petitioner workman, the Delhi Transport Corporation had preferred a Special Leave Petition before the Hon'ble Supreme Court in which the Hon'ble Supreme Court vide its order dated 08.03.2010 has allowed 50% of the amount realised by the SDM in recovery proceedings to be released in favour of the petitioner workman as an interim measure till the decision of the appeal pending before the Hon'ble Supreme Court.

The 50% amount has been ordered to be released in favour of the petitioner workman on his furnishing a personal bond with an undertaking to the respondent that in case its appeal pending before

W.P.(C.) No. 759/2010 Page 1 of 2

the Supreme Court is decided in its favour, then he will return the said amount.

In view of the above order passed by the Hon'ble Supreme Court, this writ petition is disposed of with directions to the respondent to release 50% of the award amount in favour of the petitioner workman subject to his furnishing a personal bond with an undertaking to the effect that if the appeal filed by the Delhi Transport Corporation against the order of Division Bench of this Court in L.P.A. No. 140/2008 dated 11.07.2008 is decided in favour of Delhi Transport Corporation, then he will return the said amount.

MARCH 12, 2010 S.N.AGGARWAL, J

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W.P.(C.) No. 759/2010 Page 2 of 2
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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1035/2010

Date of Decision : 2nd December, 2010

LATHA VENKATARAMAN Petitioner
Through Mr. H.K. Chaturvedi, Advocate

versus

INDIAN RENEWABLE ENERGY DEVELOPMENT
AGENCY LTD. & ANR. Respondents
Through Dr. Sarabjit Sharma, Ms. Deepti Dogra,
Mr. Arvind Kumar Adv. for R-1.
Mr. Pankaj Batra, Adv. for UOI.

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

SUDERSHAN KUMAR MISRA, J. (ORAL)

1. The respondent has raised a preliminary objection with regard to the maintainability of this petition on the principles of *constructive res judicata*. Admittedly, WP(C) No.9385/2007, seeking a similar relief, was filed before this Court which was dismissed by an order dated 4th March, 2009 to the following effect:

"After some arguments counsel for the petitioner seeks to withdraw the petition with liberty to challenge the final report of the Inquiry Officer if the same turns against the petitioner.

Reserving that liberty, the petition is dismissed as withdrawn."

2. Counsel for the petitioner seeks to urge that the aforesaid order does not amount to either *res judicata* or to *constructive res judicata* and it is open to him to file the instant petition seeking the same relief. Of course, there is no dispute that relief identical to the one sought in WP(C) No.9385/2007 has been sought in this petition also. It is the contention of counsel for the petitioner that since there was no finding given on any of the reliefs sought by the petitioner in WP(C) No.9385/2007, therefore, the dismissal of that petition was not on merits, the principle of *constructive res judicata* could not be invoked.

3. I do not agree. The aforesaid order dated 4th March, 2009 states very clearly that it has been passed after the petitioner had availed the opportunity of addressing arguments on merits in support of the reliefs sought by him. Not only that, counsel for the petitioner specifically sought permission to withdraw the petition, with liberty to challenge only the final report of the Enquiry Officer. Were it merely the case of a simple withdrawal without addressing the Court on merits at all, there would have been no question of counsel for the petitioner seeking any liberty whatsoever to raise either the whole or part of the challenge in a fresh petition. The fact that the counsel himself sought the liberty to raise only a limited portion of the challenge afresh, shows clearly that he himself was of the mind that any further challenge to the remaining reliefs would not be open to him. It is obvious that counsel for the petitioner decided to withdraw the petition once he felt that he was making no headway. As regards the challenge to the final report of the Enquiry Officer with regard to the Enquiry, which was still going on when the

order dated 4th March, 2009 was passed in WP(C) No.9385/2007, and for which liberty was granted to the petitioner, the petitioner has already moved WP(C) No.13195/2009, which has been admitted for hearing.

4. Furthermore, I also notice that after the order of 4th March, 2009 came to be passed in WP(C) No.9385/2007, the petitioner moved a CM No.16124/2009 praying for revival of the petition, particularly with regard to his challenge to the finding of the Complaint Committee for prevention of sexual harassment dated 26th July, 2006 which is also, admittedly, the scope of the instant challenge. That application was also withdrawn by the petitioner after some arguments on 6th January, 2010 with liberty to file another application, "with comprehensive facts". Admittedly, no such application was filed thereafter. The very fact of filing the said CM No.16124/2009 in WP(C) No.9385/2007 also demonstrates that the petitioner was of the mind that his challenge, in terms of the prayer sought in this petition, stands closed and it could not be revived or re-agitated except with the leave of the Court. That leave was never granted to the petitioner.

5. It would, therefore, not be appropriate for this Court to entertain the same challenge once again in a fresh writ petition.

6. Consequently, this writ petition is dismissed.

SUDERSHAN KUMAR MISRA, J.

DECEMBER 02, 2010

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CONT.CAS(C) 525/2008

**CHANDER PAL Petitioner
Through Mr. H.K. Chaturvedi with
Mr. G.M.V. Ramana,
Ms. Anjali Chaturvedi, Advocates**

versus

**SANJAY AGGARWAL and ANR Respondents
Through Ms. Gurmeet Bindra, Advocate**

**CORAM:
HON?BLE MR. JUSTICE MANMOHAN**

**O R D E R
17.03.2009**

Learned Counsel for respondent has today handed over a Pay Order bearing No. 185541 dated 2nd March, 2009 for Rs. 33,050/- drawn upon Vijaya Bank,

Service Branch Delhi towards balance Award amount. Learned Counsel for petitioner states that there is still outstanding amount under the Award. Learned Counsel for petitioner states that he would like to withdraw present contempt petition with liberty to file proceedings under Section 33C(1) of Industrial Disputes Act, 1947 for determination of outstanding amount payable to petitioner.

Consequently, present petition is disposed of as withdrawn with aforesaid liberty.

**MANMOHAN,J
MARCH 17, 2009**

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CONT.CAS(C) 114/2008

RAGHUNATH and ORS. Petitioner
Through: Mr. H.K. Chaturvedi, Advocate with
Ms. Anjali Chaturvedi, Advocate

versus

SHANKAR LAL Respondent
Through: Mr. Amit Sethi, Advocaes

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

O R D E R
20.04.2009

Learned counsel for respondent has today in Court handed over to learned counsel for petitioner four bank drafts bearing Nos. 127145, 127146, 127147 and 127148 dated 20th April, 2009 drawn on ICICI Bank Limited, Chandni Chowk Branch, Delhi-110006 for Rs.40,0000/- each, in favour of petitioner. In view of the aforesaid, present contempt petition is disposed of as having become infructuous.

MANMOHAN,J
APRIL 20, 2009
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LPA 325/2008

**SUDHI RAM Appellant
Through: Mr. H.K. Chaturvedi, Ms. Anjali
Chaturvedi, Advocates**

versus

**THE MANAGEMENT OF M/S D.N.REHANI Respondent
Through: Mr. Dhanesh Relan, Adv.**

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA**

**O R D E R
19.01.2009**

**The compromise/settlement signed by the parties and the advocates
appearing for them is taken on record and is marked 'X' for identification.
The appeal is disposed of in terms of the settlement.**

CHIEF JUSTICE

**SANJIV KHANNA, J
JANUARY 19, 2009
pk**

LPA No.140/2008

Surinder Pal ?..Appellant

Through: Mr.H.K. Chaturvedi, Advocate

Versus

Management of Delhi Transport Corporation ?Respondent

Through: Ms.Arati Mahajan Shradha, Adv.

CORAM:

HON?BLE THE CHIEF JUSTICE

HON?BLE DR. JUSTICE S.MURALIDHAR

1.Whether reporters of the local news papers be allowed to see the judgment?n

2.To be referred to the Reporter or not ?y

3. Whether the judgment should be reported in the Digest ?y

O R D E R

11.07.2008

1.Admit.

2.Learned counsel appearing for the respondent waives service. By consent the appeal is taken up for hearing.

3.This appeal is directed against the judgment and order dated 17th July, 2007passed by the learned single Judge setting aside the award of the Tribunal directing reinstatement of the workman with back wages.

4.The appellant was working as a Conductor with the respondent. He was charge-sheeted on 10th January, 1992 because of his continuous unauthorised absence from duty with effect from 18th July, 1991. An enquiry was conducted as per rules and regulations and in the enquiry the appellant was found guilty of the charge. The Depot Manager issued a show cause notice to the appellant dated 9th April, 1992 as to why he should not be removed from service and thereafter an order of termination of service of the appellant was passed. The respondent made an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (for short ?the Act?) to the Industrial Tribunal for approval of the decision of removal of the appellant from service. The Industrial Tribunal vide its order dated 10th February, 2000 held that all the ingredients of the provisions of Section 33(2)(b) of the Act are established and accorded approval to the termination of the workman. One of the issues in the approval application was legality and validity of the enquiry, which came to be decided in favour of the respondent.

5.The appellant thereafter raised an industrial dispute and filed an application before the Industrial Tribunal under Section 10 of the Act, which was numbered

as ID No.214/2001. In the ID, the Industrial Tribunal framed following issues:

1. Whether fair and proper enquiry was conducted by the management?

2. If the first issue fails whether workman has committed misconduct?

3. Whether due process was adopted while passing the order of removal and one month wages were remitted to workman?

4. As per terms of reference.?

6.The Industrial Tribunal gave a finding in respect of issue No.1 that proper enquiry was not conducted and also held the other issues against the respondent and passed the award directing reinstatement of the workman with full back wages.

7.In the writ petition filed by the respondent ? management, the learned single Judge held that since the order passed by the Industrial Tribunal under Section 33(2)(b) of the Act was not challenged by the appellant and attained finality, the issue of enquiry being fairly conducted by the respondent could not be re-

agitated and is barred by the principles of res judicata. Relying upon the observations of the Supreme Court in B.B. Coal Company v. Ram Parvesh AIR 1964 SC 486, the learned single Judge held that the Industrial Tribunal is bound by earlier findings given between the parties in respect of the same dispute and same issues. Consequently, the award of the Industrial Tribunal came to be set aside.

8.The short question which falls for our consideration is whether the findings recorded by the Industrial Tribunal regarding legality and validity of the enquiry in proceeding under Section 33(2)(b) of the Industrial Disputes Act would operate as res judicata. The plea of the respondent, which has been accepted by the learned single Judge, is that the jurisdiction under Section 33(2)(b) and Section 10 of the Act is identically the same and, therefore, any finding given in application under Section 33(2)(b) of the Act for approval for the action of termination must act as res judicata if and when such a dismissal is subject matter of any reference in a proceeding under Section 10 of the Act.

9.We are unable to agree with the view taken by the learned single Judge. The plea of res judicata has been raised and negatived in a series of judgments by the Supreme Court. In Atherton West and Company Ltd. v. The Suti Mill Mazdoor Union and others [1953-II LLJ 321] on the basis of C. (23) of the Notification of U.P. Government under the U.P. Industrial Disputes Act, 1947 as it stood at that time and corresponds to the present Section 33(i) an argument was raised that the order made by the additional Regional Conciliation Officer giving the management permission to dismiss some of the workmen was final and conclusive in regard to the appellant's fight to dismiss them from their employment and, therefore, dismissal by the appellant could not be the foundation of an industrial dispute which could be referred to the conciliation Board and the Board would have no jurisdiction to entertain the same and the award, therefore, was void. Rejecting this contention, the Supreme Court observed as follows:

16. It is clear that clause 23 imposed a ban on the discharge or dismissal of any workman pending the enquiry of an industrial dispute before the Board or an appeal before the Industrial Court and the employer, his agent or manager could only discharge or dismiss the workman with the written permission of the

Regional Conciliation Officer or the Assistant Regional Conciliation Officer concerned. Even if such written permission was forthcoming the employer, his agent or manager might or might not discharge or dismiss the workman and the only effect of such written permission would be to remove the ban against the discharge or dismissal of the workman during the pendency of those proceedings. The Regional Conciliation Officer or the Assistant Conciliation Officer concerned would institute an enquiry and come to the conclusion whether there was a prima facie case made out for the discharge or dismissal of the workman and the employer, his agent or manager was not actuated by any improper motives or did not resort to any unfair practice or victimisation in the matter of the proposed discharge or dismissal of the workman. But he was not entrusted, as the Board or the Industrial Court would be, with the duty of coming to the conclusion whether the discharge or dismissal of the workman during the pendency of the proceedings was within the rights of the employer, his agent or manager. The enquiry to be conducted by the Regional Conciliation Officer or the Assistant Regional Conciliation Officer concerned was not an enquiry into an industrial dispute as to the non-employment of the workman who was sought to be discharged or dismissed, which industrial dispute would only arise after an employer, his agent or manager discharged or dismissed the workman in accordance with the written permission obtained from the officer concerned. This was the only scope of the enquiry before the Regional Conciliation Officer or the Assistant Regional Conciliation Officer concerned and the effect of the written permission was not to validate the discharge or dismissal but merely to remove

the ban on the powers of the employer, his agent or manager to discharge or dismiss the workman during the pendency of the proceedings.

17. Once the written permission was granted by the officer concerned, the ban against the discharge or dismissal of the workman would be removed and the employer, his agent or manager could in the exercise of his discretion discharge or dismiss the workman but in that event an industrial dispute within the meaning of its definition contained in section 2(k) of the Industrial Disputes Act, 1947, would arise and the workman who had been discharged or dismissed would be entitled to have that industrial dispute referred to the Regional Conciliation Board for enquiry into the same. That right of the workman to raise an industrial dispute could not be taken away in the manner suggested by Shri C. K. Daphtary by having resort to the provisions of clauses 23 and 24(1) aforesaid. That right was given to the workman by the terms of the Industrial Disputes Act, 1947, and the Uttar Pradesh Industrial Disputes Act XXVIII of 1947, and would remain unaffected by any of the provisions hereinbefore referred to.?

10. In The Automobile Products of India Ltd. v. Rukmaji Bala and ors. [(1955) 1 LLJ 346 SC], the Supreme Court held that jurisdiction under Section 33 of the Industrial Disputes Act is only to impose a ban on the right of the employer and the only thing that the authority is called upon to do is to grant or withhold the permission i.e. to lift or maintain the ban. With regard to the scope of the enquiry under Section 33 of the Act, the Court held that the Tribunal before whom an application is made under that Section has not to adjudicate upon any

Industrial dispute arising between the employer and the workman but has only got to consider whether the ban which is imposed on the employer in matter of altering the conditions of employment to the prejudice of the workman or his discharge or punishment whether by dismissal or otherwise during the pendency of the proceedings therein referred to should be lifted. A prima facie case has to be made out by the employer for lifting of such ban and the only jurisdiction which the Tribunal has is either to give such permission or to refuse it, provided the employer is not acting mala fide or is not resorting to any unfair practice of victimisation.

11. Notwithstanding this clear position of law, an effort was again made before the Supreme Court to urge that a decision given while approving or refusing permission for dismissal would amount to res judicata in subsequent adjudication when a reference is made under Section 10. This plea was expressly negated in Lakshmi Devi Sugar Mills Ltd. v. Ram Sarup and others [(1957) I LLJ 17 SC].

12. In M/s G. Mckenzie and Co. Ltd. v. Its Workmen and others [AIR 1959 SC 389], the Supreme Court expressly rejected the argument that the findings of the State Industrial Tribunal in proceedings under section 33 of the Act which were confirmed by the Labour Appellate Tribunal barred the right of the management of the appellant company to start a fresh enquiry in respect of the same incident which formed the subject matter of the previous enquiry. The Court observed thus:

?16. There is no force in this contention, which seems to be based on a misapprehension as to the nature and scope of proceedings under section 33. That section does not confer any jurisdiction on a Tribunal to adjudicate on a dispute but it merely empowers the Tribunal to give or withhold permission to the employer during the pendency of an industrial dispute to discharge or punish a workman concerned in the industrial dispute. And in deciding whether permission should or should not be given, the Industrial Tribunal is not to act as a reviewing tribunal against the decision of the management but to see that before it lifts the ban against the discharge or punishment of the workmen the employer makes out a prima facie case. The object of the section is to protect the workmen in pending industrial disputes against intimidation or victimisation. As said above principles governing the giving of permission in

such cases are that the employer is not acting mala fide, is not resorting to any unfair labour practice, intimidation or victimisation and there is no basic error or contravention of the principles of natural justice. Therefore when the Tribunal gives or refuses permission it is not adjudicating an industrial dispute, its function is to prevent victimisation of a workman for having raised an industrial dispute. The nature and scope of proceedings under section 33 shows that removing or refusing to remove the ban on punishment or dismissal of workmen does not bar the raising of an industrial dispute when as a result of the permission of the Industrial Tribunal the employer dismisses or punishes the workmen. Atherton West and Co. Ltd. Kanpur, v. Suti Mill Mazdoor Union, 1953 S.C.R. 780 at p. 788: (AIR 1953 SC 241 at p.244); (S) AIR 1957 SC 82.

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18. As the purpose of section 33 of the Act is merely to give or withhold

permission and not to adjudicate upon an industrial dispute, any finding under section 33 would not operate as res judicata and bar the raising of an industrial dispute nor is there anything in the section itself or in the findings arrived at by the Industrial Tribunal in section 33 proceedings dated 6th June, 1954 or of the Labour Appellate Tribunal dated 29th March, 1955 which would debar the appellant company from holding the second enquiry or dismissing the workmen provided the principles above set out are complied with.?

13. Our attention is also drawn to the Division Bench judgment of this Court in *Delhi Transport Corporation v. Ram Kumar and another* [(1982) II LLJ 191 Delhi], where the Division Bench after an exhaustive consideration of the relevant decisions of the Supreme Court rejected the argument that the findings recorded under Section 33(2)(b) of the Act would operate as res judicata in industrial dispute raised by the workman under Section 10 of the Act.

14. It is thus a settled law that notwithstanding the permission accorded by the Industrial Tribunal, it is open for the workman to raise an industrial dispute under Section 10 of the Act with regard to the termination of the services for which approval had already been obtained from the Industrial Tribunal under Section 33(2)(b) of the Act. Therefore, the findings recorded in a proceeding under Section 33(2)(b) of the Act cannot operate as res judicata. The interpretation adopted by the learned single Judge would make the whole exercise of industrial adjudication under Section 10 of the Act futile and meaningless. The scope of Section 33 of the Act is extremely limited and all that is done under Section 33 of the Act is to give or refuse permission and there is no industrial adjudication by the Tribunal in those proceedings. The Tribunal is called upon to adjudicate the industrial dispute only when the matter is referred under Section 10 of the Act to the Tribunal.

15. The reliance placed by the learned single Judge on the judgment of the Supreme Court in *B.B. Coal Company v. Ram Parvesh* (supra) is completely misconceived. In that case the appeal was against the dismissal of a workman, which was referred under Section 10 of the Act. The contention on behalf of the workman was that no finding had been given by the Tribunal that the enquiry was proper and this vitiated the award and that the dismissal was mere victimization. In rejecting this the Supreme Court observed that the Tribunal had apparently held that the enquiry was proper though it has not said so in so many words in its award, nor did it find that the finding of the enquiry officer were perverse or baseless. The Court, however, also added ``that it could hardly be otherwise as it had already approved of the action taken on an application made under Section 33(2)(b) of the Act and if the enquiry had not been proper the Tribunal would not have approved of the dismissal.'' From these observations it has been inferred that if an approval has been given under Section 33(2)(b), the workman is not entitled to re-agitate the issue in Industrial Tribunal. The issue of scope of Section 33(2)(b) of the Act did not

even arise nor discussed in that case. In fact the Court came to the conclusion that the Tribunal had given a finding that the enquiry was valid though it has not said so in so many words. In our considered opinion, the view taken by the learned single Judge is against the settled law laid down by various Supreme

Court decisions both before and after the decision in B.B. Coal Company v. Ram Parvesh (supra) and notwithstanding the approval obtained under Section 33(2)(b) for the dismissal of an employee, the dispute can form the subject of an industrial dispute and of a reference under Section 10 of the Act.

16. For the forgoing reasons, the order of the learned single Judge is set aside. However, there cannot be any order as to costs.

CHIEF JUSTICE

S.MURALIDHAR

JULY 11, 2008 (JUDGE)

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W.P.(C) 6682/2008

**NARESH KUMAR Petitioner
Through Mr. H.K. Chaturvedi, Adv.**

versus

**GOVT OF NCT OF DELHI and ORS Respondent
Through Ms. Jyoti Singh with Mr. Amandeep Joshi,
Adv.**

CORAM:

**HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE SURESH KAIT**

**O R D E R
22.09.2008**

CM No. 12818/2008 (Exemption)

Allowed, subject to all just exceptions.

CM stands disposed of.

WP (C) No. 6682/2008

**Learned counsel for the Petitioner seeks leave to withdraw this writ
petition with liberty to challenge the order dated 22nd May, 2008 (page 138 of
the paper book) passed by the Executive Engineer (E), Office of Executive
Engineer (E), PWD Elect. Maint. Division M-153(NCTD), Public Works**

WP (C) No.6682/2008 page 1 of 2

Department, Government of Delhi.

Leave and liberty granted.

The petition is dismissed as withdrawn.

MADAN B. LOKUR, J

SURESH KAIT, J

SEPTEMBER 22, 2008

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5970/2008

PREM CHAND Petitioner

Through: Mr. H.K. Chaturvedi and Ms. Anjali

Chaturvedi, Advocates

versus

**D.T.C
Respondent**

Through: Mr. Sarfaraz Khan, Adv. for the applicant

CORAM:

HON'BLE MR. JUSTICE P.K. BHASIN

O R D E R

22.02.2012

CM APPL. 2287/2012

At the outset, learned counsel for the non-applicant-petitioner-workman submitted that though Rule has already been issued in the matter and the respondent-management has filed the present application seeking dismissal of this writ petition as infructuous in view of certain developments highlighted in the application but today he seeks permission to withdraw this writ petition itself since already workman has

approached the Central Administrative Tribunal with petition seeking certain reliefs which flow from the rejection of the management's application under Section 33(2)(b) of Industrial Disputes Act and also certain reliefs which he claims to be entitled to get in view of some pronouncements of the Hon'ble Supreme Court and also of this Court to the effect that whenever an approval application of the employer is rejected the workman concerned is entitled to all the benefits including that of continuity of service and in fact the workman is claiming from Central Administrative Tribunal certain reliefs on the basis of continuity of his services. It is further submitted that while permitting the petitioner to withdraw this writ petition it may also be clarified that filing of the present writ petition and its being withdrawn today will not have an adverse impact on the pending matter before the Central Administrative Tribunal.

**W.P.(C) 5970/2008 Page 1
of 2**

In view of the aforesaid submissions made by the counsel for the petitioner-workman, this application is not being pressed by the counsel for the respondent-management. This application is accordingly dismissed as not pressed. W.P.(C) 5970/2008

In view of the aforesaid submissions made by the counsel for the petitioner-workman this writ petition is dismissed as withdrawn, however, with the observation that filing and withdrawal of the present writ petition would not come in the way of disposal of the petitioner's matter before the Central Administrative Tribunal in accordance with law since this Court has not gone into the merits of this case.

P.K. BHASIN, J

FEBRUARY 22, 2012/pg

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

+ W.P.(C) 5584/2008

O.P. ARORA

..... Petitioner

Through: Mr. H.K. Chaturvedi, Mr. Anjali Chaturvedi, Mr. Sagar Chaturvedi and Mr. Shraavan Chandrashekhar, Advs.

versus

KILLICK NIXON LTD

..... Respondent

Through: Mr. Javed Ahmed and Ms. Mehvish Hameed, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **10.12.2019**

1. On the last date, learned counsel for the respondent had prayed for time to get instructions as to whether the respondent was willing to amicably settle the matter with the petitioner by paying him a reasonable compensation. It was also directed that a Responsible Officer of the respondent should remain present in Court on the next date.

2. Today, though no officer from the respondent company is present, Mr. Manowar Alam, sister concern of 'SNOWCEM PAINTS' which is claimed to be a sister concern of respondent appears and submits that the respondent is not inclined to enter not any amicable settlement with the petitioner.

3. In these circumstances, learned counsel for the petitioner prays

that the writ petition be heard on merits expeditiously.

4. Learned counsel for the respondent, however, seeks an adjournment and submits not ready with the matter. Learned counsel for the petitioner, while vehemently opposing the request, reiterate that without prejudice to his rights and contentions in the writ petition, the petitioner is willing to amicably settle the matter if he is paid a lump sum compensation of Rs.8,00,000/-, which offer is not acceptable to the respondent.

5. List for disposal on 15.01.2020. It is made clear that no further adjournment will be granted to the respondent.

DECEMBER 10, 2019
'SDP'

REKHA PALLI, J.

18.08.2009

**Present:- Mr. H.K. Chaturvedi for the petitioner.
Mr. Vinod Wadhwa for the respondents No. 1 to 3.**

W.P.(C.) No. 412/2008

The workman, Mr. Triveni Prasad, in this writ petition filed under Article 226 of the Constitution, seeks directions to respondents No. 1 and 2 that they should implement the award dated 08.11.2002 passed by the Industrial Adjudicator in his favour by which he has been directed to be reinstated in the service of respondent No. 4 with 50% back wages.

Respondent No. 2 in response to notice of this writ petition has filed its counter-affidavit and has set out the steps taken by him for execution of the above-referred award in favour of the workman. Respondent No. 3 being the S.H.O. of P.S. Malviya Nagar has also filed his Status Report on record to state that the Warrant of Arrest issued against the proprietor of the respondent No. 4 firm could not be executed for want of his complete address and also for want of his whereabouts.

Mr. H.K. Chaturvedi, learned counsel appearing on behalf of the petitioner, submits that his client will furnish the present correct address of the management to the respondents No. 1 and 2 and he prays that necessary directions may be given to respondents No. 1 and 2 that they should execute the award in favour of the workman at the new address of the management of respondent No. 4 to be made available to them by the petitioner.

W.P.(C.) No. 412/2008 Page 1 of

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Mr. Vinod Wadhwa, learned counsel appearing on behalf of the respondents No. 1 and 2, submits that in case, the present correct address of the management of respondent No. 4 is given by the workman along with details of his assets, then respondents No. 1 and 2 will take all necessary steps that will be required in law for implementation of the award in favour of the workman.

In view of the above, this writ petition is disposed of with directions to respondents No. 1 and 2 to take necessary steps for implementation of the award dated 08.11.2002 in I.D. No. 336/1998 in favour of the petitioner on his furnishing the present correct address of the management of respondent No. 4 along with the details of assets owned by respondent No. 4 which can be used for recovery of the amount due to the petitioner in terms of the above-referred award.

AUGUST 18, 2009 S.N.AGGARWAL, J

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25.04.2008

**Present: Mr.H.K.Chaturvedi for the petitioner.
Mr.Mukesh Gupta for the respondent.**

W.P.(C) No.2215/2008

Issue notice to the respondent. Mr.Mukesh Gupta appears for the respondent i.e SDM, Model Town, Assistant Collector-II, Rampura, Delhi. With the consent of both the Advocates this writ petition is taken up for final hearing.

It is contended by the writ petitioner that pursuant to an award dated 21.7.2003 the management was directed to reinstate the writ petitioner with full back-wages. It was further directed that the writ petitioner be paid salary @ Rs.1400/- per month or minimum wages whichever is higher as fixed by the appropriate Govt. from time to time for that post i.e post of Power Press Man. In the operative part of the award it has also been directed that in the event the management fails to do the same within a period of three months, the writ petitioner shall be entitled to interest @ 9% p.a from the date of publication of the award.

It is the contention of the writ petitioner that the Deputy Labour Commissioner on 21.9.2005 had issued a recovery certificate directing the respondent i.e District Collection Officer to recover a sum of Rs.1,40,603/- with respect to his dues for the period 11.10.1999 to 28.12.2003. It is contended by the writ petitioner that till date no steps have been taken by the District Collection Officer i.e the respondent, as directed by the Deputy Labour Commissioner under the provisions of Section 33C-(1) of the Industrial Disputes Act which empowers recoveries as indicated in the recovery certificate as arrears of land revenue.

Per contra Mr.Mukesh Gupta who appears on behalf of the respondent submits that the management had misled the concerned officer by placing on record the order of the High Court of Delhi in CWP No.7143/2005 whereby the management projected that the said order dated 8.5.2007 applied to the present writ petition. It is also contended by Mr.Mukesh Gupta, Advocate that in discharge of his duties, as a matter of fact, the warrants of arrest had been issued on 23.10.2006, however, in view of the fact that the aforesaid order was filed by the respondent had stayed its hand and hence did not take further coercive measures against the management.

In view of the fact that it is now come to light that the management has misled the respondent, the Advocate for the respondent Mr.Mukesh Gupta assures the Court that he would take steps as required under the law with expedition.

In view of the assurance given by the counsel for the respondent, I am of the opinion that no further orders are called for.

**However, liberty is given to the writ petitioner to approach this Court in case the respondent fails to discharge his duties within a reasonable period not exceeding four weeks from today.
The writ petition stands disposed of.
Dasti to both the parties.**

**APRIL 25, 2008 RAJIV SHAKDHER, J
mb**

IN THE HIGH COURT OF DELHI AT NEW DELHI

17.04.2009

Present: Mr. H.K. Chaturvedi for the petitioner.

W.P.(C) No. 2071/2008

**There is no ground to entertain the present petition.
Dismissed.**

**April 17, 2009 KAILASH GAMBHIR, J.
mg**

40#

IN THE HIGH COURT OF DELHI AT NEW DELHI

10.03.2008

Present: Mr.H.K. Chaturvedi, Advocate for the petitioner.

Mr.Sanjay Bhatt, Advocate for respondent No.1.

W.P.(C) No.1633/2008

Adjourned at the request of counsel for the respondent who appears on advance notice.

List on March 17, 2008.

March 10, 2008 ANIL KUMAR, J.

'Dev'



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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	CONT.CAS(C) 44/2007 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	ANIL KUMAR Vs. ANSHU KUMAR Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 20/04/2007
Page : 1			

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Search Result For Type :CONT.CAS(C) No :120 year :2007" are : 1

S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	CONT.CAS(C) 120/2007 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	BAWAR LAL Vs. ANSHU KUMAR CHAIRMAN D.T.C. Advocate : MR.H.K.CHATURVEDI	DISPOSED OFF on 24/04/2007
Page : 1			

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LPA 370/2007

**BED RAM Appellant
Through Mr.H.K.Chaturvedi, Advocate**

versus

MANAGEMENT OF LALA RAM SWARUP Respondent

Through none

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

O R D E R

07.08.2007

This appeal is directed against the order dated 2nd March, 2007 as also the order dated 14th October, 2004 passed by the learned Single Judge dismissing the review application as also the writ petition filed by the appellant.

By filing this appeal, the appellant has challenged the findings recorded by the learned Single Judge that there was no espousal of the cause of the appellant-workman by the union. It was held by the learned Single Judge that what was espoused by the workman was an individual dispute and was not an industrial dispute within the provisions of Section 2(k) of the Industrial Disputes Act. While coming to the aforesaid conclusion, the learned Single Judge has considered the entire records with particular reference to the Ex.WW1/X1, which letter was relied upon by the appellant in support of the contention that cause of the appellant was espoused by the union. The learned Single Judge has held that the said letter does not in any manner support the contention of the appellant as the said letter was issued subsequent to the order of reference by the appropriate government, which is dated 8th January, 1998, whereas the aforesaid letter is dated 3rd February, 1998.

The aforesaid findings are challenged before us by the learned counsel appearing for the appellant. The counsel for the appellant now seeks to rely upon another document which is placed on record. It is, however, an admitted position that said document was never exhibited and was not filed before the learned Labour Court and was never referred to and relied upon for the purpose of supporting the case of the appellant that the union had espoused the cause of the workman. What was relied upon was Ex.WW1/X1, which letter is dated 3rd February, 1998 and was issued subsequent to the order of reference by the appropriate government which is dated 8th January, 1998. Therefore, the findings arrived at by the learned Single Judge are legal and valid. The learned Single Judge has also given cogent reasons for coming to the conclusion, which is assailed herein.

The appeal fails on the aforesaid ground itself, which stands dismissed.

CHIEF JUSTICE

SANJIV KHANNA, J

AUGUST 07, 2007

nm

LPA 35/2007

CHHATHOO LAL Appellant
Through Mr. H.K. Chaturvedi, Advocate.

versus

MANGT. OF GORAMAL HARIRAM LTD. Respondent

Through

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

O R D E R

16.01.2007

1. This appeal is directed against the judgment and order dated 5th December, 2006 whereby the learned single Judge dismissed the writ petition filed by the appellant-petitioner as against the award of the learned Labour Court No. II answering the reference made to it in favour of the management-respondent.

2. Alleged termination of service of the appellant by M/s Goramal Hariram Limited-the management, led to the appellant raising an industrial dispute which was referred to Labour Court by the appropriate Government on the following terms of reference:-

?Whether the termination of the services of Sh. Chhathoo Lal is illegal and/or unjustified and if so, to what relief, is he entitled and what directions are necessary in this respect.?

3. Statement of claim was filed by the workman. The management in it's reply raised a number of preliminary objections including an objection that there was no employer and employee relationship between the parties and that the appellant was engaged by an independent contractor. The learned Labour Court framed three issues, which read as under:-

(i)Whether there is no relationship of employer and employee between the management and the workman as stated in Para 1 of the Preliminary Objection of the Written Statement? If so, its effect?

(ii) As in terms of reference?

(iii) Relief

4. Both the parties led evidence before the learned Labour Court and thereafter the learned Labour Court heard the learned counsel appearing for the parties and decided the reference, holding that the appellant-workman had failed to prove that he was employed by the management and employer and employee relationship existed between the parties. It was also held that the management had led cogent and convincing evidence that the appellant/workman was employed by the contractor, Mr. Parvesh Kumar Nayyar. Consequently, the learned Labour Court answered the reference in favour of the management and against the workman.

5. Being aggrieved by the aforesaid judgment and order, writ petition was filed in this Court by the appellant herein. By the impugned judgment the writ petition has been dismissed. The findings of the learned single Judge are assailed by the counsel appearing for the appellant. It is submitted by him that there is substantial evidence on record to prove and establish that the appellant was a direct employee of the respondent management, in the nature of EPF slip and ESI card. It is also submitted by him that direct relationship of employer and employee having been established, the award as also the judgment and order passed by the learned single Judge are liable to be set aside and quashed. We have considered the aforesaid submissions in the light of the records placed along with the appeal.

6. The Labour Court has considered the entire evidence including EPF slip and ESI card. Several witnesses were examined by both the parties. The learned Labour Court specifically referred to the cross-examination of the appellant herein, leave applications as well as letters written by the appellant to the contractor-Mr. Parvesh Kumar Nayyar to hold that the appellant was not an employee of the respondent. Exhibits WW1/M1 to WW11/M11 show that appellant was actually employed by the contractor for doing packing work. The contractor Mr. Parvesh Kumar Nayyar was also examined in the proceedings as MW1. He deposed that the appellant was his employee. He also proved on record the registration certificate issued under Section 7 of The Contract Labour (Regulation and Abolition) Act, 1970 by the concerned authority as Exhibit M1/1. The aforesaid M1/1 was issued to the management on 17th February, 1996, much prior to the employment of the appellant-workman. The learned Labour Court after considering the entire evidence on record came to the conclusion that the appellant had failed to prove his direct relationship of employer and employee with the

management. It was also found by the learned Labour Court that the appellant was employed by a contractor.

7. Learned single Judge has upheld the aforesaid findings and the facts found by the learned Labour Court. It was held that there was no direct employer and employee relationship between the appellant and the respondent. We are not inclined to interfere with the aforesaid findings and conclusions of the Labour Court and learned single Judge. Findings of the Labour Court are factual and based on evidence and material produced before the said court. We find that the reference made by the appropriate Government at the instance of the appellant was mis-conceived for the reason that there was no employer and employee relationship between the appellant and the management. Naturally, therefore, the reference had to be answered in favour of the management as there

could have been no termination of service of the workman by the management. The subsequent attempt of the appellant to get the matter decided under Section 10 of The Contract Labour (Regulation and Abolition) Act, 1970 is beyond the purview of the terms of reference.

8. We find no infirmity in the order passed by the learned single Judge, the appeal has no merit and is dismissed.

CHIEF JUSTICE

SANJIV KHANNA, J

JANUARY 16, 2007

VKR

IN THE HIGH COURT OF DELHI AT NEW DELHI

04.03.2009

**Present: -- Mr. H.K. Chaturvedi, Mr. G.M.V. Ramana and Ms. Anjali Chaturvedi
Advocates for petitioner.**

Mr. Abhishek Kumar, Advocate for R-1 and R-2.

W.P.(C) No.9385/2007

**After some arguments counsel for the petitioner seeks to withdraw
the petition with liberty to challenge the final report of the Inquiry Officer
if the same turns against the petitioner.**

Reserving that liberty, the petition is dismissed as withdrawn.

Dasti.

March 04, 2009 KAILASH GAMBHIR, J.

Pkv

33#

W.P.(C) 8991/2007

**SANNAM SINGH Petitioner
Through: Mr. G.M.V. Ramana, Adv.**

versus

**COLLECTOR and ORS Respondent
Through: Mr. Daiyan Hussain for Mr. V.K. Tandon, Adv.
Mr. Raavi Birbal, Adv.**

**CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**

**O R D E R
05.12.2008**

Counsel for the parties submit that the parties to the present writ petition have arrived at a settlement agreement dated 9th October, 2008 with the assistance of the Delhi High Court Mediation and Conciliation Centre. In terms of the aforesaid settlement the petitioner-workman has agreed to receive an amount of Rs.1,75,000/- in full and final settlement of all his claims.

I see no legal impediment in the settlement arrived at between the parties.

Counsel for the petitioner, therefore, seeks leave to withdraw the writ petition in terms of the aforesaid settlement arrived at between the parties. The writ petition is disposed of as having been settled.

SIDDHARTH MRIDUL, J.

**DECEMBER 05, 2008
mk**

27.08.2009

**Present:- Mr. S.K. Kalia for the petitioner.
Mr. H.K. Chaturvedi for the respondent.**

W.P.(C.) No. 8209/2007

The workman in this writ petition filed against the management is aggrieved by the inadequacy of compensation of Rupees One Lakh awarded to him by the Industrial Adjudicator vide impugned award dated 07.07.2006. This amount was awarded to him in lieu of his claim for reinstatement and back wages after alleged termination of his services by the management of the respondent w.e.f. 09.03.2000 after he had worked for about 16 years with the respondent No. 1 management. The petitioner has prayed for his reinstatement and back wages. The management of respondent has also filed a separate writ petition being W.P. (C.) No. 6473/2008 against the same award of the Industrial Adjudicator dated 07.07.2006 and the management seeks setting aside of the said award on the ground of perversity.

Both these petitions filed by the parties against each other have been taken up for hearing together. In the course of hearing, counsel for both the parties have agreed for passing of a consent order. The petitioner being the workman is present in Court. Mr. S.K. Kalia, learned counsel appearing on behalf of the management is stated to have taken instructions from his client.

W.P.(C.) No. 8209/2007 page 1 of 2

Mr. H.K. Chaturvedi, learned counsel appearing on behalf of the petitioner, submits that his client will not press the present writ petition in case the award amount of Rupees One Lakh deposited by the management of the respondent with this Court pursuant to interim order dated 26.11.2007 is released in favour of his client.

Mr. S.K. Kalia, learned counsel appearing on behalf of the management on instructions from his client, submits that the Court may release the amount of Rupees One Lakh deposited by the respondent pursuant to Court order dated 26.11.2007 in favour of the petitioner along with accrued interest, if any, and his client also does not want to press the writ petition being W.P.(C.) No. 6473/2008 filed against the petitioner workman.

In view of the above submissions made by the counsel for the parties, both these writ petitions are disposed of as not pressed in view of the compromise arrived at between the parties. The Registry is directed to release the amount of Rupees One Lakh deposited by the respondents pursuant to Court order dated 26.11.2007 in favour of the petitioner along with accrued interest, if any, forthwith. The parties are left to bear their own costs.

A copy of this order be kept in the file of W.P.(C.) No. 6473/2008 which has also been disposed of by this common order.

AUGUST 27, 2009 S.N.AGGARWAL, J

'bsr'



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1.	W.P.(C) 7494/2007 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	ANIL KUMAR & ORS Vs. M.C.D. Advocate : H.K.CHATURVEDI	Court No. : 13 DISPOSED OFF on 31/03/2009
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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 7385/2007

RAMESH KUMAR RAWAT Petitioner

Through: Mr. H.K. Chaturvedi, Advocate.

versus

MANGT. OF NORTHERN SCALES CO. Respondent

**Through: Mr. D.G. Singh and Ms. Yasmin Zafar,
Advs.**

CORAM:

HON'BLE MR. JUSTICE P.K. BHASIN

O R D E R

02.11.2011

Since no settlement has been arrived at between the parties the writ petition with the consent of the parties itself has been heard finally today.

Judgment reserved.

P.K. BHASIN, J

NOVEMBER 02, 2011

nk

1

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 7021/2007

**RAJ BAHADUR SINGH and ANR. Petitioner
Through : Mr. H.K. Chaturvedi, Advocate**

versus

**MANGT. OF SWAHNEY GAS AGENCY Respondent
Through : Mr. N.K. Jha, Advocate**

**CORAM:
HON'BLE MS. JUSTICE VEENA BIRBAL**

**O R D E R
22.04.2010**

**There is a possibility of settlement. Workers are present in court.
Let authorized representative of management be present in court on the
next date.**

Renotify on 04.05.2010.

**VEENA BIRBAL, J
APRIL 22, 2010
kks**

21.

IN THE HIGH COURT OF DELHI AT NEW DELHI

11.05.2009

Present: -- Mr. H.K. Chaturvedi, Advocate with Mr. Anjali Chaturvedi, Advocate for petitioner.

Mr. Shashank , Advocate for respondent.

W.P.(C) No.6211/2007

Pleadings are complete.

List for final disposal on 19.11.2009.

May 11, 2009 KAILASH GAMBHIR, J.

pkv

BB-37#

29.02.2008

Present: Mr. H.K. Chaturvedi and Mr. S.M. Krishnan, Advocates for the petitioner.

Mr. Daiyan hussain and Mr. Som Dutt Kaushik, Advocates for respondents Nos. 1 and 2.

Mr. Lalit Gupta, Advocate for respondent No.3.

W.P.(C) No.5510/2007

In the writ petition filed by respondent No. 3 being W.P.(C).No.1667/2008 award dated 29th January 2004 has been stayed in respect of which the enforcement is sought in the present writ petition.

The bailable warrants were issued to respondent No.3, Umesh Chand Srivastava, who is present today.

Considering that the respondent No.3 has appeared today and in writ petition filed by him, the operation of the impugned award has been stayed, the bailable warrants issued against respondent No.3 are discharged. Mr. Vinay Kumar Garg, Advocate, is also present. Presence of Mr. Vinay Kumar Garg on future dates is also dispensed with as respondent No.3 is now represented by Mr.Lalit Gupta, Advocate.

In the facts and circumstances, learned counsel for the petitioner seeks to withdraw the petition with liberty to file an appropriate application in case the award is upheld and the same is not executed by the concerned authorities.

W.P.(C) No.5510/2007 Page 1 of 2

Dismissed as withdrawn with the liberty as prayed for.

February 29, 2008 ANIL KUMAR, J.

'Ag'

W.P.(C) No.5510/2007 Page 2 of 2

IN THE HIGH COURT OF DELHI AT NEW DELHI

11.02.2008

Present: Mr.H.K. Chaturvedi, Advocate for the petitioner.

W.P.(C) No.4690/2007

Learned counsel for the petitioner states that the Labour Court could not go beyond the scope of the reference and could not consider the question of territorial jurisdiction which was not referred.

Issue show cause to the respondent as to why rule nisi be not issued by ordinary process and registered AD post on petitioner taking steps within one week, returnable on August 27, 2008.

February 11, 2008 ANIL KUMAR, J.

'Dev'

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3844/2007 and CM Appl. No. 3695/2008

MEHAR SINGH Petitioner

Through : Mr. H.K. Chaturvedi, Ms. Anju Chaturvedi and Mohd. Aqil Saifi, Advs.

versus

D.T.C. Respondent

Through : Ms. Arati Mahajan Shedha, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

O R D E R

05.08.2013

1. Petitioner was working as a Driver with the respondent ? Delhi Transport Corporation (DTC). A departmental enquiry was held against the petitioner on the following charges:-

?you were caught stealing tyre ring at about 6:40 hours on 23/12/89 from the depot workshop. Whereas at that time you were not also on duty from which it is clearly apparent that you came to the depot with the intention of stealing.?

2. The petitioner participated in the enquiry. He was afforded opportunity to defend himself. Two Security Guards, namely, Sh. Sultan Singh and Sh. Rajbeer Singh, who had caught the petitioner red-handed, were examined by the respondent. They supported the respondent on the above charge. Shri Rajbeer Singh even stated that petitioner was handed over to the police. Petitioner did not examine any witness in his defence. Enquiry Officer gave his report against the petitioner which was accepted by the Disciplinary Authority and the petitioner was terminated.

3. Approval under Section 33(2)(b) of the Industrial Disputes Act, 1947 (the Act for short) was sought which was given by the Labour Court on 19th July, 1993.

4. Only thereafter, petitioner raised the present industrial dispute which was referred by the Secretary (Labour) to the Labour Court in the following terms:

?Whether the punishment of removal from the services imposed upon Sh. Mehar Singh S/o Sh. Rai Singh by the management vide its order dated 12.11.90 is illegal and/or unjustified and if so to what relief is he entitled and what directions are necessary in this regard??

5. By the award impugned in this writ petition under Article 226 of

the Constitution of India, Industrial Adjudicator has held that enquiry was held in a fair and proper manner. It is further held that the petitioner was rightly terminated by the respondent. Industrial Adjudicator has returned a categorical finding that the principles of natural justice were followed. Due opportunity was given to the petitioner to defend himself in the enquiry proceedings. He was afforded opportunity to defend himself through his co-worker but he declined for appointment of Defence Assistant. Industrial Adjudicator has also perused enquiry proceedings Ex. MW1/3 and the report and has returned a finding that no perversity is there in the enquiry report.

6. I do not find any jurisdictional error in the view taken by the Industrial Adjudicator. Enquiry report is on record which has also been perused by me and I do not find it to be perverse. It is not the case that the report is based on no evidence or there had been any violation of principles of natural justice. I also do not find any apparent error of law in the findings returned by the Industrial Adjudicator which is based upon scrutiny of material placed before him.

7. Writ petition is dismissed. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

AUGUST 05, 2013

rb

IN THE HIGH COURT OF DELHI AT NEW DELHI

11.02.2008

Present: Mr.H.K. Chaturvedi, Advocate for the petitioner.

W.P.(C) No.3220/2007

Learned counsel for the petitioner contends that since the registered office of the petitioner was at Delhi, therefore, part of the cause of action arose at Delhi and courts at Delhi will also have jurisdiction besides the plea of the petitioner that the Labour Court could not go beyond the scope of the reference.

Issue show cause to the respondent as to why rule nisi be not issued by ordinary process and registered AD post on petitioner taking steps within one week, returnable on August 27, 2008.

February 11, 2008 ANIL KUMAR, J.

'Dev'

13.03.2008

**Present: Mr.H.K.Chaturvedi, Advocate for the petitioner along with Ms.Sunita Thakur, petitioner in person.
Mr.Vijay Sharma, Advocate for the respondent.**

W.P.(C) No.221/2007

The report from the Delhi High Court Mediation and Conciliation Centre dated 26th February, 2008 reflects that the parties have settled their matter and under the settlement the workman has agreed to accept Rs.1,05,000/- in full and final settlement of all her claims against the respondent management. An amount of Rs.55,000/- has been paid to the petitioner workman vide banker's cheque No.010076 dated 12th March, 2008 drawn on HDFC Bank, New Delhi and another cheque for Rs.50,000/- bearing No.010077 dated 12th March, 2008 drawn on HDFC Bank has also been paid. Both the cheques have been handed over to the petitioner workman in the presence of the counsel for the petitioner.

In view of the settlement and the payment of the amount of Rs.1,05,000/- to the petitioner workman in full and final settlement of all the claims no further orders are required.

The writ petition is disposed of in terms of the settlement arrived at between the parties. All the pending applications are also disposed of.

March 13, 2008 ANIL KUMAR, J.

?K?

25.03.2010

**Present:- Mr. H.K. Chaturvedi for the petitioner.
Mr. J.S. Bhasin for the respondent.**

W.P.(C.) No. 1964/2007

The petitioner had joined service in DTC as Conductor in 1982. He was terminated from service w.e.f. 05.02.1991. In challenge to his termination made by him, he was ordered to be reinstated with full back wages vide industrial award dated 13.09.2002. The management of the DTC challenged the said award in writ petitions being W.P.(C.) No. 6254/2003 and W.P.(C.) No. 3883/2000 and in these writ petitions, this Court vide its order dated 03.03.2004 directed the management of the DTC (respondent herein) to take the petitioner back on duty. In compliance with the order of this Court dated 03.03.2004, the petitioner was reinstated in service by the respondent vide order dated 01.06.2004. The reinstatement of the petitioner was subject to the final outcome of the writ petitions being W.P.(C.) No. 6254/2003 and W.P.(C.) No. 3883/2000. Both these writ petitions being W.P.(C.) No. 6254/2003 and W.P.(C.) No. 3883/2000 were finally disposed of by this Court vide its order dated 13.12.2004 setting aside the award dated 13.09.2002 and the dispute was remanded back to the Labour Court for fresh adjudication. However, the petitioner continued to work with W.P.(C.) No. 1964/2007

page 1 of 4

the respondent even during the period case was pending before the Labour Court pursuant to remand order of this Court dated 13.12.2004. He is working with respondent since the date he was reinstated, i.e., 04.06.2004 till date. In the meanwhile, pursuant to remand order of this Court dated 13.12.2004, the Labour Court passed a fresh award dated 12.07.2006 by which it directed the management of the respondent to reinstate the petitioner with 50% back wages for the period from 03.12.2004 to 12.07.2006, i.e., up to the date of the award. This award dated 12.07.2006 is subject matter of challenge by the petitioner workman in the present writ petition.

The management of the respondent Corporation, aggrieved by the order of reinstatement and payment of 50% back wages to the petitioner, had also challenged the award dated 12.07.2006 in W.P.(C.) No. 2556/2007. This writ

petition filed by the management being W.P.(C.) No. 2556/2007 was dismissed by the Single Judge of this Court on 04.04.2007. Aggrieved therefrom, the respondent Corporation had filed a Letters Patent Appeal being L.P.A. No. 346/2007 which has been dismissed by the Division Bench of this Court vide its order dated 25.07.2008. The order of the Division Bench in L.P.A. No. 346/2007 is Annexure P-3 at pages 59-62 of the paper book. The Division Bench vide its order dated 25.07.2008 has upheld the reinstatement of the petitioner with 50% back wages.

W.P.(C.) No. 1964/2007

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The grievance of the petitioner in the present writ petition is in regard to the relief given to him by the Court below in the impugned award dated 12.07.2006 regarding 50% back wages for the period from 03.12.2004 till the date of award, i.e., 12.07.2006.

Mr. H.K. Chaturvedi, learned counsel appearing on behalf of the petitioner, contends that the services of the petitioner were terminated by the respondent in 1991 and he was reinstated in service w.e.f. 03.06.2004 and, therefore, according to him, the petitioner is entitled for full wages with effect from the date he was reinstated instead of 50% wages awarded to him for the period from 03.12.2004 till 12.07.2006.

Mr. J.S. Bhasin, learned counsel appearing on behalf of the respondent Corporation, does not dispute that the petitioner was reinstated in service pursuant to orders of this Court w.e.f. 04.06.2004 and since then he is continuously working with the respondent Corporation. In view of this admitted fact, the petitioner workman is entitled for full wages for the period from the date of his reinstatement, i.e., 04.06.2004 as he is actually working with the respondent since that date. The benefit of 50% back wages awarded to the petitioner vide award dated 12.07.2006 as upheld by the Division Bench in L.P.A. No. 346/2006 is relatable for the period from the date of his illegal termination, i.e., 05.02.1991 till the date of his reinstatement, i.e.,

04.06.2004

W.P.(C.) No. 1964/2007

page 3 of 4

In view of the foregoing, the impugned award is modified to the extent that the petitioner workman shall be entitled to 50% back wages for the period from the date of his termination, i.e., 05.02.1991 till the date of his reinstatement, i.e., 04.06.2004 and after 04.06.2004, he shall be entitled to full wages admissible to him under the Rules.

The parties are left to bear their own costs.

This writ petition is allowed and stands disposed of in terms referred above.

MARCH 25, 2010 S.N.AGGARWAL, J

'BSR'

W.P.(C.) No. 1964/2007

page 4 of 4

50.

16.12.2009

**Present:- Mr. Sanjoy Ghosh for the petitioner.
Mr. Amit Bhasin for respondent No. 1.
Mr. A.S. Singh for respondent No. 2.**

W.P.(C.) No. 980/2006

This writ petition filed by the workman is directed against an interim order of the Labour Court dated 26.11.2005 by which it has reviewed its earlier order dated 16.11.2004

Mr. Sanjoy Ghosh learned counsel appearing on behalf of the petitioner seeks permission of the Court to withdraw the present writ petition with liberty

to challenge the final award, if it comes against the workman, on all such grounds as may be available to him in law including the grounds taken by him in the present writ petition against the interim order dated 26.11.2005.

In view of the above, this writ petition is dismissed as withdrawn reserving the liberty as prayed for.

DECEMBER 16, 2009 S.N.AGGARWAL, J

'a'

W.P.(C) 9645/2006

BACHCHAN Petitioner

Through: Mr. G.M.V. Ramana, Adv.

versus

THE COLLECTOR and ORS. Respondent

Through: Mr. Daiyan Hussain for Mr. V.K. Tandon, Adv.

Mr. Raavi Birbal, Adv.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

O R D E R

05.12.2008

Counsel for the parties submit that the parties to the present writ petition have arrived at a settlement agreement dated 9th October, 2008 with the assistance of the Delhi High Court Mediation and Conciliation Centre.

In terms of the aforesaid settlement the petitioner-workman has agreed to receive an amount of Rs.1,75,000/- in full and final settlement of all his claims.

I see no legal impediment in the settlement arrived at between the parties.

Counsel for the petitioner, therefore, seeks leave to withdraw the writ petition in terms of the aforesaid settlement arrived at between the parties.

The writ petition is disposed of as having been settled.

SIDDHARTH MRIDUL, J.

DECEMBER 05, 2008

mk

W.P.(C) 8027/2006

**CHAMPA DEVI Petitioner
Through Mr. H.K. Chaturvedi Advocate**

versus

**LT.GOVERNOR OF DELHI and ORS. Respondent
Through Ms. Zubeda Begum Advocate**

CORAM:

HON'BLE MR. JUSTICE S.RAVINDRA BHAT

O R D E R

10.05.2006

Counsel for petitioner seeks liberty to withdraw this petition and approach the Civil Court in appropriate Civil proceedings seeking inter alia a declaration as to the status of the petitioner as the lawful wedded wife of late Mr. Hari Ram. It is the petitioner's claim that she had married him some time in 1994.

Learned counsel for petitioner also submits that the MCD would be impleaded in the said civil proceedings/suit. Needless to say that in such an event, decree would be binding on the MCD.

Liberty granted. The Writ Petition is dismissed as withdrawn.

S.RAVINDRA BHAT, J

MAY 10, 2006

rs



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Search Result For Type :W.P.(C) No :4496 year :2006* are : 1			
S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 4496/2006 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	GOPAL @ SHRAVAN KUMAR Vs. MANGT. OF DELHI TOURIST TRANSP Advocate : MR.H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 24/03/2006
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W.P.(C) 3960/2006

**DALBIR SINGH Petitioner
Through Mr. H.K.Chaturvedi, Adv.**

versus

**MANGT. OF D.T.C. Respondent
Through Mr. Ajay Kapur, Adv.**

**CORAM:
HON'BLE MR. JUSTICE S.RAVINDRA BHAT**

**O R D E R
24.03.2006**

1. Issue notice. Mr. Kapur accepts notice and submits that no reply is required in these proceedings and he has instructions to make submissions on the merits.

2. The Applicant claims directions to the Respondent (hereafter called as 'the DTC?'). He joined the services of the DTC in 1980 as a Driver. Whilst in service, on 30.7.2004 he met with an accident which led to a fracture of his right hand. He claims that after treatment, on 27.6.2005 the Petitioner was declared fit by Rao Toola Ram Memorial Hospital which is a Government institution.

3. Counsel submits that in the interregnum period between 30.6.2004 and 7.1.2006, the Petitioner was asked to report to the Medical Board from time to time and on each occasion he was advised rest. It is also claimed that the Petitioner was deprived of salary and allowances for the past many months.

Contd...2...

: 2 :

4. The Petitioner has relied upon provisions of Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which entitles a disabled employee to non-discriminatory rights, particularly protection of his salary and allowances irrespective of whether he can perform the task assigned to him by the employer in his normal post. It is

also contended that by virtue of that provision the employee is under an obligation to continue the employee in the same pay and allowances and adjust the employee in some other duties. Learned counsel for the Respondent submits that the Petitioner may approach the DTC with an appropriate representation which would be duly and reasonably considered having regard to the facts of this case as expeditiously as possible.

5. In the light of the above submissions, it is open to the Petitioner to

approach the DTC within two weeks. The DTC shall pass appropriate order as to the employment of the Petitioner within four weeks of receipt of such representation. In case the Petitioner is held entitled to some other duties, the DTC shall take into consideration its application under Section 47 of the Act as regards pay and allowances including the entitlement of the Petitioner for the interregnum period.

The petition is disposed off in terms of the above directions. No costs.

S.RAVINDRA BHAT, J

MARCH 24, 2006

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C.) No. 3387-88/2006**
% **Date of Decision: 27th August, 2009**
SHRI RAM KISHAN & ANOTHER PETITIONERS
! Through: Mr. H.K. Chaturvedi, Advocate.

VERSUS

\$ THE MANAGEMENT OF M/S AMERICAN EXPRESS BANKING CORPORATION AND ANOTHERRESPONDENTS
^ Through: Mr. Raj Birbal, Sr. Advocate with Ms. Raavi Birbal , Advocate.

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not?**YES**
3. Whether the judgment should be reported in the Digest?**YES**

S.N.AGGARWAL, J (ORAL)

The workmen in this writ petition filed under Article 226 of the Constitution are aggrieved by two separate orders both dated 21.11.2003 passed by the Central Government declining to refer the dispute raised by them with regard to their alleged termination for adjudication to the Central Government Industrial Tribunal.

2. Briefly stated the facts of the case relevant for the decision of the present writ petition are that the petitioner No. 1 was employed with respondent No. 1 on 15.10.1999 and petitioner No. 2 was appointed on 25.01.2000. The appointment of both the petitioners with respondent No. 1 was stated to be for a fixed period of three years. The appointment of petitioner No. 1 was for three years from 15.10.1999 to 14.10.2002 and of petitioner No. 2 was from 25.01.2000 to 24.01.2003. The contract

of employment of the petitioners with the respondent No. 1 was not renewed by respondent No. 1 after the expiry of the fixed period for which they were appointed. The petitioners were aggrieved by non-extension of the period of their employment and, therefore, they raised an industrial dispute before the Central Government and alleged unfair labour practice against the management of respondent No. 1. The dispute raised by them was declined to be referred by the Central Government for adjudication to the Central Government Industrial Tribunal vide impugned order (Annexure P-I collectively at pages 17-18 of the Paper Book) for the following reasons:

“since the applicant was appointed for a fixed period of three years from 15.10.1999 to 14.10.2002 and these terms/conditions were accepted by the complainant, hence dispute has no merit to refer.”

3. Mr. H.K. Chaturvedi, learned counsel appearing on behalf of the petitioners, has argued that the Central Government could not have taken upon itself the task of adjudication and declined the reference under Section 10 of Industrial Disputes Act, 1947 for adjudication to the Central Government Industrial Tribunal for the reason that the petitioners had been appointed for a fixed period of three years and that they had accepted the term of their appointment.

4. On the other hand, Ms. Raavi Birbal, learned counsel appearing on behalf of the respondent No. 1, has relied upon a three-Judge Bench judgment of the Hon'ble Supreme Court in ***Bombay Union of Journalists and Others Vs. State of Bombay and Another reported as 1964 1 LLJ page 351*** and on the strength of this judgment, she has contended that since the petitioners had admitted that they had been appointed by respondent No. 1 for a fixed term of three years, the Central Government was justified and acted legally in declining to refer

the dispute raised by the petitioners for adjudication by the Central Government Industrial Tribunal as no industrial dispute exists for such adjudication in view of the provisions contained in Section 2(o)(b) of the Industrial Disputes Act, 1947 which exclude from its ambit of the expression 'retrenchment' as defined in the main part of Section 2(o) "terminations of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein"

5. I have given my anxious consideration to the above rival arguments advanced by the counsel for the parties but I could not persuade myself to agree with the submission made by the counsel appearing on behalf of the petitioners. It is an admitted case of the petitioners that they were appointed with respondent No. 1 for a fixed term of three years. However, their case is that their appointment for a fixed term of three years was a camouflage and amounts to unfair labour practice. As to what amounts to an unfair labour practice is provided in Fifth Schedule annexed with the Industrial Disputes Act, 1947 and Clause 10 of the said Schedule relied upon by learned counsel appearing on behalf of the petitioners, provides that to employ a workmen as Badli or casuals or temporary and continue them for years with an object to deprive them the benefit of permanent post amounts to an unfair labour practice. It may be noted that the petitioners were neither appointed as Badli nor in their capacity as casuals or temporary. Their appointment was for a fixed term of three years. The petitioners had accepted the terms and conditions of their appointment which clearly stipulates that their appointment was for a fixed term of three years. Their grievance in the dispute raised by them before the Central Government was for non-

extension of the period of their employment. This does not fall within the scope of unfair labour practice as provided in the Fifth Schedule to the Industrial Disputes Act, 1947 particularly Clause 10 relied upon by the counsel appearing on behalf of the petitioners.

6. In ***Bombay Union of Journalists and Others Vs. State of Bombay and Another*** (supra), it was held by the Hon'ble Supreme Court that when the appropriate Government considers the question as to whether any industrial dispute should be referred for adjudication or not under Section 10 of the Industrial Disputes Act, 1947, it may consider, prima facie the merits of the dispute and take into account other relevant considerations which would help it to decide whether making of reference would be expedient or not.

7. In the considered opinion of this Court, the Central Government was fully justified in declining to refer the dispute for adjudication to the Central Government Industrial Tribunal because the appointment of the petitioners was for a fixed term of three years which was accepted and acted upon by them and therefore, they do not fall within the ambit of retrenchment as defined in Section 2(oo) of the Industrial Disputes Act, 1947 and for that reason, no industrial dispute exists which require an adjudication by the Central Government Industrial Tribunal.

8. For the foregoing reasons, I do not find any illegality or perversity in the impugned order that may call for an interference by this Court in exercise of its extraordinary discretionary writ jurisdiction under Article 226 of the Constitution. This writ petition, therefore, fails and is hereby dismissed.

AUGUST 27, 2009
'bsr'

S.N.AGGARWAL, J



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1.	W.P.(C) 2252/2006 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	RAJBIR Vs. MANGT. OF D.T.C. Advocate : MR.H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 17/02/2006
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W.P.(C) 2192/2006

ANIL PRASAD Petitioner

Through: Mr. H.K. Chaturvedi and Ms. Anjali

Chaturvedi, Advocates

versus

THE MANAGEMENT OF

M/S VISHVAMAN INDUSTRIES Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE P.K. BHASIN

O R D E R

19.04.2012

I have heard learned counsel for the petitioner-workman.

The only grievance of the petitioner-workman in this writ petition is that though there was sufficient reason given by him before the labour Court for his not being present for his cross-examination on 2nd February, 2005, when the impugned Award rejecting his claim came to be passed after his evidence was closed but the labour Court wrongly rejected that reason and therefore, this Court should set aside the

impugned Award and remand back the matter to the labour Court for fresh trial after giving an opportunity to the petitioner-management to produce himself for cross-examination and also to the management to adduce its own evidence.

The petitioner-workman had submitted his affidavit by way of evidence on 9th September, 2004 and thereafter he was directed to appear for cross- examination but he did not make himself available for his cross-examination on two dates of hearing and on 2nd February, 2005, which was

**W.P.(C) 2192/2006 Page 1
of 3**

the second date for that purpose, though adjournment was sought on his behalf by his representative but the same was not granted and his evidence was closed. Consequently final Award was also passed on the same date by the labour Court rejecting his claim on the ground that he had failed to establish that his services have been terminated illegally. Then this writ petition was filed. The respondent entered appearance in the matter once through its counsel on 18th April, 2006 but thereafter the counsel never turned up nor any counter affidavit was filed. So, only counsel for the petitioner was heard today.

After passing of the Award the petitioner-workman had moved an application for seeking one more opportunity to produce himself for cross-examination and in that application it was claimed that the petitioner could not produce himself for his cross-examination as his father had died on 10th January, 2004 in his village and the workman had thereafter started living in the village for quite some time as there was no one else to take care of his father?s properties and his uncle and his son were attempting to take over those properties. The learned labour Court, however, rejected that application by observing that no affidavit of the workman had been filed despite more than sufficient opportunities having been given. That was however not correct as affidavit had already been filed by the petitioner-workman.

Counsel also submitted that apart from the workman himself no other evidence is to be adduced.

Considering the fact that the learned Presiding Officer of the labour Court had not doubted the genuineness of the reason being given by the workman for his non-appearance during the proceedings for his cross-examination and since this Court is also of the view that the reason given by the petitioner-workman for his non-appearance before the labour Court

cannot be said to be unjustified and his absence cannot be said to be intentional and also considering the fact that respondent-management is even not contesting this writ petition the same is allowed and the impugned Award is set aside. The matter is remanded back to the labour Court with a direction to proceed with the trial afresh after giving an opportunity to the petitioner-workman to produce himself for cross-

examination and also to the management to adduce its own evidence in support of its defence that petitioner-workman himself had abandoned his job and it had not terminated his services.

The matter shall now be taken up by the labour Court on 14th May, 2012 at 2 p.m. and it shall proceed with the matter further after giving notice to the management.

P.K. BHASIN, J

APRIL 19, 2012/pg

**W.P.(C) 2192/2006 Page 3
of 3**

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24

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 18888/2006

HARI KRISHAN and ANR Petitioners

Through: Mr. H.K. Chaturvedi, Advocate.

versus

THE MGMT. OF M/S NORTHERN SCALE CO. Respondent

**Through: Mr. D.G. Singh and Ms. Yasmin Zafar,
Advts.**

CORAM:

HON'BLE MR. JUSTICE P.K. BHASIN

O R D E R

02.11.2011

Since no settlement has been arrived at between the parties the writ petition with the consent of the parties itself has been heard finally today.

Judgment reserved.

P.K. BHASIN, J

NOVEMBER 02, 2011

nk

2

IN THE HIGH COURT OF DELHI AT NEW DELHI

10.11.2006

Present: Mr. H.K. Chaturvedi for the petitioner.

WP(C) No. 16708/2006

Issue notice to the respondents to show cause as to why rule nisi be not issued, returnable on 16th April 2007.

**November 10, 2006 SHIV NARAYAN
DHINGRA,J
kb**

A-28

10.11.2006

Present: Mr. H.K. Chaturvedi for the petitioner.

WP(C) No. 16665/2006

Issue notice to the respondent to show cause as to why rule nisi be not issued, returnable on 2nd April 2007.

**November 10, 2006 SHIV NARAYAN
DHINGRA,J
kb**

A-26

18.10.2006

Present: Mr. H.K. Chaturvedi for the petitioner.

WP(C) No. 15959/2006

This writ petition has been filed challenging the award dated 13.12.2005 whereby the Industrial Tribunal answered the reference against the workman. The workman claimed that he was illegally terminated from service by the respondent. Following dispute was referred to the Tribunal for adjudication to the Tribunal: ?Whether the services of Shri Vijay Kumar have been terminated illegally and/or unjustifiably by the management and if so, what relief is he entitled and what directions are necessary in this respect??

The Industrial Tribunal, after recording evidence from both sides, came to conclusion that the petitioner had failed to prove that he worked with the respondent/management for 240 days. The only evidence given by the petitioner was his own affidavit. No document was produced by the petitioner. The petitioner did not summon record of the management in evidence to show that he worked with the management for 240 days. Counsel for the petitioner submits that during cross examination, the management witness has stated that the name of the petitioner was not on muster roll, therefore, record was not summoned. I consider that merely asking one of the questions in cross examination, does not absolve the petitioner from the onus cast on the petitioner to prove

that he had worked for 240 days, by cogent evidence. The petitioner should have summoned either the record or another co-workman or given some evidence that he had worked for 240 days. The finding of the Tribunal regarding non working of the petitioner for 240 days, is a finding on facts, which cannot be interfered with by this Court in exercise of its power of review under Article 226 of the Constitution of India.

I find no merits in the writ petition, the writ petition is hereby dismissed in limine.

October, 18, 2006 SHIV NARAYAN

DHINGRA, J

rd

A-45

W.P.(C) 15953/2006

MANSA RAM Petitioner

Through : Mr. H.K. Chaturvedi, Adv.

versus

MANGT. OF PELICAN CERAMIC INDU Respondent

Through : None

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

O R D E R

11.05.2010

Perusal of order dated 08.04.2010 passed by Mr. A.K. Mahajan, Registrar of this court shows that notice issued to respondent has been refused by the wife of Sh. Ravi Khullar, partner of respondent's firm. By refusal, respondent is taken to be served.

Since no one has appeared on behalf of respondent on 08.04.2010 as well as today, respondent is proceeded ex parte.

List this matter for hearing on 29.11.2010.

VEENA BIRBAL, J

MAY 11, 2010

kks

44.

IN THE HIGH COURT OF DELHI AT NEW DELHI

08.09.2006

Present: Mr.H.K.Chaturvedi for the petitioner.

WP(C) No.14158/2006

Notice be issued to the respondent to show cause as to why writ petition be not admitted, returnable on 11th December, 2006.

**September 08, 2006 (MANJU GOEL)
ks JUDGE**

W.P.(C) 14157/2006

**MUNNA KUMAR Petitioner
Through Mr.H.K.Chaturvedi Adv with
Petitioner in person.**

versus

**THE MGMT OF M/S AWAKSMETIC HYD Respondent
Through Mr.P.K.Arya, Adv. with
Authorized representative of management**

**CORAM:
HON'BLE MS. JUSTICE VEENA BIRBAL
O R D E R
23.04.2010**

**It is reported that matter is settled before the Delhi High Court
Mediation and Conciliation Centre. The settlement agreement dated 25th March,**

**2010 has been received from Mediation Centre. As per said agreement, petitioner
has settled the matter with respondent-management for a sum of Rs.62,500/- in
full and final settlement of all claims against respondent-management. A
Banker's cheque of Rs.62,500/- dated 22nd April, 2010 bearing number 037581
drawn on Union Bank of India, Paschim Vihar, New Delhi in favour of petitioner
is given in court by respondent-management to the petitioner. As per
settlement agreement, petitioner has no claim against respondent-management.
Parties have confirmed having signed on the settlement agreement dated 25th
March, 2010.**

WP(C) 14157/2006 Page 1 of page 2

**It is prayed that as the parties have settled the matter, the impugned
award dated 10th July, 2006 may be modified in terms of settlement between the
parties.**

**In view of the above submission made and the fact that parties have
settled the matter before the Delhi High Court Mediation and Conciliation Centre
and in terms thereof, a banker's cheque has already been handed over to the
petitioner in court, the impugned award stands modified in terms of settlement
agreement dated 25th March 2010.**

Petition stands disposed of accordingly.

VEENA BIRBAL,J

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 14156/2006

VIJAY PAL Petitioner

Through: Mr. H.K. Chaturvedi, Advocate.

versus

MANAGEMENT M/S PANORMA EVIPORT Respondent

Through: Mr. J.K. Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE P.K. BHASIN

O R D E R

09.11.2011

Arguments heard.

Order reserved.

P.K. BHASIN, J

NOVEMBER 09, 2011

nk

12

IN THE HIGH COURT OF DELHI AT NEW DELHI

08.09.2006

Present: Mr.H.K.Chaturvedi for the petitioner.

WP(C) No. 14134/2006

Notice be issued to the respondent to show cause as to why writ petition be not admitted, returnable on 4th January, 2007.

**September 08, 2006 (MANJU GOEL)
ks JUDGE**

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 12024/2006

AJIT SINGH Petitioner

Through: Mr. H.K. Chaturvedi, Adv.

versus

D.T.C. Respondent

Through: Mr. Gaurav Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

O R D E R

08.08.2013

**In view of dismissal of writ petition nos. 4249/2007 and 4307/2007,
this writ petition is not pressed and is disposed of accordingly.**

A.K. PATHAK, J.

AUGUST 08, 2013

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03.02.2009

**Present: Mr. H. K. Chaturvedi, Mr. G. M.V. Raman and Ms. Anjali Chaturvedi, Advocates for the petitioner.
Mr. Vimal Goyal, Advocate for the respondent.**

W.P.(C) No. 1169/2006

The learned counsel for the parties has stated that an amicable settlement has been arrived between the parties in term of which a sum of Rs. 50,000/- shall be paid by way of banker's cheque in favour of the each petitioner. However, he seeks some time to pay the money to the workmen. Request is allowed.

Dasti.

List on 17th February, 2009.

**FEBRUARY 03, 2009 V.K. SHALI, J.
KP**

11.03.2008

Present: Mr.H.K.Chaturvedi, Advocate for the petitioner.

Cont.Cas(C) No.1387/2005

The application of the petitioner under Section 17B of the Industrial Disputes Act, 1947 was allowed by order dated 1st November, 2000. Pursuant thereto another application being CM No.814/2005 was filed by the workman, petitioner in the present contempt petition for a direction to the petitioner to pay the wages in terms of order dated 1st November, 2000. The management, Sh.R.K.Arora proprietor of M/s.New Golden Press was granted six weeks time to pay the arrears. By order dated 18th May, 2005 it was also held that if the amount is not paid within the time so granted the workman shall be at liberty to take appropriate steps for recovery of the said amount. The learned counsel for the petitioner/workman in the present contempt petition contends that the workman shall take appropriate proceedings under Section 33(C)(1) for the recovery of the amount due to him and in view of that he seeks to withdraw the contempt petition.

The contempt petition is dismissed as withdrawn with the liberty as prayed for.

March 11, 2008 ANIL KUMAR, J.

'K'

CONT.CAS(C) 1370/2005

**GANGA PRASAD Petitioner
Through Mr.H.K.Chaturvedi**

versus

**CHAIRMAN D.T.C. Respondent
Through Mr.M.T.Khan**

**CORAM:
HON'BLE MS. JUSTICE GITA MITTAL**

O R D E R

22.11.2005

CM 16367/2005

Allowed subject to all just exceptions.

Cont.Cas(C) 1370/2005

Issue notice.

Nr.Khan accepts notice.

Learned counsel for the respondent has brought a cheque for a sum of Rs.1,27,615/- bearing no.978943 drawn on Syndicate Bank and has handed over the same to the learned counsel for the petitioner. It is stated that this payment is being made in compliance with the orders dated 26th May, 2005 directing the respondent management to make payment to the workman.

Learned counsel for the petitioner submits that in view of the receipt of the payment he does not press this petition. However he reserves his right to verify the correctness of the amount paid.

Accordingly this petition is disposed of as not pressed. The petitioner shall be at liberty to verify the correctness of the payment made to him. In case of any discrepancy the same may be raised in an appropriate proceeding. This petition stands disposed off.

**GITA MITTAL, J
NOVEMBER 22, 2005
JK**

CONT.CAS(C) 1258/2005

**RAJ SINGH Petitioner
Through Mr. H.K.Chaturvedi, Advocate**

versus

**A.MAJUMDAR and ANR. Respondent
Through Mr. J.S.Bhasin, Advocate**

CORAM:

HON'BLE MR. JUSTICE S.RAVINDRA BHAT

O R D E R

14.12.2006

It is stated that the review petition was preferred by the DTC in respect of the order dated 16.8.2005 in WP(C) 635/2004 Counsel further submits that notice has been issued in those proceedings. He requests that the hearing in this petition ought to be deferred.

In view of the above circumstances, I am of the opinion that the most appropriate course of action would be that this contempt petition too should be considered by the same Hon'ble Judge who had issued the order dated 16.8.2005 and who has also issued notice in the review proceedings.

List before Gita Mittal, J on 8.3.2007, subject to orders of Hon'ble Chief Justice.

**S.RAVINDRA BHAT, J
DECEMBER 14, 2006**

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07.12.2005

Present: Mr.R.P.Bansal, Sr. Advocate with Mr.Rakesh Mahajan, Advocate for the applicant/petitioner.

Ms.Ritika Pal, Advocate for the respondent.

CCP No.115/2005 in CS(OS) No.1261/1995

The learned counsel for the petitioner states that there are some typographical errors in the petition and he wants to withdraw the petition with liberty to file the fresh petition.

The petition is dismissed as withdrawn with liberty as prayed for.

December 07, 2005 ANIL KUMAR, J.

sdp

IN THE HIGH COURT OF DELHI AT NEW DELHI

**LPA 1975/2005, LPA 1976/2005, LPA 1977/2005, LPA 1978/2005, LPA
1979/2005, LPA 1980/2005, LPA 1981/2005, LPA 1982/2005**

**SUKH SAGAR and ORS. Appellant
Through Mr.H.K.Chaturvedi, Adv.**

versus

**THE MGMT. OF M/S BHARAT LITHO Respondent
Through**

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR.JUSTICE SANJIV KHANNA

O R D E R

28.05.2007

**We have heard the learned counsel for the parties on the present appeals
directed against the order dated 22.7.2005 passed by the learned Single Judge
dismissing the Writ Petition.**

**Learned counsel for the appellant has drawn my attention to the impugned
order whereby the writ petition was dismissed. On perusal of the said order, we
find that the said order does not contain any reason for dismissing the writ
petition. The impugned order is devoid of any reason. In our considered
opinion, the learned Single Judge should have given reasons for the order which
was passed. We, therefore, set aside the impugned order and remit back the
matter to the learned Single Judge for fresh hearing of the writ petition and to
deal with the contentions raised and dispose of the writ petition with a
reasoned order.**

**Parties may appear before the learned Single Judge on 16.7.2007 for
further directions in the writ petition.**

CHIEF JUSTICE

SANJIV KHANNA, J

MAY 28, 2007

RN



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Search Result For Type :LPA No :1147 year :2005" are : 1

S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	LPA 1147/2005 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	KRISHAN CHANDER Vs. D.T.C. Advocate : H.K.CHATURVEDI & CO.	Court No. : 0 DISPOSED OFF on 27/05/2005
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28.10.2009

**Present:- Mr. H.K. Chaturvedi for the petitioner.
Mr. K.K. Sabharwal for the respondent.**

W.P.(C.) No. 9652/2005

This writ petition filed by the petitioner workman is directed against an interlocutory order of the Industrial Adjudicator (Annexure P-1 at page 22 of the Paper Book) deciding the inquiry issue vide its order dated 10.11.2004 against him.

**This writ petition against the interlocutory order is not maintainable in view of the judgment of the Hon'ble Supreme Court in Cooper Engineering Ltd. vs. P.P. Mundhe AIR 1975 SC 1900, wherein the Supreme Court has held as under:-
?We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.?**

In view of the above judgment of the Hon'ble Supreme Court in Cooper Engineering Ltd.'s case (supra), Mr. H.K. Chaturvedi, learned counsel appearing on behalf of the petitioner, on instructions from his client present in the Court, seeks leave of Court to withdraw the present writ petition with liberty to challenge the final award, if it

W.P.(C.) No. 9652/2005 page 1 of 2

comes against the petitioner workman on all such grounds as may be available to him in law including the grounds taken by the petitioner in assailing the impugned order on inquiry issue.

In view of the above, this writ petition is dismissed as withdrawn reserving the liberty as prayed for.

LCR be sent back to the concerned Labour Court/Successor Court

OCTOBER 28, 2009 S.N.AGGARWAL, J

'BSR'

W.P.(C.) No. 9652/2005 page 2 of 2

10.

W.P.(C) 8913/2005

**RASHEED KHAN Petitioner
through Mr. H.K.Chaturvedi, Advocate
with Ms. Anjali Chaturvedi, Advocate**

versus

**THT MGMT.OF M/S SUPER CIRCLE and ANR Respondents
through Mr. Kailash Sharma, Advocate with
Ms. Nishi Jain, Advocate for R-1.**

**CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA**

**O R D E R
15.11.2010**

Learned counsel for the petitioner does not want to press the present writ-petition in so far as it relates to M/s Super Circle (P) Limited. Counsel, however, submits that the petitioner will raise a dispute against M/s Super Flooring (P) Limited. In view of the above, the writ-petition is dismissed as withdrawn with liberty to the petitioner to raise a dispute against M/s Super Flooring (P) Limited as per law.

REKHA SHARMA, J.

**NOVEMBER 15, 2010
ka**

05.03.2010

**Present:- Petitioner with his counsel Mr. H.K. Chaturvedi.
Mr. Pankaj Gupta for the respondent along with
Mr. Rameshwar Gaur, General Manager (HR) in the
respondent management.**

W.P.(C.) No. 8344/2005

The Labour Court has awarded compensation of Rs.60,000/- vide its award dated 26.08.2004 in favour of the petitioner workman for illegal termination of his services by the respondent. The petitioner aggrieved by the meagre amount of compensation has filed the present writ petition and has prayed for setting aside of the said award and to reinstate him in service with back wages. The parties have settled the dispute between themselves during the pendency of the present writ petition. The respondent has agreed to give and the petitioner workman has agreed to accept an amount of Rs.1,50,000/- in full and final settlement of all his claims arising out of his employment with the respondent including his rights under the impugned award. Mr. Pankaj Gupta learned counsel appearing on behalf of the respondent on instructions from his client present in Court says that the compromise amount of Rs.1,50,000/- shall be paid to the petitioner workman by Pay Order to be handed over to his counsel Mr. H.K. Chaturvedi within a week's time from today.

**W.P.(C.) No. 8344/2005 Page 1 of
2**

**In view of the above settlement arrived at between the parties, Mr. H.K. Chaturvedi learned counsel appearing on behalf of the petitioner submits that he does not want to press this writ petition for any further relief and says that the writ petition may be disposed of in terms of settlement arrived at between the parties. However, he submits that the respondent may be directed to cooperate with the petitioner in release of his Provident Fund from the Provident Fund Department. Mr. Pankaj Gupta learned counsel appearing on behalf of the respondent says that his client will cooperate with the petitioner in release of his Provident Fund payable to him by the Provident Fund Department. In view of the above, this writ petition stands disposed of.
LCR be sent back.**

**MARCH 05, 2010 S.N.AGGARWAL, J
'a'**

W.P.(C) 6112/2005

**MUNNA LAL Petitioner
Through Mr.H.K.Chaturvedi, Advocate
Petitioner in person**

versus

**THE MGMT. OF M/S DEWAN SONS Respondent
Through Mr.Rajesh Goyal, Advocate
Anil Raswant, Accounts Officer,
of the respondent.**

**CORAM:
HON'BLE MR. JUSTICE J.M.MALIK**

**O R D E R
14.07.2008**

The parties have settled the matter. The statements of parties are recorded separately.

In view of the settlement between the parties, the writ petition is disposed of as having been compromised. The parties are directed to be bound by the terms and conditions of the settlement.

**J.M.MALIK, J
JULY 14, 2008
dc
WP(C)No.6112/2005**

Statement of Munnal Lal, S/o Shri Jyoti Prasad, Aged, 50 years, R/o House No. 603, Gali No. 10, Gagan Vihar, Bopra, Ghaziabad, U.P.

On S.A.

I have settled the matter with the respondent/Management. I accept a cheque of Rs.25,000/- bearing No. 439032 dated 3rd July, 2008, drawn on Bank of India, Connaught Circus Branch, New Delhi which is handed over to me in Court today in full and final settlement of our disputes. I have no claim left against the respondent except that the Management has also agreed to affix their signatures on the provident fund form within a week.

ROandAC

Identified by Mr.H.K.Chaturvedi, Adv. J.M.Malik, J

14.07.2008

WP(C)No.6112/2005

Statement of Anil Raswant, Accounts Officer of M/s Dewan Sons Tailors and Drappers, 23/4, Show Room, East Patel Nagar, new Delhi, Aged 45 years.

On S.A.

I accept the terms and conditions of the settlement on behalf of the respondent/Management as mentioned in the statement of the petitioner.

ROandAC

Identified by Mr.Rajesh Goyal, Adv. J.M.Malik, J

14.07.2008

W.P.(C) 552/2005

**NARESH KUMAR Petitioner
Through Mr. H.K.Chaturvedi, Adv.**

versus

**GOVT.OF NCT OF DELHI and ORS. Respondent
Through Mr. Harsh Aggarwal, Adv. for
Mr. V.K.Tandon, Adv.**

**CORAM:
HON'BLE MR. JUSTICE S.RAVINDRA BHAT**

**O R D E R
19.09.2005**

Learned counsel for the Petitioner seeks liberty to withdraw the petition and move an original application under Section 14 of the Administrative Tribunal's Act in respect of the grievance raised here. Liberty granted.

Petition is disposed off accordingly.

It is open to the Petitioner to bring to the notice of the Tribunal the period during the present petition was pending before this Court, while making an appropriate application for condonation of delay, if any.

**S.RAVINDRA BHAT, J
SEPTEMBER 19, 2005**

m

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05.10.2006

**Present: Mr. H.K. Chaturvedi for the petitioner.
Mr. J.R. Midha for the respondent.**

WP(C) No.18028/2005

**Arguments heard.
Order reserved.**

**October, 05, 2006 SHIV NARAYAN
DHINGRA, J
rd**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 13314/2005

MUNNA PRASAD Petitioner

Through Mr. H.K. Chaturvedi, Adv.

versus

THE MGMT.OF M/S SAWHNEY RUBBER Respondent

Through Ms. Raavi Birbal, Adv.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

O R D E R

05.09.2012

Arguments heard.

Judgment reserved.

MUKTA GUPTA, J

SEPTEMBER 05, 2012

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 12913/2005, W.P.(C) 12914/2005, W.P.(C) 12915/2005, W.P.(C) 12916/2005

**DINESH and ORS. Petitioner
Through Mr. H.K. Chaturvedi, Adv.**

versus

**THE MGMT. OF PRAKASH TIN INDUS Respondent
Through None**

**CORAM:
HON'BLE MS. JUSTICE GITA MITTAL**

**O R D E R
05.09.2005**

**Learned counsel for the petitioner prays for one short adjournment to enable him to file documents in support of the writ petition. The same shall be done within one week.
List on 14th September, 2005.**

**GITA MITTAL, J
SEPTEMBER 05, 2005
kr**

W.P.(C) 12688/2005

**JITENDER KUMAR SINGH Petitioner
Through Mr. H K Chaturvedi, Advocate**

versus

**SHAHDARA METAL INDUSTRIES Respondent
Through Mr. Rajat Bhalla, Advocate**

CORAM:

HON'BLE MS. JUSTICE REKHA SHARMA

O R D E R

09.12.2010

CM NO. 6353/2010

It is stated by learned counsel for the petitioner that in terms of order dated September 17, 2009, learned counsel for the respondent has handed over to him a demand draft bearing no. 522038 dated December 4, 2010 for a sum of ` 60,000/-. It is further stated that nothing survives in the matter. In view of the above, the application stands disposed of. The file be consigned to records.

**REKHA SHARMA,J
DECEMBER 09, 2010
PC.**

IN THE HIGH COURT OF DELHI AT NEW DELHI

18.09.2008

**Present:- Mr. H.K. Chaturvedi for the petitioner.
Mr. Pankaj Aggarwal for the respondent.**

WP (C) No. 11122/2005

The petitioner, in this writ petition, has challenged the interim order of the Industrial Tribunal. During the pendency of the present writ petition, the Industrial Tribunal has decided the reference and has passed the final award. Mr. Chaturvedi, learned counsel appearing on behalf of the petitioner says that he has instructions to withdraw the present writ petition with liberty to challenge the final award on such grounds as may be available to him in law.

In view of the above, the present writ petition is dismissed as withdrawn reserving the liberty as prayed for.

SEPTEMBER 18, 2008 S.N.AGGARWAL, J

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 11055/2005

LAKSHMAN CHANDRA SIL Petitioner

Through : Mr. H. K. Chaturvedi, Adv.

versus

MANGT. OF M/S NAGPAL BROTHERS Respondent

Through : None

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

O R D E R

22.11.2013

Vide order dated 22nd October, 2013 matter was referred to National Lok Adalat scheduled to be held on 23rd November, 2013. Pre-Lok Adalat sittings were held by Continuous Lok Adalat ? II. Conciliator, Continuous Lok Adalat ? II has opined that no fruitful purpose would be served to keep the matter pending before Continuous Lok Adalat ? II, in view of non-appearance and/or reluctance of the parties. Accordingly, matter need not to be listed before the National Lok Adalat on 23rd November, 2013.

Matter has already been admitted on 16th October, 2006.

Renotify in the category of ?Regular Matters? as per its own turn.

A.K. PATHAK, J.

NOVEMBER 22, 2013/rb

W.P.(C) 11009/2005

ISHWARDIN

Petitioner

Through: Mr. H.K. Chaturvedi, Adv.

versus

MAGT. OF M/S SALWAN EDUCATION Respondent

**Through: Ms. Avnish Ahlawat with Ms. Latika Chaudhury and Ms. Nidhi Gupta,
Advs.**

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

O R D E R

01.08.2008

Counsel for the respondent submits that the parties to the present petition have entered into an out of Court settlement. According to counsel for the respondent the petitioner - Mr.Ishwardin, S/o Shri Ram Harsh R/o S-15, Sabzi Mandi, R.S. Block, Mangolpuri, Delhi has made a statement on S.A. in this behalf before the Presiding Officer, Labour Court-X on 29.03.2008. A perusal of the statement made by the petitioner reflects that the petitioner had undertaken to withdraw the present writ petition in view of the settlement arrived at between the parties.

In the circumstances, nothing survives in the writ petition. The writ petition is dismissed as infuctuous and disposed of accordingly.

SIDDHARTH MRIDUL, J

AUGUST 01, 2008

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IN THE HIGH COURT OF DELHI AT NEW DELHI

04.07.2005

Present : Mr. H.K. Chaturvedi, Adv. for the Petitioner.

WP (C) No.10680/2005

*** Issue notice to the respondents to show cause as to why rule nisi be not issued, returnable on 13th September, 2005.**

Notice shall be served on the respondent through Mr. Ajay Kapoor, standing counsel. Ms. Saroj Bidawat, who is present in court for the respondent Corporation in another matter is directed to accept notice. It is pointed out that the award in favour o

f the petitioner has been upheld by this court and the writ petition of the DTC impugning the same stands dismissed. Learned counsel appearing for the petitioner submits that even the appeal filed by the respondent impugning the judgment of the learned single Judge stands dismissed.

In this view of the matter, unless there is an order of stay by any court in the matter, the respondent shall ensure compliance of the orders passed in favour of the petitioner before the next date of hearing and a reply setting out the position thereto

shall be filed within two weeks. Rejoinder thereto, if any, be filed within one week thereafter.

List on 13th September, 2005.

(GITA MITTAL)

JUDGE

July 04, 2005

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 1060/2005

**RAM NARESH Petitioner
Through Mr. H.K. Chaturvedi, Advocate**

versus

THE MGMT.OF M/S PAULS PRESS Respondent

**CORAM:
HON'BLE MR. JUSTICE MUKUL MUDGAL**

**O R D E R
24.01.2005**

The learned counsel for the petitioner seeks and is granted leave to withdraw this writ petition with liberty to take appropriate proceedings in accordance with law.

With the aforesaid liberty, the writ petition is accordingly dismissed as withdrawn.

**MUKUL MUDGAL, J
JANUARY 24, 2005
ak**



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Search Result For Type :CONT.CAS(C) No :778 year :2004" are : 1

S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	CONT.CAS(C) 778/2004 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	SUNIL KUMAR Vs. RAJEEV TALWAR Advocate : H.K.CHATURVEDI & CO	Court No. : 0 DISPOSED OFF on 16/11/2004
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IN THE HIGH COURT OF DELHI AT NEW DELHI

CONT.CAS(C) 703/2004

**TEJ PRATAP Petitioner
Through Mr. H.K. Chaturvedi, Adv.**

versus

**I.S.KOCHHAR Respondent
Through Mr. Nishant Kumar, Adv.**

**CORAM:
HON'BLE MS. JUSTICE GITA MITTAL**

**O R D E R
20.09.2005**

List on 21st October, 2005.

**GITA MITTAL, J
SEPTEMBER 20, 2005
kr**



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Search Result For Type :CONT.CAS(C) No :657 year :2004* are : 1			
S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	CONT.CAS(C) 657/2004 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	DINA NATH Vs. R.K.ARORA Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 14/09/2004
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15.09.2006

**Present: Mr. H.K. Chaturvedi for the petitioner.
Mr. P.S. Bindra for the respondent.**

Cont.Cas(C) No.472/2004

Counsel for the respondent submits that the respondent had preferred an appeal against the order under Section 17-B of the Industrial Disputes Act. There is no stay granted by the Appellate Court. Under these circumstances, the respondent is bound to comply with the order under Section 17-B of I.D. Act. The respondent is, therefore, either approach the Appellate Court and obtain stay against the order or should comply with the order within a period of 60 days. Post on 22nd January, 2007.

**September 15, 2006 SHIV NARAYAN
DHINGRA,J
rd**

A-39

IN THE HIGH COURT OF DELHI AT NEW DELHI

CONT.CAS(C) 388/2004

**A.K.LUTHRA Petitioner
Through None**

versus

**RAJPAL THAKRAL Respondent
Through**

**CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR**

**O R D E R
29.07.2004**

**Learned counsel for the Petitioner has not complied with the order dated 7th May, 2004.
Last opportunity is granted for compliance.
To come up on 11th October, 2004.**

**MADAN B. LOKUR, J
JULY 29, 2004
kapil**

CONT.CAS(C) 286/2004

**SUBHASH CHAND Petitioner
Through**

versus

**BAL CHAND JAIN Respondent
Through**

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

**O R D E R
18.08.2009**

The matter is listed before the Court by the Registry. LPA No.998/2004 arising out of the order dated 10.12.2003, which is the foundation of this contempt petition, has since been decided on 11.10.2006. The same has been disposed of on a settlement being reached between the parties. Consequently in my view nothing survives in this petition and the same is disposed of.

**VIPIN SANGHI,J
AUGUST 18, 2009**

as

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04.04.2008

**Present: Mr.H.K.Chaturvedi for the appellant
Ms.Sonia Singhani for respondent No.1**

FAO No.113/2004

- 1. None appears for respondent No.6 in spite of service.**
 - 2. Learned counsel for the appellant points out that respondent No.6 is the company which has to deposit the ESI dues of the workers. Counsel further points out that the company has gone into liquidation and order for liquidation of the company was obtained on a petition for winding up filed by the workmen. Counsel states that since respondent No.1 has already crystallized the ESI dues, and issue being debated today is for recovery thereof, instant appeal may be disposed of recording that the Official Liquidator would consider the dues of the workmen while distributing the realisable assets of the company.**
 - 3. It may be noted that the issue involved in the instant appeal is whether workman of a company can proceed under Section 75 of the ESIC Act seeking a direction for issuance of a recovery certificate against the employer for ESI dues determined by the authorities under the ESI Act.**
- page 1 of 2**
- 4. Vide impugned order the learned Judge, ESI court has held that such a petition is not maintainable.**
 - 5. Disposing of the appeal as infructuous, question of law raised in the appeal is kept open for adjudication in an appropriate case.**
 - 6. Appeal stands disposed of.**
 - 7. No costs.**
 - 8. TCR be returned forthwith.**

April 04, 2008 PRADEEP NANDRAJOG, J.

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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	LPA 692/2004 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	PRAKASH CHAND Vs. THE MGMT. OF M/S JIA LAL RAM K Advocate : H.K.CHATURVEDI & CO.	Court No. : 0 DISPOSED OFF on 19/07/2004
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Search Result For Type :LPA No :251 year :2004" are : 1			
S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	LPA 251/2004 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	SURESH CHAND SHARMA Vs. D.T.C. Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 08/03/2004
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IN THE HIGH COURT OF DELHI AT NEW DELHI

08.08.2006

Present: Mr.H.K.Chaturvedi for the petitioner.

CM No.7912/2006 and WP(C) No. 8879/2004

Counsel for the petitioner wants to withdraw the writ petition as the matter has been settled between the parties.

The writ petition is accordingly dismissed as withdrawn.

August 8, 2006 MANJU GOEL, J.

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IN THE HIGH COURT OF DELHI AT NEW DELHI

15.03.2004

**Present: Mr. H.K. Chaturvedi, Adv. for the Petitioner.
Mr. Hanu Bhaskar, Adv. the Respondent.**

WP (C) No.703/2004

**Learned counsel for the Petitioner seeks leave to withdraw this writ petition.
Leave and liberty granted.
The writ petition is dismissed as withdrawn.**

**March 15, 2004 Madan B. Lokur, J
aa**

13.09.2006

**Present: Mr. H.K. Chaturvedi for the petitioner.
Mr. Ajay Sharma for the respondent.**

WP(C) No.6778/2004

Parties have entered into an out of court settlement and it has been agreed between the parties that on payment of Rs.80,000/- to the LRs of petitioner, by the respondent, the entire claim of the petitioner shall stand satisfied. It is admitted that wife Mrs. Satyabhama Prashan of the petitioner (deceased) received amount of Rs.80,000/- on her behalf as well as on behalf of remaining LRs.

In view of the settlement, this writ petition is disposed of as compromise.

**SHIV NARAYAN DHINGRA,J
September 13 , 2006**

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W.P.(C) 635/2004

**RAJ SINGH Petitioner
Through Mr. H.K. Chaturvedi and
Mr. B.K. Pandey, Adv.**

versus

**D.T.C. Respondent
Through Ms. Latika Choudhary, Proxy Adv.**

**CORAM:
HON'BLE MS. JUSTICE GITA MITTAL**

**O R D E R
29.07.2005**

Pleadings in this matter are complete.

Learned counsel for the petitioner submits that the only issue which has to be adjudicated in this matter is the failure of the respondents to reinstate the petitioner with consequential benefits despite rejection of their approval application filed unde

r Section 33 (2) (b) of the Industrial Disputes Act, 1947. Reliance in this behalf is placed on the pronouncement of the Apex Court reported in 2002 I AD SC 269 entitled Jaipur Zila ; 2001 LLR 539 entitled M.D. Tamil Nadu State Transport Corporation vs

eethivilangan and a pronouncement of the Division Bench of this court reported at 98 2002 DLT 706 entitled Raj Singh vs Delhi Transport Corporation and a judgment of a learned Single Judge of this court dated 12th May, 2003 in writ petition(civil) 1673/2

02 entitled Sh. Roshan Singh vs Delhi Transport Corporation.

An adjournment is requested on the ground of personal difficulty of learned counsel for the respondent which is not opposed.

List this matter on 16th August, 2005.

**GITA MITTAL, J
JULY 29, 2005
kr**

IN THE HIGH COURT OF DELHI AT NEW DELHI

13.03.2008

Present: Mr.H.K.Chaturvedi, Advocate for the petitioner.

Mr.Manish Tandon, Advocate for the respondent.

W.P.(C) No.5350/2004

The learned counsel for the parties seek an adjournment on the ground that the parties are ready to get the matter settled and they request that the matter be sent for mediation to the Delhi High Court Mediation and Conciliation Centre. Parties are directed to appear before the Delhi High Court Mediation and Conciliation Centre on 1st April, 2008.

List on 28th August, 2008 for awaiting the report of mediation.

March 13, 2008 ANIL KUMAR, J.

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W.P.(C) 5325/2004

**KANHAYA LAL Petitioner
Through: Mr. H.K. Chaturvedi, Adv.**

versus

**THE MGMT. OF M/S SWANTANTRA BH Respondent
Through: Mr. Mohit Gupta, Adv.**

**CORAM:
HON'BLE MS. JUSTICE GITA MITTAL**

**O R D E R
27.07.2005**

WP (C) No.5325/2004

Issue notice to the respondents to show cause as to why rule nisi be not issued.

Mr. Mohit Gupta, Advocate accepts notice and prays for copies of the paper book. Let the same be supplied to him within one week. Let the reply be filed within four weeks. Rejoinder be filed within four weeks thereafter.

List on 24th October, 2005.

**GITA MITTAL, J
JULY 27, 2005**

aa

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5310/2004

**RAM DHANI CHAUHAN Petitioner
Through Mr.H.K. Chaturvedi**

versus

**MGT.OF M/S.SHIVANIKA ENTERPRIS Respondent
Through**

**CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR**

**O R D E R
07.05.2004**

CM NO.5262/2004

Issue notice to the Respondents, returnable before the Registrar (Protocol) on 25th May, 2004, the date already fixed.

**MADAN B. LOKUR, J
MAY 07, 2004
kapil**

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3802/2004 and C.M. No. 12023/2008

YOGINDER SHARMA

..... Petitioner

Through: Mr. H.K. Chaturvedi, Ms. Anjali Chaturvedi and Mohd. Aqil Saifi, Advocates.

versus

MANGT. OF ARVALI LEASING LTD.

..... Respondent

Through: Mr. Puneet Bajaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

07.03.2013

Arguments heard.

Judgment reserved.

VIPIN SANGHI, J

MARCH 07, 2013

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15.07.2004

**Present : Mr.Vikas Nagpal for the petitioner.
Ms.Bandana for the respondent.**

W.P.(C) 2756/2004

This writ petition is filed by the petitioner being aggrieved by the award dated 6th November, 2000 passed by the Presiding Officer, Industrial Tribunal No.II, Delhi in I.D.Case No.736/90

On a dispute raised by the workman, the appropriate Government referred the same to the Tribunal under the following terms:-

"Whether the services of Smt.Sushila Saxena have been terminated illegally and/or unjustifiably by the management and, if so, to what relief is she entitled and what directions are necessary in this respect?

The learned tribunal received evidence adduced by the parties and thereafter passed his award on 6th November, 2000 holding that the workman is entitled to work and to be reinstated in service with the management and that she should be paid 50% of the

last drawn wages till the award becomes enforceable or till the time the claimant is taken in service.

Although the award was passed by the learned tribunal as far back as on 6th November, 2000 no immediate steps were taken by the petitioner to get the said award challenged. After sleeping over its right and obligation for fairly a long period, the sa

e came to be ultimately challenged through this petition which was filed on 21.2.2004. There is no whisper in the writ petition regarding delay nor any reasonable explanation has been given in the petition or otherwise explaining the delay in filing the

present writ petition. A writ petition filed as against an impugned order and seeking for a writ of certiorari is required to be challenged within a reasonable period of time. There is negligence and laches writ large on the face of the records and,

herefore, I find no reasonable ground to entertain this petition. The petition stands dismissed on the grounds of inordinate delay and laches.

**(DR. MUKUNDAKAM SHARMA)
JUDGE**

July 15, 2004

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High Court of Delhi

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1.	W.P.(C) 2518/2004 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	NARESH KUMAR Vs. UOI & ANR. Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 27/02/2004
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#18

W.P. (C) 2273/2004

KALI CHARAN Petitioner

Through: Mr. H.K. Chaturvedi, Advocate.

versus

DELHI TRANSCO LTD. Respondents

Through: Mrs. Avnish Ahlawat, Advocate.

CORAM: JUSTICE S. MURALIDHAR

O R D E R

02.09.2011

1. The Petitioner seeks the quashing of an order dated 13th/18th May 2004 passed by the General Manager (Administration) of Delhi Transco Limited dismissing the Petitioner from service. The Petitioner also challenges the memorandum dated 9th September 2003 and 6th February 2004 issued by the Respondent pursuant to which the order of dismissal was passed.

2. Learned counsel for the Petitioner pointed out that only plea being urged by the Petitioner as far as present petition is concerned is that he should be paid subsistence allowance at the normal rate till the criminal appeal filed by the Petitioner against his conviction remains pending.

3. The Petitioner was arrested in Case No. 11 of 1986 (new No. 331 of 1994) in RC No. 23/1985 DLI with respect to embezzlement of electric equipment regarding street lighting worth Rs. 5 lakhs. The Petitioner faced trial for the offences under Section 120-B IPC read with Section 409 IPC and 5(1)(c) and (d) of the Prevention of Corruption Act read with Section 120-B IPC. He was convicted and sentenced to three and half years rigorous imprisonment with fine of Rs. 5,000/- and in default, further imprisonment for six months. Consequent upon the conviction a notice dated 6th February 2004 was issued to him asking him to show cause why he should not be dismissed. In his reply the Petitioner pointed out that he had filed Criminal Appeal No. 529 of 2003 in this Court challenging the conviction. By way of an interim order, the sentence had been suspended by this Court. Invoking Rule 19 of CCS (CCA) Rules, the Respondent concluded that retention of the Petitioner in service was not desirable.

Accordingly, he was dismissed from service.

4. Mr. H.K. Chaturvedi, learned counsel appearing for the Petitioner refers to the Government of India instructions in OM dated 29th November 1966 as amended by the further OM dated 19th September 1975 to urge that during the pendency of the Petitioner's criminal appeal against his conviction, he was entitled to subsistence allowance.

5. The above plea is without merit. Subsistence allowance would become payable only during the time when the disciplinary inquiry against the Petitioner is not complete. In the present case the Petitioner has already been dismissed from service. There is no employee employer relationship, vis-a-vis the Respondent. Therefore, the Petitioner's case for revocation of suspension can be considered if and when he succeeds in the criminal appeal.

6. For the aforementioned reasons, there is no ground made out for being grant of subsistence allowance. This is the only point urged in the present writ petition. Accordingly, the writ petition is dismissed, but in the circumstances with no order as to costs.

**S. MURALIDHAR, J
SEPTEMBER 02, 2011
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W.P. (C) No. 2273/2004 Page 3 of 3

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 19823/2004

RAJU KAPOOR Petitioner

Through: Mr. H.K. Chaturvedi, Ms. Anjali Chaturvedi and Mohd. Aqil Saifi, Advocates.

versus

MANGT. OF M/S JANATA COOP. BAN Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

16.05.2013

Arguments heard.

Judgment reserved.

VIPIN SANGHI, J.

MAY 16, 2013

BSR

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 1902/2004

**GURU CHARAN SINGH Petitioner
Through Mr. H.K. Chaturvedi with
Ms. Bandana
and Mr. Manoj Kumar, Advs.**

versus

**THE MGT.OF D.T.C. Respondent
Through Ms. Gita Sharma, Adv.**

**CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR**

**O R D E R
24.09.2004**

**In view of the dismissal of W.P.(C) 1722/1998 learned counsel for the Petitioner does not
press this writ petition.**

Dismissed as not pressed.

CM 1655/2004 also stands disposed of.

**MADAN B. LOKUR, J
SEPTEMBER 24, 2004
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IN THE HIGH COURT OF DELHI AT NEW DELHI

15.03.2004

**Present: Mr. H.K. Chaturvedi, Adv. for the Petitioner.
Mr. G. Dutta, Adv. the Respondent.**

WP (C) No.1898/2004

**Learned counsel for the Petitioner seeks leave to withdraw this writ petition.
Leave and liberty granted.
The writ petition is dismissed as withdrawn.**

**March 15, 2004 Madan B. Lokur, J
aa**

IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) 18296/2004****RAM SINGH Petitioner
Through Mr. H.K. Chaturvedi, Adv.****versus****D.T.C Respondent
Through Mr. Sanjeev Sachdeva, Mr. Preet Pal Singh and Mr. Rohit Nagpal, Adv.****CORAM:
HON'BLE MS. JUSTICE GITA MITTAL****ORDER
09.11.2005**

By way of this writ petition the petitioner has sought implementation of the Award dated 2nd November, 1996 in his favour whereby the termination of the services of the petitioner was set aside and the respondent was directed to take the petitioner back

in service with full back wages and continuity of services. The petitioner pointed out that the respondent impugned this award by way of Writ Petition(Civil) 289/1998 which was disposed of vide an order passed on 11th February, 2004 In this writ petition

on, as a gesture of goodwill the respondent/workman had made a statement that he would accept 50% of the back wages instead of the full back wages as was awarded by the Labour Court. This offer of the workman was accepted by the DTC and the award made by

the Industrial Tribunal was modified to this limited extent. The writ petition of DTC was disposed of by the aforementioned order dated 11th February, 2004

It is pointed out that pursuant to the orders dated 11th February, 2004, the petitioner/workman has been reinstated in service. It is submitted that it is only the relief of continuity of service and the resultant consequential benefits which remain to be given to the petitioner/workman.

Learned counsel for the respondent points out that he has received a communication dated 8th November, 2005 informing him that previous increments as well as the benefit of the ACP Scheme and continuity of service has been granted to the petitioner. It

has also been stated that the case of payment of back wages was under approval and would be released to the petitioner.

The respondent is directed to ensure payment of the back wages in terms of the order dated 11th February, 2004 to the petitioner/workman within a period of 15 days. The petitioner shall also be handed over copies of the orders passed by the DTC giving him

continuity of service as well as all other resultant consequential benefits including the benefit of the ACP Scheme within a period of four weeks from today. Upon compliance with these directions, the prayers made in the writ petition appear to stand satisfied.

In view of the aforesaid directions, nothing survives for adjudication in the present writ petition which is disposed of in terms thereof.

GITA MITTAL, J

NOVEMBER 09, 2005
kr

IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) No.18287/2004

**Shri V. Bhanu Vikram ...Petitioner
Through Mr. H.K. Chaturvedi**

versus

**The Management of M/s. Hotel Le Meridian ...Respondent
Through Mr. Kailash Vasdev, Sr. Adv., Mr. Sanjay K. Shandiliya, Adv. and Mr. Prateek
Kumar**

**CORAM:
HON'BLE MS. JUSTICE GITA MITTAL**

**ORDER
12.09.2005**

**Petitioner seeks to withdraw this writ petition with liberty to take appropriate action
against the respondents as may be available to it in law.**

This writ petition is dismissed as withdrawn with liberty as prayed for.

**GITA MITTAL, J
September 12, 2005
bm**

IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) 18030/2004****RAM NARESH Petitioner****Through: Mr. H.K. Chaturvedi, Adv.****versus****ASHOK KUMAR SHARMA Respondent****Through: Nemo.****CORAM:****HON'BLE MS. JUSTICE GITA MITTAL****ORDER****01.12.2005**

Learned counsel for the petitioner submits that disputes and claims between the parties stand fully and finally settled and the settlement has been placed on record in WP (C) No.5630/2002.

In view of this settlement, learned counsel for the petitioner submits that nothing further survives for adjudication in the present matter.

This writ petition is consequently dismissed as not pressed.

GITA MITTAL, J**DECEMBER 01, 2005****aa**

IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) No.17873/2004

**Shri Puran Singh ...Petitioner
Through Mr. H.K. Chaturvedi**

versus

**The Management of M/s. Hotel Le Meridian ...Respondent
Through Mr. Kailash Vasdev, Sr. Adv., Mr. Sanjay K. Shandiliya, Adv. and Mr. Prateek
Kumar**

**CORAM:
HON'BLE MS. JUSTICE GITA MITTAL**

**ORDER
12.09.2005**

**Petitioner seeks to withdraw this writ petition with liberty to take appropriate action
against the respondents as may be available to it in law.**

This writ petition is dismissed as withdrawn with liberty as prayed for.

**GITA MITTAL, J
September 12, 2005
bm**

IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) No.17850/2004

**Shri Absar Hussain ...Petitioner
Through Mr. H.K. Chaturvedi**

versus

**The Management of M/s. Hotel Le Meridian ...Respondent
Through Mr. Kailash Vasdev, Sr. Adv., Mr. Sanjay K. Shandiliya, Adv. and Mr. Prateek
Kumar**

**CORAM:
HON'BLE MS. JUSTICE GITA MITTAL**

**ORDER
12.09.2005**

**Petitioner seeks to withdraw this writ petition with liberty to take appropriate action
against the respondents as may be available to it in law.**

This writ petition is dismissed as withdrawn with liberty as prayed for.

**GITA MITTAL, J
September 12, 2005
bm**



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1.	W.P.(C) 15164/2004 [REGULAR] <input type="button" value="Order(s) Judgement(s)"/>	RAVINDER SINGH Vs. THE MGMT.OF M/S J.P.EXPORT LTD Advocate : H.K.CHATURVEDI & CO.	REGULAR on 30/11/2009
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IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) 15147/2004****SUNIL KUMAR Petitioner
Through Mr. H.K. Chaturvedi, Advocate****versus****MGT.OF CRYOGENIC REFRIGERATION Respondent****CORAM:
HON'BLE MR. JUSTICE MUKUL MUDGAL****ORDER
31.01.2005**

The learned counsel for the petitioner states that he has instructions to withdraw this writ petition and such a statement was also recorded on 25th January, 2005 before the Joint Registrar. The writ petition is allowed to be withdrawn.

The writ petition is accordingly dismissed as withdrawn and stands disposed of. All the pending applications stand disposed of.

**MUKUL MUDGAL, J
JANUARY 31, 2005
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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22nd December, 2018

Pronounced on: 05th April, 2018

+ W.P. (C) 14302/2004

DEV NARAYAN Petitioner

Through: Mr. H.K.Chaturvedi and
Mr.Sagar Chaturvedi, Advocates

versus

THE MGMT.OF M/S AUTO PRECISION Respondent

Through: None.

**CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR**

% **JUDGMENT**

C. HARI SHANKAR, J.

1. The industrial dispute, which has led to the passing of the impugned Award, dated 16th October, 2003, by the Labour Court, was initiated by the petitioner, claiming to be aggrieved by his unceremonious verbal removal from service, by the respondent, on 28th May, 1991.

2. Subsequent thereto, on 24th June, 1991, the Okhla Industrial Workers Union (hereinafter referred to as “OIWU”) addressed a representation to the Regional Labour Officer (Ex. WW-1/4 before the Labour Court), complaining that the petitioner, who had been serving the respondent since 1983, had been verbally removed from service on 28th May, 1991, merely because he had protested against the respondent extracting, from its employees, twice the work which they were supposed to perform. The representation, therefore, requested that the petitioner be reinstated in service with full back wages. The Regional Labour Officer/Labour Inspector responded, *vide* letter dated 26th June, 1991 (Ex. WW-1/3) addressed to the OIWU, stating that the matter had been discussed, with the respondent, who had stated that the petitioner had not been removed from service, but had remained absent from service, of his own accord, from 28th May, 1991, and that the respondent was prepared to take him back in service. As such, the OIWU was advised to immediately direct the petitioner to rejoin duty with the respondent.

3. Iterating the above facts, the petitioner contended, in his Statement of Claim filed before the Labour Court, that the verbal termination of his services, by the respondent, on 28th May, 1991, was *ex facie* illegal, and pointed out, in this regard, that he had neither been visited with any notice prior to the said removal from service,

nor paid any amount, by the respondent, at the time of such removal. The petitioner further contended that the respondent had misrepresented facts to the Regional Labour Officer, and submitted that, when he reported at the office of the respondent for work, the respondent refused to entertain him. The allegation that the petitioner had, of his own will and volition, chosen to remain absent from work with effect from 28th May, 1991, was categorically denied. Alleging that these acts of the respondent amounted to unfair labour practice, the petitioner prayed that he be reinstated in service with full back wages.

4. It may be noted, here, that, while referring the industrial dispute, raised by the petitioner, for adjudication to the Labour Court, the Secretary (Labour), Delhi Administration framed the following single term of reference:

“Whether the services of Sh. Dev Narayan have been terminated illegally and/or unjustifiably by the management, and if so, to what relief he entitled and what directions are necessary in this regard?”

5. The respondent, in its Written Statement filed before the Labour Court, submitted, as a “preliminary objection”, that, as the respondent had not terminated the services of the petitioner, he “should be directed to report for duty”, albeit with the clear understanding that he would not be entitled to any back wages with effect from 28th May,

1991. Legally, it was contended that, as the petitioner had absented himself from duty without any prior information or sanction of leave, and despite been repeatedly advised, by the respondent, in writing, to report for duty, had failed to do so, no “industrial dispute”, within the meaning of Section 2(k) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”), arose. The submission, of the petitioner, that, after the visit of the Labour Inspector at the premises of the respondent, he had reported for work, but was not allowed to do so, was denied.

6. Before the Labour Court, the petitioner filed his affidavit-in-evidence, on 23rd May, 1994, reiterating his contention that the respondent had verbally terminated his services on 28th May, 1991. It may be noted, here, that the petitioner averred, in para 7 of his affidavit, that, as the respondent was not taking him back in service, the Labour Inspector had, *vide* his report, exhibited as Ex. WW-1/3, advised the petitioner to initiate an industrial dispute, whereas, as a matter of fact, Ex. WW-1/3 does not contain any such advice; rather, the said communication, from the Labour Inspector, pointedly stated that the respondent was willing to take the petitioner back in service, and advised the OIWU to send the petitioner back to work immediately. The petitioner, however, reiterated his stance that the respondent was entirely unwilling to take him back on work. In these circumstances, it was submitted, in the affidavit-in-evidence of the

petitioner, that his termination, from service, infringed Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”), as the petitioner had worked continuously for over 240 days in each year during which he served the respondent.

7. The petitioner was cross-examined, by the respondent, on the above affidavit-in-evidence, on 26th August, 1998. He denied the suggestions, put to him, to the effect that he had absented from duty with effect from 28th May, 1991, and that he had been offered to be taken back on duty, by the respondent, but did not join the same.

8. The respondent led the evidence of Mr. Vipin Jain, Accountant with the respondent, as MW-1. Mr. Jain filed his affidavit-in-evidence, dated 7th May, 1999 by way of examination-in-chief, on behalf of the respondent, before the Labour Court. It was categorically stated, therein, that the respondent was ready and willing to take the petitioner on duty even as on that date, but on the clear understanding that he would not be entitled to any back wages w.e.f. 28th May, 1991, till the date when he would report for duty. It was reiterated that the respondent had not terminated the petitioner, but that the petitioner had himself remained absent from duty w.e.f. 28th May, 1991, without any information or prior sanction of leave. It was further asserted that, even after the visit of the Labour Inspector, at the premises of the respondent, the petitioner never turned up to report for work.

9. MW-1 Mr. Vipin Jain was cross-examined, on the above-mentioned affidavit-in-evidence, tendered by him, on 7th May, 1999. He admitted the fact that the respondent had not served any warning or chargesheet on the petitioner, but denied the allegation that the respondent was extracting more work, from the workmen, including the petitioner, than was required to be done by them. The allegation of termination, of the services of the petitioner, by the respondent, was also categorically denied, and it was asserted that the respondent had never refused to take the petitioner on duty or after 28th May, 1991, or after the visit of the Labour Inspector at the respondent's premises.

10. The Labour Court adjudicated the above industrial dispute by means of the impugned Award, dated 16th October, 2003.

11. On the basis of the facts that had emerged, the Labour Court framed the following two questions, as arising for its consideration, on 30th March, 1996:

“1. Whether the workman abandoned the job as stated, if so, its effect?

2. As per the terms of reference.”

12. With respect to Issue No. 1, as framed above by the Labour Court, the petitioner strenuously objected to the very framing of the

said issue, or to the jurisdiction of the Labour Court to decide the same, on the ground that the issue was beyond the reference made by the appropriate Government under Section 10(1)(c) read with Section 12 (5) of the ID Act. Reliance was placed for the said purpose, on the following judicial pronouncements:

- (i) ***Delhi Cloth and General Mills Co. Ltd vs Workmen, AIR 1967 SC 469,***
- (ii) ***I.T.D.C. vs Delhi Administration, 1982 Lab IC 1309 (Del),***
- (iii) ***Mool Chand Khairati Ram Hospital Kar. Union vs Labour Commissioner, 1997 (76) FLR 12 (Del),***
- (iv) ***Eagle Fashions vs Secretary (Labour), 1998 (78) FLR 371 (Del) and***
- (v) ***Bhagwan Hosiery vs Principal Officer, Labour Court, 2001 (89) FLR 701 (Del).***

13. Responding to the said preliminary submission, it was contended, on behalf of the respondent, before the Labour Court, that Issue No. 1 framed by the Labour Court was not beyond the scope of the reference made to it by the appropriate Government, as it was incidental and ancillary to the said reference, and did not result in enlargement of the ambit thereof. The respondent relied, for this purpose, on the following decisions:

- (i) *Hindustan Petroleum Corporation Ltd vs Presiding Officer, Industrial Tribunal, 2002 (95) FLR 1195,*
- (ii) *J. K. Synthetics v. Rajasthan Trade Union Kendra, (2001) 2 SCC 87* and
- (iii) *Harris Engineers Ltd vs Govt of N.C.T. of Delhi, 2002 (III) LLJ 246.*

14. The Labour Court rejected the above noted preliminary objection voiced by the petitioner, holding that there was no admission, on the part of the respondent, of the factum of termination of the petitioner's services by it. Further, it was noted that the "foundation of the reference" was not shaken or violated while considering the plea of the respondent "that it was not a case of the termination but a case of termination of service by abandonment of services by the claimant". Reliance was placed, by the Labour Court, for arriving at its findings, on *Ashoka Hotel vs Govt of Karnataka, 1984 (64) FJR 176* [which relied, in turn, on the judgement of the Supreme Court in *Express Newspapers (P) Ltd vs Their Workmen, (1963) 23 FJR 1*], and *Sheshrao Bhaduji Hatwar vs P.O., 1st Labour Court, 1992 (II) LLC 672 (Bom)*, as well as the judgements of the Supreme Court in *Delhi Cloth and General Mills Co Ltd vs Their Workmen, 1967 (I) LLJ 423* and *Sitaram Shirodkar vs Administrator, Govt of Goa, 1985 (I) LLJ 480.*

15. Proceeding to examine Issue No 1, as framed by it, on merits, the Labour Court noted that (i) MW-1 had deposed, on oath, that the services of the petitioner were never terminated and that, in fact, he absented himself from duty with effect from 28th May, 1991, (ii) the Labour Inspector, who visited the respondent, was also requested, by it, to direct the petitioner to report for duty (though, admittedly, the respondent did not examine the Labour Inspector), (iii) the petitioner himself proved, on record, the report of the Labour Inspector (Ex. WW-1/3), to the effect that the petitioner had himself absented from duty on 28th May, 1991, while the respondent was ready to take him back on duty, (iv) the Labour Inspector also wrote, on 26th June, 1991, to the OIWU, requesting it to direct the petitioner to report for duty, and (v) there was neither any averment, nor any deposition, by the petitioner, in his affidavit-in-evidence, to the effect that he ever reported for duty, in compliance with the said direction; rather, the petitioner only relied on the demand notice sent through the OIWU on 27th June, 1991 which, too, did not aver that the petitioner had again reported for duty at the office of the respondent after 27th June, 1991. These facts, cumulatively seen, it was held, lent sustenance to the plea of the respondent, that the petitioner had abandoned his job, by *suo motu* remaining absent from work and not reporting for duty, despite the direction of the Labour Inspector. As such, it was held that there was no evidence of termination, of the petitioner, by any act of the

respondent. Issue No 1 was, therefore, decided in favour of the respondent, and against the petitioner.

16. Having thus decided Issue No. 1 against the petitioner, the Labour Court held, with respect to Issue No. 2, i.e., the entitlement, of the petitioner, to reinstatement with back wages, that, in view of the absence of any evidence, to indicate that the respondent had ever terminated the services of the petitioner, and in view of the lack of evidence of any effort, on the part of the petitioner, to rejoin duty, he was not entitled to reinstatement or back wages. Reliance was placed, for this purpose, on *Sonal Garments vs Trimbak Shankar Karve, 2003 LLR 5 (Bom)*.

17. In view of the above, the Labour Court answered the reference, made to it by the appropriate Government, by holding that there was no termination, by the respondent, of the services of the petitioner and that the petitioner stood disentitled to the relief of reinstatement or back wages.

18. The petitioner assails the said decision, by means of the present writ petition.

19. There was no appearance on behalf of the respondent, before me; accordingly, I have heard detailed submissions advanced by Mr.

H. K. Chaturvedi, learned counsel for the petitioner, and proceeded to decide the present petition taking into account the said submissions and the material on record.

20. Mr. Chaturvedi advanced, as his first plank of attack against the impugned Award of the Labour Code, the preliminary objection, voiced by his client before the Labour Court as well, regarding the jurisdiction of the Labour Court to enter into the issue of supposed abandonment, by the petitioner, of his services. Mr. Chaturvedi emphatically submitted that the term of reference, contained in the order, whereby the matter stood referred for adjudication to the Labour Court, was only regarding the legality of the termination, by the respondent, of the petitioner, and submitted, therefore, that the Labour Court was proscribed, in law, from framing an issue as to whether the petitioner had, or had not, abandoned his services. He sought to place reliance, for this purpose, on the judgement of this court in *I.T.D.C. (supra)* and the judgement of the Bombay High Court in *Sitaram Vishnu Shirodkar (supra)*. He, therefore, submitted that, the Labour Court having proceeded to examine an issue which was outside the pale of its jurisdiction, the matter necessarily had to be remanded to the Labour Court for decision afresh. He also placed reliance on Section 10(4) of the ID Act, to contend that the issue of abandonment could not be regarded as incidental to that of termination. In his submission, once the Labour Court held that there

had been no termination, of the services of his client, by the respondent, the matter had to rest there, and the Labour Court had no jurisdiction to return any finding, adverse to his client, on the presumption that his client had abandoned his service.

21. On merits, Mr. Chaturvedi relied on the well-known decision of the Supreme Court in *G. T. Lad vs Chemicals and Fibres of India Ltd, AIR 1979 SC 582*, which clearly holds that there could be no abandonment of service in the absence of animus to abandon. Mr. Chaturvedi submits that the facts of the present case would emphatically militate against any presumption of animus, on the part of his client, to abandon his service, and draws my attention, in this regard, to (i) the affidavit, dated 23rd May, 1994, of the petitioner, especially the assertion, in para 8 thereof, that the petitioner had, on 24th June, 1991, again requested, through the OIWU, that he be taken back in service, but to no avail (ii) letter, dated 26th June, 1991 (Ex. WW-1/3 *supra*) from the Labour Inspector to the OIWU, which indicated that the allegation of abandonment, by the petitioner, of his service, was a defence raised by the respondent, (iii) notice, dated 27th June, 1991 (Ex. WW-1/1 *supra*) by the OIWU to the respondent, which bore the signature of the petitioner at the foot thereof, and (iv) the application, filed by the petitioner before the Conciliation Officer (Ex. WW-1/7) in June 1991, wherein, too, it was averred that, after 24th June, 1991, the petitioner had again visited the premises of the

respondent, for being taken back in service, but the respondent refused to oblige. Mr. Chaturvedi would urge that it was for this reason that the term of reference, in the order, dated 26th August, 1992, whereby the dispute was referred, by the Delhi Administration for adjudication to the Labour Court, was only with respect to termination, and not abandonment. Mr. Chaturvedi submitted that the Labour Court was entirely in error in failing to direct reinstatement of his client, once it had held that the respondent had not terminated his services. He further submitted that the finding, of the Labour Court, that there was no averment, in the affidavit of the petitioner, to the effect that he had ever reported for duty, in compliance with the direction of the Labour Inspector, was incorrect, and that there was, in fact, a specific submission, to this effect, in the said affidavit, to which he drew my attention. In these circumstances, Mr. Chaturvedi would submit that there was no evidence, whatsoever, to support the finding, of the Labour Court, that his client had abandoned his service.

Analysis and decision

22. I would first address the preliminary submission, of Mr. Chaturvedi, regarding the propriety and legality of the examination, by the Labour Court, of the question of abandonment, by the petitioner, of his services, and the framing of Issue No. 1, to that effect, by the Labour Court.

23. It is necessary to understand, at the outset, that there is no half-way house between “termination” and “abandonment”. The territory between the two is no-man’s land. That, with effect from 28th May, 1991, the petitioner ceased to serve the respondent, is not in dispute. Only one, of two, inferences, could be drawn therefrom, and no third, i.e., either – as the petitioner would aver – that the respondent did not allow the petitioner to work after the said date, which would tantamount to “termination”, or – as the respondent would contend – that the petitioner, of his own volition, stopped working from the said date, which would tantamount to “abandonment”.

24. Abandonment and termination are both positive acts, with the former requiring positive intent, on the part of the workman, not to work, and the latter requiring positive intent, on the part of the management, not to allow the workman to work. Requisite animus is the *sine qua non* in either case. There is, however, the subtle jurisprudential distinction between termination (at the instance of the employer) and abandonment, in that, in the former case, it would always be possible for the employer to unequivocally indicate, to the employee, that his services were no longer required and, therefore, that they stood “terminated”, whereas, in the latter case, often, the intention not to continue working for the employer has to be presumed from the conduct of the employee. It is only for this reason that a jural

concept of “deemed abandonment” has evolved over a period of time. I have, in a recent decision in *Engineers India Ltd vs Labour Court, 2018 SCC Online 572 (Del)*, had occasion to examine the concept of “abandonment”, and the law that has evolved, by various pronouncements of the Supreme Court [including *G. T. Lad (supra)*] in that regard. I had called out certain guiding principles, on the issue of “abandonment”, in the said decision, among which are the following:

- (i) Intention, or animus, to abandon, is the necessary *sine qua non*, for any case of “abandonment” to be said to exist. In the absence of intention, there is no abandonment.
- (ii) Whether intention to abandon exists, or not, is a question of fact, to be determined in each case.
- (iii) Termination, or removal, from service, is a positive act of the employer; *per contra*, abandonment is a positive act of the employee.
- (iv) Any evidence, to indicate that the employee, or workman, desired to join duty, but was prevented from doing so, would, by itself, militate against any presumption of “abandonment”.

25. In each case, the onus, to prove that termination, or abandonment, had taken place, would be on the party so contending.

26. Once this is understood, it becomes immediately apparent that the preliminary objection, of Mr. Chaturvedi, regarding the propriety

of Issue No 1, as framed by the Labour Court, and the jurisdiction of the Labour Court to adjudicate thereon, is fundamentally bereft of substance. In my view, there is no necessity to refer, for the purpose, to any judicial pronouncements. The plea of abandonment, by the petitioner, of his services, was the defence put up, by the respondent, to the plea of termination, by the respondent, of the services of the petitioner, as urged by the latter. It is a matter of simple common sense that a *lis* cannot be adjudicated merely by referring to the stand of one of the parties thereto, without appreciating the merits of the stand, put up by the other, by way of rebuttal. The plea of abandonment, in the present case, being the response, by the respondent, to the plea of termination, urged by the petitioner, it was incumbent, on the Labour Court, to examine the merits of the said plea. Expressed otherwise, it would have been impossible – as well as impermissible – for the Labour Court to render a verdict, in the matter, merely by examining whether the respondent had, or had not, terminated the services of the petitioner, without addressing, equally, the plea of the respondent that it was the petitioner who had, in fact, abandoned his services. It is appropriate, in this context, to understand that abandonment also results, in the ultimate consequence, in termination. Though established abandonment, by an employee, of his service, would result in snapping of the jural link between him and his employer, the sequitur would be termination of the employee's employment with the employer.

27. “Termination” is not an expression of art. In some ways, it is merely a constriction of the expression “determination”. Determination of the employer-employee relationship, therefore, would result, *ipso facto*, in termination of the employee, whether it takes place because of the act of the employer in terminating the relationship, or the act of the employee in choosing not to attend work. As such, abandonment, by the employee, of his service, would also result in termination thereof.

28. The jurisdiction of the Labour Court or Industrial Tribunal, under the ID Act, is not limited to the points referred to it for decision/adjudication, in the order of reference made by the appropriate Government, but extends to “matters incidental thereto”, by virtue of Section 10 (4) of the ID Act, which reads as under:

“(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points *and matters incidental thereto*.”

(Emphasis supplied)

The expression “matters incidental thereto” is, by its very nature, wide and comprehensive in equal measure. A leading authority on the ambit of the said expression, as it occurs in section 10 (4) of the ID

Act, is the judgement of the Supreme Court in *Delhi Cloth and General Mills Co. Ltd vs Workmen*, AIR 1967 SC 469, and a careful study of the said decision would substantially answer the objection raised by the petitioner. Before advertng to the factual matrix in which Section 10 (4) of the ID Act came up for consideration in that case, it would be apposite to extract the law, relating to the expression “matters incidental thereto”, as expostulated in para 21 of the report, thus:

“From the above it therefore appears that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the Tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto. The word “incidental” means according to *Webster's New World Dictionary*:

‘happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but usually associated.’

“Something incidental to a dispute” must therefore mean something happening as a result of or in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct.’

In the case before the Supreme Court, the above issue arose in the context of the third and fourth terms of reference, as contained in the order, under Section 10 (1) and 12 (5) of the ID Act, whereby the

Delhi Administration referred the disputes for adjudication to the Industrial Tribunal. They read thus:

“3. Whether the strike at the Delhi Cloth Mills and the lockout declared by the management on the 24-2-1966 are justified in legal and whether the workmen are entitled to wages for the period of the lockout?

4. Whether the ‘sit-down’ strike at the Swatantra Bharat Mills from 23-2-1966 is justified and legal and whether the workmen are entitled to wages during the period of the strike?”

The Supreme Court was concerned, in that matter, with the issue of whether it was open to the Industrial Tribunal, on the basis of the pleadings of the parties, to hold that there was no strike at all. The Supreme Court answered the issue in the negative, opining that, despite the wide scope of the expression “matters incidental thereto”, the Tribunal, in that case, was bound by the terms of reference, which, plainly read, proceeded on the premise that the strike had taken place, and required the Tribunal to adjudicate whether the strike was justified and legal, or not. The Supreme Court held that, in view of the fact that the reference by the appropriate Government proceeded on the premise that the strike had taken place, it was not open to the Tribunal to hold otherwise, i.e., that there was no strike at all. Applying this principle to the present case, it would be seen that the point of reference, contained in the referral order of the Delhi Administration, specifically refers the issue of *whether the services of*

the petitioner had been terminated illegally and/or unjustifiably by the respondent, and not merely whether the termination was illegal or unjustified. In other words, the issue of whether the respondent had, in fact, terminated the services of the petitioner, or not, squarely arises for consideration, in the words of the reference, as crafted by the referral order of the Delhi Administration. Per sequitur, where the case of the respondent-management was that there had been no termination of the petitioner's services, on its part, as it was the petitioner himself who voluntarily abandoned his services, the issue of whether such abandonment had, or had not, taken place, was clearly a "matter incidental" to the issue referred for adjudication. It cannot, therefore, be said that the Labour Court exceeded its jurisdiction in framing Issue No 1 as it did, or in adjudicating the same. The preliminary objection, voiced by learned counsel for the petitioner has, therefore, necessarily to be rejected.

29. Coming, now, to the meat of the matter, it is true that intention to abandon is the necessary prerequisite to a finding that the employee abandoned his services, as contended by Mr. Chaturvedi. It is the contention of Mr. Chaturvedi that the existence of intention to abandon, on the part of the petitioner, had to be proved as a positive fact, and that the evidence on record, in the present case, rather indicated to the contrary. Having said that, the "evidence", on which Mr. Chaturvedi seeks to place reliance, to support his submission that

the requisite intention to abandon, on the part of his client, could not be said to exist, in my view, does not really advance the case of the petitioner. Mr. Chaturvedi has placed reliance on (i) the affidavit, dated 23rd May, 1994, of the petitioner, (ii) the letter, dated 26th June, 1991, from the Labour Inspector to the OIWU, (iii) the notice, dated 27th June, 1991, by the OIWU to the respondent, which bore the signature of the petitioner, and (iv) the application filed by the petitioner before the Conciliation Officer in June 1991. These documents, however, whether viewed individually or collectively, cannot, in my opinion, be said to establish the *absence of intention*, on the part of the petitioner, to abandon his services.

30. It must be remembered that there is no dispute about the fact that, with effect from 28th May, 1991, the petitioner ceased working for the respondent. The petitioner has not placed, on record, a single document, indicating that the respondent discontinued his services, or asked him to quit. Rather, the respondent, even in its written statement before the Labour Court, maintained that it was willing to take the petitioner back on work, subject only to the condition that he would not be entitled to back wages. Though the petitioner has stated, on one or two occasions, that he had reported in the office of the respondent for work, after 27th June, 1991, and had not been permitted to resume duty, no evidence, to that effect, is forthcoming, as rightly held by the Labour Court. *Neither, it appears, did the petitioner take any remedial*

steps, even by way of a communication, to the respondent, whether by himself or through the OIWU, to the effect that the respondent had resiled from its undertaking to take the petitioner back on duty, by refusing to allow him to work, despite his turning up at its office for the said purpose. There is, therefore, no material, whatsoever, on the basis of which it could be held that the petitioner had, in fact, reported for work, at the office of the respondent, after 27th June, 1991, but had not been allowed to rejoin duty.

31. As the facts stand, therefore, the petitioner, apparently, stopped working for the respondent with effect from 28th May, 1991, and never chose to turn up for work thereafter, despite the respondent expressing its readiness and willingness to take him back on its rolls.

32. In that backdrop, the reliance, by Mr. Chaturvedi, on the aforementioned four documents, can take his case thus far and no further. While the letter, dated 26th June, 1991, from the Labour Inspector to the OIWU, is actually counter-productive to the case of the petitioner – as it exhorts the OIWU to direct the petitioner to report back, at the office of the respondent, to resume duty – the other three documents merely contain a bald averment, to the effect that the petitioner had reported for duty after 27th June, 1991, but was not allowed to resume work. Such a bald statement, unsubstantiated by any evidence in support, could not possibly have been regarded as

establishing intention, on the part of the petitioner, to resume duty, and, consequently, it is not possible for this court to fault the Labour Court in refusing to accept the submission, of the petitioner, that there was no intention, on his part, to abandon his services.

33. For the same reason, the contention, of Mr. Chaturvedi, that, having found that the respondent had not terminated the services of the petitioner, the Labour Court had no option but to direct the petitioner's reinstatement, and that it seriously erred in law in failing to do so, has merely to be stated to be rejected. It was no part of the duty of the Labour Court to direct the respondent to take back, on its rolls, an employee who had abandoned his services, or expressed his intention, overtly or covertly, not to work for the respondent. The Labour Court or Industrial Tribunal are, no doubt, required to adopt a labour-friendly approach; at the same time, once it was found that a workman had abandoned his services, or did not evince any intention to work for the management, the brief of the Labour Court stood discharged, and it could not be expected to force, on the management, the services of an unwilling worker.

34. One may, in this connection, usefully refer to the following passage, from para 3 of the report in *State of Haryana vs Om Prakash*, (1998) 8 SCC 733, which is self-speaking in nature:

“Therefore, the authority was wrong in coming to the conclusion that there was a violation of Section 25-F of the Act besides, *as stated earlier, he himself voluntarily ceased to report for duty and there was no act on the part of the employer nor is there anything on record to suggest that the employer had refused work to him.* Retrenchment within the meaning of Section 2(oo) means termination by the employer of the service of the workman for any reason whatsoever. Therefore, *it contemplates an act on the part of the employer which puts an end to service to fall within the definition of the expression “retrenchment” in Section 2(oo) of the Act. There was nothing of the sort in the instant case. It was the workman who ceased to report for duty and even after he ceased to report for duty, it is not his case that at any point of time he reported for duty and he was refused work. He straightaway proceeded to invoke the provisions of the Act and, therefore, this is a case in which the employer has done nothing whatsoever to put an end to his employment and hence the case does not fall within the meaning of Section 2(oo) of the Act. Therefore, the case does not attract Section 2(oo), nor does it satisfy the requirements of Section 25-F.”*

True, in the above decision, there is an observation, by the Supreme Court, that it was not the case of the workman, before it, that, after ceasing to report for duty, he had, thereafter, in fact reported for duty and was refused work, whereas, in the present case, the petitioner has sought to contend that, after 27th June, 1991, he had reported to the office of the respondent, but was not allowed to work. As already noted by me hereinabove, however, the submission is effectively made *in vacuo*, without an iota of material to support it; neither is there any evidence that the petitioner never made any protest in this regard, even by means of a representation to the respondent itself.

35. Viewed any which way, therefore, the petition has to fail. There is no evidence, whatsoever, to indicate that the respondent had ever terminated the services of the petitioner. Worse, even after the petitioner petitioned the Labour Court, the respondent repeatedly undertook to take the petitioner back on its rolls, but there is nothing to indicate that the petitioner ever obliged, or reported for work at the premises of the respondent. The submission, of the petitioner, that he, in fact, did so, but was not taken back on work, is too facile to merit acceptance, especially in the absence of any evidence that the petitioner raised any protest in this regard, either by seeking judicial redress, or even by way of a protest representation. Justice to labour, cannot be at the cost of injustice to industry. I am constrained, therefore, to observe that the petitioner has not made out any case which would entitle him to relief, either from the Labour Court, or from this Court.

36. It has to be remembered, in this context, that this Court, exercising its jurisdiction under Article 227 of the Constitution of India, does not sit in appeal over the decision of the Labour Court or Industrial Tribunal, but interferes therewith only where the findings of the Labour Court or industrial Tribunal are perverse, or suffer from some manifest error of law or fact. No such infirmity, in the opinion

of this Court, can be said to plague the impugned Award, dated 16th October, 2003, passed by the Labour Court.

37. In the result, I am unable to find any cause or reason to interfere with the impugned Award passed by the Labour Court.

38. The writ petition is, consequently, dismissed, without any order as to costs.

APRIL 5, 2018
RK

C.HARI SHANKAR, J



IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) No. 14191/2004****Reserved on: 26.9.2006****05.12.2006****Date of Decision: December 05, 2006****Chhathoo Lal PETITIONER
Through Mr. H.K.Chaturvedi, Advocate.****versus****The Management of
M/s Goramal Hariram Ltd.,
RESPONDENT
Through Mr. Mohit Gupta,
Advocate****CORAM:
JUSTICE SHIV NARAYAN DHINGRA**

- 1. Whether reporters of local papers may be Yes.
allowed to see the judgment?**
- 2.To be referred to the Reporter or not? Yes.**
- 3.Whether the judgment should be reported Yes.
in the Digest?**

: Judgment

- 1. By this writ petition, the petitioner has challenged the validity of award dated 4.1.2003 passed by the Labour Court-II, Karkardooma, Delhi whereby the reference was answered against the petitioner.**
- 2. Briefly the facts are that the petitioner raised a dispute that his services were illegally terminated by the respondent. The dispute was referred in following terms to the Labour Court:
?Whether the termination of the services of Shri Chhathoo Lal is illegal and/or unjustified and if so, to what relief, is he entitled and what directions are necessary in this respect??**
- 3. Before the Labour Court, the respondent/management took the stand that there was no relationship of employer-employee between the management and the workman. The Tribunal framed an issue about the employer-employee relationship, apart from the terms of reference. The Tribunal after considering the evidence came to the conclusion that the petitioner was an employee of contractor, Mr. P.K.Nayyar, who was assigned the contract of packing work by the respondent/management. The documents placed on record showed that the petitioner had sent the leave applications etc. through the contractor and he was being supervised by the contractor. The contractor was having registration under Section 7 of the Contract Labour (Regulation and Abolition) Act and the**

registration certificate was proved. The Tribunal observed that in view of the fact that the petitioner was an employee of contractor, there was no relationship of employer-employee between the petitioner and the respondent and answered the reference against the petitioner.

4. The petitioner challenged the award on the ground that the management could not have raised the issue that the petitioner was not an employee of the management neither the Tribunal could have travelled beyond the reference and framed an issue about the employer-employee relationship. The other ground taken is that the documents produced by the workman viz. slip of EPF and ESI card were sufficient to show that he was an employee of the respondent. Even if he was considered as an employee of the contractor, the contract was camouflage and sham and he should have been considered as an employee of the management on this ground itself. The other ground of the challenge of the award is that the contractor was not having a license under

Section 3 of the CLRA Act, therefore, the contract entered into between the respondent and contractor was sham and camouflage and not giving benefits to the petitioner in the garb of illegal contract amounted to unfair practice. It was the obligation of the principal employer, to comply with all the labour laws and principal employer should have complied with the provisions of Section 25F of the Industrial Dispute Act. The petitioner relied upon 1999 (3) SCC 601 Secretary HSEB v. Suresh and Ors. in support of the arguments that unless there was a genuine contract, the provisions of Contract Labour (Regulation and Abolition) Act shall not be available to be invoked. It was pleaded by the petitioner that the findings of the Labour Court are contrary to law and perverse.

5. The respondent counsel on the other hand supported the award passed by the Tribunal and advanced the arguments as given by the Tribunal in its award.

6. The law in respect of contract labour has been now laid down by Supreme Court in very clear terms in SAIL and Ors v. National Union Waterfront Workers and Ors. 2001 (7) SCC 1 wherein Supreme Court had categorically held that prohibition of contract labour can be considered only by the appropriate Government under Section 10 of the Contract Labour (Regulation and Abolition) Act. Where the contract is alleged to be sham and camouflage, the industrial adjudicator has to adjudicate upon this issue and come to a conclusion if the contract was sham and camouflage. The industrial adjudicator if comes to conclusion that the contract was sham and camouflage may direct the absorption of the employees of contractor by the principal employer. In the present case, the petitioner did not claim that he was an employee of the contractor. He claimed that he was an employee of the principal employer. It is only during evidence, it transpired that he was the employee of the contractor and he was not a direct employee of the respondent. The Tribunal, therefore, came to conclusion that there was no employer-employee relationship between the petitioner and the respondent. After this finding, the petitioner has taken the stand that even if he was an employee of the contractor, the contract should have been declared as camouflage and he should have been considered an employee of the principal employer.

7. In SAIL v. UOI and others 2006 (9) Scale 597 Supreme Court observed as under:

The 1970 Act is a complete code by itself. It not only provides for regulation

of contract labour but also abolition thereof. Relationship of employer and employee is essentially a question of fact. Determination of the said question would depend upon a larger number of factors. Ordinarily, a writ would not go into such a question.

In *State of Karnataka and Others v. KGSD Canteen Employees' Welfare Association and Others* [(2006)1 SCC 567], this court held:

?Keeping in view the facts and circumstances of this case as also the principle of law enunciated in the above-referred decisions of this Court, we are, thus, of the opinion that recourse to writ remedy was not apposite in this case.?

We may reiterate that neither the Labour Court nor the writ court could determine the question as to whether the contract labour should be abolished or not, the same being within the exclusive domain of the Appropriate Government. A decision in that behalf undoubtedly is required to be taken upon following the procedure laid down in sub-section (1) of Section 10 of the 1947 Act. A notification can be issued by an Appropriate Government prohibiting employment of contract labour if the factors enumerated in sub-section (2) of Section 10 of the 1970 Act are satisfied.

When, however, a contention is raised that the contract entered into by and between the management and the contractor is a sham one, in view of the decision of this Court in *Steel Authority of India Limited (supra)*, an industrial adjudicator would be entitled to determine the said issue. the industrial

adjudicator would have jurisdiction to determine the said issue as in the even if it be held that the contract purportedly awarded by the management in favour of the contractor was really a camouflage or a sham one, the employees appointed by the contractor would, in effect and substance, be held to be direct employees of the management.

8. In the present case the workman had not raised any contention that the contract entered into between the contractor and the management was a sham. In fact the contention of the workman was that he was an employee of the respondent. The Labour Court could not have gone into the question whether the contract was sham or not because no such reference was made to the Labour Court. The reference made to the Labour Court was that whether the services of the petitioner were illegally terminated or not and the contention of the petitioner was that he was a direct employee of the respondent. I consider that the petitioner should have initially raised a proper dispute. He should have come up with clean hands and submitted that he was an employee of the contractor and the contract should be declared as sham and camouflage and he should be considered as an employee of the principal employer. He did not disclose the true facts and taking a false plea stood in the way of referring the proper dispute to the Labour Court. It is settled law that the Labour Court is a creation of the reference and the Labour Court cannot go beyond the terms of reference except that the questions incidental to the dispute and those, who go to the root to the jurisdiction of Labour Court can be decided by the Labour Court while deciding a reference.

9. The contention of the counsel of petitioner that the Labour Court could not have gone into the questions of relationship of employer-employee does not stand the scrutiny of law. The issue of relationship of employer-employee goes to the root of the jurisdiction of the Labour Court and is incidental to the issue raised by the petitioner that he was illegally terminated by the respondent. If he was not an employee of the respondent there

could have been no question of his illegal termination the question of his illegal termination would arise only if he was an employee of the respondent.

10. In **A.P.SRTC and Ors. v. G.Srinivas Reddy and Ors, (2006) 3 SCC 674**, Supreme Court held that if the respondents wanted the relief of absorption they will have to approach the Industrial Court and establish that the Contract Labour System was only a ruse/camouflage to avoid labour law benefits to them. Where the workmen do not approach the Court with correct reference and true facts, workmen cannot later on turn around and say that now they should be considered as workmen through the contractor and they should be deemed to be the employees of the management because contract was sham and camouflage.

11. In view of my above discussion, I find no force in the writ petition. The writ petition is dismissed.

December 05, 2006 SHIV NARAYAN DHINGRA,J.
vn

IN THE HIGH COURT OF DELHI AT NEW DELHI**10.08.2009**

**Present:- Petitioner with his counsel Mr. H.K. Chaturvedi,
Advocate.
Mr. D.P. Sethi for respondent No. 1.**

W.P.(C.) No. 131/2004

After some arguments were heard, Mr. H.K. Chaturvedi learned counsel appearing on behalf of the petitioner on instructions from the petitioner present in Court requested that he may be permitted to withdraw this writ petition unconditionally.

**In view of the above, this writ petition is dismissed as withdrawn.
LCR be sent back.**

**AUGUST 10, 2009 S.N.AGGARWAL, J
'a'**

\$~22

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

% **Date of Decision: 23rd March, 2017**

+ W.P.(C) 11760/2004

GANESH PANDEY

..... Petitioner

Through: Mr. Jatin Kumar, Advocate
along with petitioner in person.

versus

THE MANAGEMENT OF :

M/S AMBASSADOR CO.

..... Respondent

Through: Mr. Rajesh Gogna, Adv.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the award dated 29th January, 2004 of the Labour Court whereby the Labour Court declined the backwages to the petitioner.
2. The petitioner joined the respondent as a press-man on 16th February, 1992 and was terminated on 14th May, 1994. The petitioner raised an industrial dispute which was referred to the Labour Court which resulted in the award dated 29th January, 2004.
3. During the pendency of the industrial dispute, the respondent offered the job to the petitioner who re-joined on 25th March, 2003. In that view of the matter, the petitioner restricted his claim to the back wages for the period 1994 to 2003.
4. The respondent contested the claim of the petitioner on the ground that the petitioner abandoned the job on 12th April, 1994. The learned Labour Court held that the respondent failed to prove that the

petitioner abandoned his service.

5. Learned counsel for the petitioner submits that in view of the finding that respondent failed to prove that the petitioner abandoned his service, the petitioner would be entitled to the back wages.

6. Learned counsel for the respondent submits that the respondent unit has been closed as back as in June 2003.

7. Learned counsel for the petitioner submits that the petitioner suffered an accident during the course of his employment with the respondent in which he lost three fingers.

8. In the facts and circumstances of this case and considering the period of 1994 to 2003 when the petitioner remained out of job as well as the minimum wages during the aforesaid period as well as interest that would have accrued on the claim of the back wages, this Court is of the view that lump sum compensation of Rs.1,75,000/- in lieu of the back wages would suffice the interest of justice.

9. The writ petition is allowed and the respondent is directed to make payment of Rs.1,75,000/- to the petitioner as lump sum compensation in lieu of back wages within a period of four weeks. The payment be sent to the petitioner through counsel by means of a cheque.

10. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court.

MARCH 23, 2017
Dk

J.R. MIDHA, J.



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1.	CONT.CAS(C) 60/2003 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	NAGENDER SHARMA Vs. J.P.ARORA Advocate : H.K.CHATURVEDI	Court No. : 25 DISPOSED OFF on 05/11/2007
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IN THE HIGH COURT OF DELHI AT NEW DELHI**05.02.2004**

**Present : Mr. H.K. Chaturvedi, Advocate for the petitioner.
Mr. R.K. Saini, Advocate for the respondent.**

CONT CAS (C) 529/2003

*** The contempt petition has been filed alleging violation of the Order dated 18.02.2003. In terms of the said Order, this Court modified the award and further granted liberty to the respondent herein to make payment in terms of the Order passed.**

The grievance of the petitioner is that despite the payment made till now, the same does not amount to full payment in terms of the award as modified by the Order dated 18.02.2003, though learned counsel for the respondent contends that the payment has been made.

Be that as it may, this is a matter to be considered by the Recovery Officer and in case any amounts have still not been paid to the petitioner, the petitioner is free to approach the Recovery Officer for recovery of any balance amount.

The contempt petition stands disposed of and the contempt notice stands discharged.

**February 5, 2004 SANJAY KISHAN KAUL, J
am**



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1.	CONT.CAS(C) 496/2003 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	MAHAVIR SINGH Vs. AMARJIT SINGH SAWHNI Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 23/10/2003
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IN THE HIGH COURT OF DELHI AT NEW DELHI

CCP 490/2003

**MATADIN Petitioner
Through Mr. H.K. Chaturvedi, Advocate.**

versus

**RUKAN SINGH Respondent
Through Mr. Naveen Sharma, Advocate.**

**CORAM:
HON'BLE MR. JUSTICE MUKUL MUDGAL**

**O R D E R
05.12.2003**

Learned counsel for the petitioner does not wish to press this contempt petition as he has received the amount sought in this petition. Accordingly the contempt petition is dismissed as withdrawn.

**MUKUL MUDGAL, J
DECEMBER 05, 2003
kkb**



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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	CONT.CAS(C) 470/2003 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	TEJ PRATAP Vs. I.S.KOCHHAR Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 27/04/2004
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IN THE HIGH COURT OF DELHI AT NEW DELHI

24.02.2004

**Present : Mr. H.K. Chaturvedi for the Petitioner.
None for the Respondents.**

CCP 442/2003

**Learned counsel for the Petitioner says that he does not press this petition.
Dismissed as not pressed.**

**MADAN B. LOKUR, J
FEBRUARY 24, 2004
rkr**



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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	LPA 207/2003 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	NIRANJAN PASWAN Vs. THE MGMT.OF SEA HAWK CARGO CAR Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 17/03/2003
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IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) 953/2003****CHANDER PAL SINGH and ORS. Petitioners****Through: Mr. H. K. Chaturvedi, Advocate.****versus****MANAGEMENT OF M/S SUNPACK****AUTO INDIA PVT. LTD. and ANR. Respondents****Through: Mr. Pradeep Kumar Arya, Advocate.****CORAM:****HON'BLE MR. JUSTICE V.P.VAISH****ORDER****18.02.2015**

Learned counsel for the parties submit that parties have amicably settled the matter. It is submitted that petitioners and respondents have settled the matter before Delhi High Court Mediation and Conciliation Centre, New Delhi on 25.07.2006 and the petitioners have agreed to receive a sum of Rs.35,000/- (Rupees Thirty five thousand) each. Copy of the report of Mediator dated 25.07.2006 is on record. It is also submitted that petitioner No.3 could not appear before Delhi High Court Mediation and Conciliation Centre, New Delhi but he has also agreed to receive a sum of Rs.35,000/- (Rupees Thirty five thousand).

Petitioner Nos.1 and 2, who are present in Court today state that they have received pay order No.075595 dated 16.02.2015 issued by Union Bank, Udhog Nagar, Delhi and pay order No.000048 dated 16.02.2015 issued by Punjab and Sind Bank, Plot No.31, Khasra No.56/24, Najafgarh Road Nangloi, New Delhi for Rs.35,000/- (Rupees Thirty five thousand) each

respectively in lieu of reinstatement/ back wages and continuity of service, bonus, gratuity and notice pay, etc. and nothing is due.

Petitioner No.3, who is present in Court, states that he has received pay order No.075596 dated 16.02.2015 issued by Union Bank, Udhog Nagar, Delhi in lieu of reinstatement/ back wages, continuity of service, bonus, gratuity and notice pay, etc. and nothing is due.

In this regard, the statements of petitioner Nos.1, 2 and 3 have been recorded separately.

Since the matter has been settled between the parties, the petition stands disposed of.

V.P.VAISH, J

FEBRUARY 18, 2015

hs

W.P.(C) 953/2003

Statement of Shri Chander Pal Singh, S/o. Shri Siya Ram, aged about 55 years R/o. H. No.731, Gali No.8, Prem Nagar, Nangloi, Delhi ? 110041

ON S.A.

I have filed the present petition bearing W.P.(C) No.953/2003. I have settled the matter with respondent No.1 Management before Delhi High Court Mediation and Conciliation Centre, New Delhi on 25.07.2006. In terms of settlement, I have agreed to receive a sum of Rs.35,000/- (Rupees Thirty five thousand) towards full and final settlement. I have received pay order No.075595 dated 16.02.2015 issued by Union Bank, Udyog Nagar, Delhi in lieu of reinstatement of back wages in continuity of service, bonus, gratuity and notice pay, etc. and nothing is due.

I have also received Form No.19 under Employees? Provident Fund Scheme, 1952.

(VED PRAKASH VAISH)

JUDGE

RO and AC

18.02.2015

W.P.(C) 953/2003

Statement of Shri Om Prakash, S/o. Shri Ram Dhani Gupta, aged about 43 years R/o. J-260, Mangolpuri, Delhi ? 110083

ON S.A.

I have filed the present petition bearing W.P.(C) No.953/2003. I have settled the matter with respondent No.1 Management before Delhi High Court Mediation and Conciliation Centre, New Delhi on 25.07.2006. In terms of settlement, I have agreed to receive a sum of Rs.35,000/- (Rupees Thirty five thousand) towards full and final settlement. I have received pay order No.000048 dated 16.02.2015 issued by Punjab and Sind Bank, Plot No.31, Khasra No.56/24, Najafgarh Road Nangloi, New Delhi in lieu of reinstatement of back wages in continuity of service, bonus, gratuity and notice pay, etc. and nothing is due.

I have also received Form No.19 under Employees' Provident Fund Scheme, 1952.

(VED PRAKASH VAISH)

JUDGE

RO and AC

18.02.2015

W.P.(C) 953/2003

Statement of Shri Jawahar Lal, S/o. Shri Moti Lal Singh, aged about 41 years presently at H. No.5, Gali No.4, Shahipur Market, Shalimar Bagh, Delhi-110052 and permanent resident of Village Narayanpur Dubey, Post Khampar District Devariya-274702, Uttar Pradesh

ON S.A.

I have filed the present petition bearing W.P.(C) No.953/2003. I have settled the matter with respondent No.1 Management of M/s. Sunpack Auto India Pvt. Ltd. In terms of settlement, I have agreed to receive a sum of Rs.35,000/- (Rupees Thirty five thousand) towards full and final settlement. I have received pay order No.075596 dated 16.02.2015 issued by Union Bank Udhyog Nagar, Delhi in lieu of reinstatement of back wages in continuity of service, bonus, gratuity and notice pay, etc. and nothing is due.

(VED PRAKASH VAISH)

JUDGE

RO and AC

18.02.2015

§ 2



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1.	W.P.(C) 8066/2003 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	RAM NATH & ORS. Vs. MGT.OF M/S.PLAY WORLD ENTER Advocate : MR. H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 01/09/2009
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1.	W.P.(C) 8044/2003 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	CHATTAR SINGH Vs. MGT.OF M/S.A.FASHION Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 02/11/2006
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1.	W.P.(C) 7456/2003 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	RS RAJWAT CW 7454/03 Vs. . Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 17/11/2003
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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 7376/2003

**RAJ SINGH Petitioner
Through Mr. H.K. Chaturvedi, Adv.**

versus

**D.T.C. Respondent
Through Mr. Vibhu Shankar, Adv.**

**CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR**

**ORDER
24.03.2004**

Dismissed as withdrawn.

**MADAN B. LOKUR, J
MARCH 24, 2004
rkr**

IN THE HIGH COURT OF DELHI AT NEW DELHI**08.12.2003**

**Present : Mr. H.K. Chaturvedi, Advocate for the petitioner.
Mr. Vibhu Shankar, Advocate for the respondent with
Mr. R.K. Singh, Commissioner (Land Management and
Housing) DDA.**

CW 710/2003

The petitioner has filed the present writ petition for restraining the respondent from taking any action in dispossessing the petitioner from property No.1-X/2A measuring 25 sq. yard along with one room and boundary wall situated in Khasra No.23/25, New Lahore, Shastri Nagar in the area of village Khureji Khas, Illaqa Shahdara, Delhi.

The substratum of the claim of the petitioner is that the colony in question forms part of 1071 colonies slated for regularisation and thus in view of the directions passed in CW No.4771/1993 Common Cause and Others Vs. UOI and Others, there could not be any pick and chose policy and a uniform decision should be taken. In the counter affidavit filed by the DDA, it has been stated that the petitioner is in illegal possession of Khasra number which is a nazul land. It is stated that though the colony is slated for regularisation forming part of 1071 colonies, New Delhi. The petitioner has built an unauthorised construction in the vacant land of the DDA.

At the stage of hearing of the petition on 22.07.2003, it was not clear as to what is the position of Khasra no.38 where the construction has been carried out by the petitioner. It has been clarified today that Khasra No.38 is a large khasra and part of

khasra number 38 forms part of the colony slated for regularisation. However, the petitioner has constructed in part of the khasra which is not slated for regularisation and does not form part of the colony. It has also been stated that the petitioner

has carried out construction in the year 2001 which is contrary to the directions passed in Common Cause case (supra) on 17.8.1998.

In view of the aforesaid, it is apparent that the petitioner cannot be granted protection under the present writ petition. Learned counsel for the petitioner states that there are other similar persons who carried out construction. Thus respondent DDA

is directed to forthwith survey the area in question and take action in accordance with law within a maximum period of two months from today and file a compliance report within 10 weeks.

Learned counsel for the petitioner further states that the order has also been passed dismissing the writ petition in respect of the same khasra number in CW No.189/2003 on 24.11.2003 where relief was claimed on same basis as the present petition.

No ground made out for interference under Article 226 of the Constitution of India.

Dismissed.

CM No 189/2003

Dismissed.

**December 08, 2003 SANJAY KISHAN KAUL, J
mb**



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1.	W.P.(C) 6922/2003 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	CHANDER SINGH Vs. D.T.C. Advocate : H.K.CHATURVEDI & CO	Court No. : 0 DISPOSED OFF on 29/11/2005
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1.	W.P.(C) 6650/2003 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	SURESH CHAND SHARMA Vs. D.T.C. Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 20/10/2003
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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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WP(C)1993/1992

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Date of decision:26th April, 2010

DELHI TRANSPORT CORPORATION

..... PETITIONER

Through: Mr. J.N. Aggarwal & Mr. Mayank Joshi,
Advocates

Versus

SHRI SHYAM SUNDER & ORS.

..... RESPONDENTS

Through: Mr. H.K. Chaturvedi & Ms. Anjali
Chaturvedi, Advocates.

AND

+

WP(C)6584/2003

SHRI SHYAM SUNDER

..... PETITIONER

Through: Mr. H.K. Chaturvedi & Ms. Anjali
Chaturvedi, Advocates.

Versus

DELHI TRANSPORT CORPORATION

..... RESPONDENT

Through: Mr. J.N. Aggarwal & Mr. Mayank Joshi,
Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported
in the Digest? No

RAJIV SAHAI ENDLAW, J.

1. WP(C) 1993/1992 has been preferred by DTC with respect to the award dated 19th September, 1991 of the Labour Court holding the termination by the DTC of the services of the respondent workman to be illegal and unjustified and

directing DTC to reinstate the workman with continuity of service and full back wages.

2. The DTC appointed the respondent workman as a Retainer Crew Conductor with effect from 15th March, 1984 and he was put on probation for one year with effect from 15th September, 1984. It is the case of DTC that the respondent workman was negligent in discharging his duties; that the bus on which he was posted was involved in an accident at Shahdara Terminal and hit a person who fell down and received fatal head injuries. DTC thus terminated the services of the respondent workman on 21st March, 1985 under Regulation 9(a)(i) of DRTA (Conditions of Appointment & Service) Regulations, 1952 after paying one month's notice pay including retrenchment compensation. The respondent workman raised an industrial dispute which was referred to the Labour Court. The Labour Court held that notwithstanding the fact that the respondent workman was on probation, since the cessation of his probation or termination of his services was for the reason of misconduct aforesaid, it was stigmatic and enquiry having not been held, the termination was held to be bad.

3. The award aforesaid is dated 19th September, 1991. DTC instead of challenging the said award, issued a letter dated 16th March, 1992 to the respondent workman, reinstating the respondent workman in service with immediate effect subject to the final decision of the High Court in the writ petition "which was going to be filed by the Corporation against the award dated 19th September, 1991". It was also promised vide the said letter that the respondent workman would be entitled to full back wages from the date he was

terminated from service till the date of his reinstatement with the benefit of continuity of service. It is undisputed that in pursuance to the said letter the respondent workman joined the services of the DTC and continues to be in the service. The writ petition challenging the award was filed after more than two months in or about May, 1992 and came up before this Court on 27th May, 1992 when Rule was issued. However, notwithstanding the aforesaid, the writ petition was accompanied with an application for interim relief. Even though as per the letter dated 16th March, 1992, the respondent workman was not only reinstated but also held entitled to back wages but on 28th November, 1994, on the statement of the counsel for the DTC that in pursuance to the award the respondent workman had been reinstated in service, this Court stayed the implementation of the award qua the payment of back wages.

4. WP(C) No.6584/2003 was filed by the respondent workman contending that though in pursuance to the letter dated 16th March, 1992 he had joined duties with DTC and has since then been working with DTC but without getting the benefit of continuity of service. The respondent workman thus seeks the relief of implementation of the letter dated 16th March, 1992 of the DTC in as much as continuity of service is concerned. Notice of the said writ petition was also issued and the same ordered to be heard along with WP(C) No.1993/1992.

5. The counsel for the DTC has contended that the award dated 19th September, 1991 is contrary to the law as laid down in *Municipal Committee, Sirsa Vs. Munshi Ram* JT 2005 (2) SC 117, *Chaitanya Prakash Vs. H. Omkarappa* (2010) 2 SCC 623, *Ram Narain Jha Vs. T.M. Apartments Pvt. Ltd.*

2007 (99) DRJ 724 and the order dated 22nd September, 2004 in WP(C) No.1061/1994 titled *Delhi Transport Corporation Vs. Presiding Officer* of another Single Judge of this Court, all to the effect that during the probation period the services of an employee can be terminated and merely because the employer on appraisal of the performance of the employee finds the employee not up to the mark, the order of termination of probation or cessation of probation does not become stigmatic.

6. I have also recently in *Duli Chand Vs. P.O., Labour Court-VIII* MANU/DE/0582/2010 held so. I find that the Division Bench of this Court in *Mahavir Singh Vs. D.T.C.* 57 (1995) DLT 465 has also held that an order of termination simplicitor of a probationer is not *per se* bad even when it is preceded by a preliminary fact finding enquiry and it is only when a probationer is dismissed from service without a proper enquiry that a stigma as a result of some specific charge that the plea that the removal from service is by way of punishment can be sustained.

7. In the present case, the order of termination of the respondent workman does not cast any stigma on him. The order of the Labour Court is thus clearly not in accordance with law.

8. However, the conduct of the DTC in reinstating the respondent workman immediately after the award, though subject to the final decision in the writ petition challenging the award, which had not even been filed at that time, compels me to hold that this is not a fit case for exercise by this Court of the discretionary jurisdiction under Article 226 of the Constitution of India. It has

been put to the counsel for the DTC as to why DTC in this case followed such procedure. No answer is forthcoming. No reason for such conduct is set out in the writ petition also. It was not as if DTC had sought interim stay of the award and the same had been declined by this Court or there was any other compulsion on DTC to reinstate the respondent workman. The proceedings since then have remained pending for about 18 years. I have enquired from the counsel for DTC as to whether DTC has in the last 18 years had any problem of conduct/misconduct or otherwise with the respondent workman. The counsel for DTC states that he has no instructions. The counsel for the respondent workman on the other hand makes a categorical statement that for the last 18 years there has been no case of misconduct against the respondent workman. The counsel for the respondent workman infact invites attention to the certificate of appreciation dated 6th September, 2004 issued by DTC to the respondent workman, appreciating the exemplary honesty displayed by the respondent workman and giving incentive of Rs.500/- to the respondent workman. The said document has been on record for the last over five years and has not been controverted by DTC.

9. This Court is of the opinion that DTC by its unilateral act of reinstating the respondent workman has created a situation which does not now merit interference by this Court in the award of the Labour Court even though found to be contrary to law. The respondent workman at that time was at the threshold of his career/ working life and could have got employment elsewhere. Today after such a long lapse of time, the respondent workman would be incapable of finding employment anywhere else and even otherwise family-wise would be at such a

stage where dismissal of the respondent workman from employment, which would be the consequence of allowing the petition, would play havoc on the respondent workman and his family members. DTC which has considerable industrial / service litigation in this Court is deemed to be aware of the time for which the writ petition would remain pending before this Court. DTC before issuing the order of reinstatement dated 16th March, 1992 did not even take a chance of seeking stay of operation of the award from this Court. It is generally found that in a large number of awards against DTC stay of operation of the award is granted. In such eventuality, the respondent workman in the meanwhile would have arranged his affairs otherwise. However, DTC by making the respondent workman work has now not left the respondent workman with any other alternative avenue of employment.

10. WP(C) No.1993/1992 is thus dismissed. Consequently, WP(C) No.6584/2003 is allowed. It is inexplicable as to why DTC has not fully implemented its letter dated 16th March, 1992 by which it had made the respondent workman accept the offer of reinstatement on the promise that he will be paid full back wages and the benefit of continuity of service. The DTC is directed to, within six weeks hereof, implement the letter dated 16th March, 1992 in entirety and to make payment to the respondent workman of salary giving benefit of continuity of service as per the award. However, in the circumstances, the parties are left to bear their own costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

26th April, 2010/gsr

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

% **W.P.(C) No. 6336/2003**

+ **Date of Decision: 6th September, 2012**

MANGAL PRASAD **....Petitioner**

! **Through: Mr.H.K.Chaturvedi, Advocate**

Versus

\$ **MGT. OF M/S MODERN FOOD
INDUSTRIES & ANR.**

...Respondents

! **Through: Mr. Sandeep Prabhakar &
Mr. Amit Kumar, Advocates**

CORAM:

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

JUDGMENT

The present writ petition has been filed by the petitioner-workman questioning the correctness of the Award dated 25.03.2003 passed by the Labour Court whereby his claim of reinstatement in service lodged against his employer, the respondent no. 1 herein, with back wages was rejected after rejecting his case that his services had been terminated illegally and unjustifiably.

2. Briefly stated, the facts that led to the filing of this petition are that the petitioner-workman, as per his case, was employed with the respondent-management in 1986 and on 18.08.1989 his services were terminated illegally. He had then approached the labour authorities for his re-instatement in service but since he could not get that relief the

dispute between him and the respondent-management was referred for adjudication to the Labour Court vide Reference dated 7th September, 1990. The following was the term of reference:-

“Whether the services of Sh. Mangal Parsad have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?”

3. The petitioner-workman filed his statement of claim before the Labour Court and claimed termination of his services to be illegal due to non-compliance of the requirements of Sections 25-F and G of the Industrial Disputes Act, 1947. He pleaded that his signatures were being obtained every year by the respondent no. 1-management on some papers to show fresh employment everytime so that he could not claim permanence in job. The respondent-management filed its written statement denying his claim of illegal termination from the services and stated that he was a casual worker who was employed temporarily to meet the requirements of the seasonal work and he had not worked for 240 days and had worked for 151 days only and was paid as a daily wager and, therefore, he could not claim benefit of Section 25-F of the Industrial Disputes Act. It was further stated that since there was no work in the respondent's-factory the petitioner was not given any work. Violation of Section 25-G of the said Act was also denied.

4. The petitioner-workman filed a rejoinder reaffirming the averments made him in his statement of claim while refuting the averments made by the respondent-management in its written statement and further reiterated that he had worked for 240 days.

5. The Labour Court after examining the evidence produced by both the parties before it and after considering the submissions made by their authorized representatives, answered the reference in favour of the respondent-management. The relevant portion from the Award is reproduced below:-

“7. Perusal of the written submission placed on record by the party, the case of the claimant is that claimant worked with the management since 24.04.86 but nothing to that effect has been placed or proved on record by the claimant. In the written submissions also, the claimant case was that management admitted that claimant worked during 1986 but that admission has been explained by the management witness Praman Kumar that claimant worked only for 55 days after joining on 05.05.86 and never worked during the year 1987 and worked only for 89 days during the year 1988. The management witness denied the suggestion that claimant worked continuously till 18.06.89. The onus to prove that claimant worked for 240 days lies on the claimant and mere deposition in the affidavit is not sufficient to prove the factum of working for 240 days continuously in a year preceding the date of his termination as defined u/s 25-B of the I.D. Act. The management witness, on the other hand, has placed and proved on record the muster roll for the year 1989 showing that claimant had worked only for 151 days during 23 February, 1989 to August, 1989 as was consistently pleaded by the management in the reference as well as before conciliation officer admittedly. The muster roll proved on record are Ext.MW2/1 to MW2/7. There is no substance in the submissions by Ld. A.R. for the claimant that management purposely did not produce muster roll for the year, 1986 and 1987 as the claimant was working regularly during the years. It is so because, primarily it is for the claimant to prove continuous working for 240 days in a year and not for the management.....

8. Considering the above discussion, I hold that claimant failed to prove that he served the management for 240 days during the period of twelve months preceding the date with reference to his alleged termination.

9. It being so, the claimant is not entitled to protection of Section 25-F of the I.D. Act, 1947 as laid down in case of India Silk Manufacturing Co. Pvt. Ltd. Vs. Gan Prasad R. Jaiswal & other reported in 1997 LLR 1126.....

In fact, the submissions before the Court was that it was for the management to prove that claimant was junior most and not for the claimant to substantiate the submissions. Reference is made to the case of Central Bank of India Vs. S. Satyam & others reported in 1996 (74) FLR 2063, Samistha Dube Vs. City Board Etawah & others reported in 1999 (81) FLR 766, Balbir Singh Vs. Kurukshetra Central Co. Op Bank Ltd. & others reported in 1990 (61) FLR 438, Govt. of N.C.T. of Delhi Vs. Balbir Singh and others reported in 1997 (76) FLR 569, Madho Shanker Dave Vs. The State of Rajasthan reported in 1990 FLR 683, Ram Chandra Vs. Union of India & others reported on 2001 (90) FLR 55, The Kurukshetra Central Co. Op Bank Ltd. Vs. State of Haryana & others reported in 1993 (66) FLR 297, Dilip Hanumantrao Shirke & others Vs. Zila Parishad, Yavathal & other.

The submissions are misconceived and the reference made to the case of Samistha Dube Vs. S. Satyam & others is of no help to the claimant as it was not the case of the management that claimant was junior most or that his services were retrenched by the management being the claimant a junior most employee of the management

10. In fact, a vague plea was taken, for the first time, before the Court by adding a para in the statement of claim that juniors to the claimant are working with the management. That was not the case of the claimant in his statement of claim which was filed before conciliation officer of which copy is placed on record and proved as Ext.WW1/1 in the affidavit filed in evidence by the claimant. Not only a vague plea is of no consequence but also claimant failed to prove that his services were terminated by the management on 18.08.89. On the face of statement of Executive Administration, Shri Praman Kumar that claimant left the job in August 1989 and his services were never terminated by them, no question of even retrenchment arises what to talk of retrenchment of the claimant as junior most employee of the management. Nothing has been placed or proved on record by the claimant so as to say that claimant was the junior most employee, even if, it is assumed that services of the claimant were terminated/retrenched by the management as on date as alleged by the claimant.

11. In view of the above, the claimant has no case either of non compliance of Section 25-F of the I.D. Act or violation of Section 25-G by the management. The claimant, as such is not entitled to any relief or directions in the matter under reference.”

6. The learned counsel appearing on behalf of the petitioner-workman argued that the impugned award has been passed by the Labour Court without applying its mind and without considering the evidence produced before it as the claim of the workman of joining the respondent in 1986 has not been denied by the management which shows that the management agrees with that statement of the workman to be true and the same has been ignored by the Labour Court. It was also argued that the petitioner had been working continuously since 1986 with his ESI No. 11-7720-03 and that the junior to him have not been terminated though his services have been terminated being violative of provisions of Industrial Disputes Act and to support this submission the learned counsel has submitted judgments of various Courts. The learned counsel for the petitioner-workman also argued that the petitioner had completed 240 days and that the management has deliberately now shown the muster rolls for the years 1986 and 1987 which would show that the petitioner was continuously working with the respondent-management.

7. The learned counsel for the respondent while supporting the impugned award reiterated the submissions made before the Labour Court and argued that the petitioner-workman was a casual worker employed temporarily for seasonal work and wasn't working continuously and also that he did not complete 240 days with the respondent and it is for the petitioner-workman to establish that he had completed 240 days with the respondent-management. It was further

argued that the respondent has not violated any provisions of the Industrial Disputes Act.

8. Considering the submissions made on behalf of both the parties and after having gone through the impugned award and particularly the portion already extracted I have come to the conclusion that the impugned award does not suffer from any perversity or illegality in appreciation of evidence by the Labour Court justifying interference by this Court which cannot re-appreciate the evidence as an Appellate Court. The labour Court has rightly concluded that the petitioner-workman had failed to prove that he had worked for 240 days with the respondent-management and that anyone junior to him had been retained in service.

9. This writ petition is, accordingly, dismissed.

P.K. BHASIN, J

September 6, 2012

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

Date of decision: 25th March, 2011.

+

W.P.(C) 5458/2003

BABLU DAS

..... Petitioner

Through: Mr. H.K. Chaturvedi & Ms. Anjali
Chaturvedi, Advocates

Versus

MGT.OF M/S.P.R.ELECTRICALS & ANR..... Respondents

Through: Mr. P.K. Dikshit, Adv. for
Mr. Sanjay Sehgal, Adv. for R-1.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

- | | |
|--|-----|
| 1. Whether reporters of Local papers may be allowed to see the judgment? | No. |
| 2. To be referred to the reporter or not? | No. |
| 3. Whether the judgment should be reported in the Digest? | No. |

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the award dated 17th January, 2003 of the

Labour Court on the following reference:

“Whether the services of Sh. Bablu Das have been terminated illegally and / or unjustifiably by the

management, and if so, to what relief is he entitled and what directions are necessary in this respect.”

2. It was the defence of the respondent employer before the Labour Court that the petitioner was not a “workman” but a contractor and had left the work of the respondent employer of his own accord on 4th May, 1993 after full and final settlement. It is not in dispute that the petitioner was working as a Winder with the respondent employer since 12th September, 1984 and was last receiving ₹1,250/- per month. The Labour Court on the defence of the respondent employer of the petitioner being a contractor, after consideration of the evidence led held that without the respondent employer proving anything more, its bare statement that the petitioner was doing the job of winding on contract basis could not be accepted. It was found that the petitioner was carrying out the work of winding in the premises of the respondent employer and under the directions of the respondent employer and was thus an employee and a “workman” of the respondent employer. With respect to the plea of full and final settlement, the Labour Court on the basis of evidence led held that though a document of full and final

settlement was prepared but the petitioner workman had been able to prove by examination of himself and other witnesses that the said document was written under threat and compulsion; moreover the petitioner workman had immediately filed a police report also in this regard. The Labour Court accordingly held that the respondent employer had got executed the said document from the petitioner forcibly.

3. Though deciding the issues aforesaid in favour of the petitioner workman and holding that the termination of service of the petitioner workman was illegal and unjustified, the Labour Court nevertheless granted the relief only of payment of compensation of ₹60,000/- to the petitioner. One of the reasons given for denying the relief of reinstatement to the petitioner workman was that owing to the allegations of theft by the respondent employer against the petitioner workman and of threats of coercion by the petitioner workman against the respondent employer, the respondent employer would have lost confidence in the petitioner workman.

4. Aggrieved from the non grant of the relief of re-instatement, the present petition was filed. Notice thereof was issued. However, the respondent employer remained unserved for nearly three years. On 20th September, 2005, the petitioner workman informed that the sole proprietor of the respondent employer had expired. An application was filed for substitution of legal representatives and notice thereof issued to the legal representatives; since they were also not found at the address given, fresh address was furnished and the legal heirs of the deceased proprietor of the respondent employer appeared on 28th July, 2008. The said legal heirs however did not appear thereafter and fresh notice was issued and which could only be served for 20th May, 2010 when time was sought by the legal heirs for filing counter affidavit. Thereafter on 16th August, 2010 final opportunity was given for filing the counter affidavit but the counter affidavit was still not filed. On the last date i.e. 6th December, 2010 again last and final opportunity was granted to file the counter affidavit but it has not been filed till now. The counsel for the legal representatives today again seeks time to file

counter affidavit stating that the records could not be collected till now.

5. However, since last and final opportunity for filing the counter affidavit has already been granted twice, the request cannot be acceded to and the counsels have been heard.

6. The counsel for the petitioner contends that the relief of reinstatement ought to have followed the finding of termination of employment being illegal. Reliance in this regard is placed on the recent judgment dated 2nd April, 2009 of the Division Bench of this Court in LPA No.85/2009 titled ***Kamla Vs. The Management of Director of Social Welfare*** where it was held that ordinarily where a workman whose services were terminated illegally will be entitled to reinstatement and compensation in lieu of reinstatement may be awarded only in unusual and exceptional cases. It was further held that in the absence of cogent and valid reason, it would not be proper for the Labour court to deny the relief of reinstatement to a workman whose services have been illegally terminated.

7. Reliance is placed next on para 12 of the *Management of Delhi Transport Corporation Vs. Ram Kumar* 1992 LAB. I.C. 1378 where the Division Bench of this Court held that unsubstantive plea of loss of confidence ought not to come in the way of grant of relief of reinstatement. He contends that the Labour Court in the present case has denied the relief of reinstatement only on the ground of loss of confidence and which as aforesaid held by the Division Bench could not have been done.

8. The counsel for the legal heirs of the respondent employer has not been able to urge any submissions.

9. I find that the Labour Court in paras 16 & 17 of the award has given yet another reason for grant of the relief of compensation only. Reliance was placed on certain judgments of this Court holding that the Court was free to adopt any of the two reliefs, of reinstatement or compensation as it may consider expedient.

10. The Labour Court in the award impugned in this petition has not

returned any finding of the petitioner workman having committed theft and in lieu of dropping which charge the full and final settlement relied upon by the respondent employer was recorded. I find merit in the contention of the petitioner workman that without the incident of theft having been proved, no reason of loss of confidence could have been cited for denying the relief of reinstatement.

11. However the Apex Court recently in *Jagbir Singh Vs. Haryana State Agriculture Marketing Board* (2009) 15 SCC 327 has reiterated that compensation in lieu of re-instatement can be granted in appropriate cases. In the present case, the petitioner workman has not been working with the respondent employer for the last over 17 years. Moreover, the employer is now no more. The counsel for the legal heirs is not even able to state whether the legal heirs are carrying on the business in which the petitioner workman was employed. I do not find it appropriate that the petitioner workman be now directed to be employed with a new employer. Thus, the relief of re-instatement in view of further a long time having elapsed since the award and the

subsequent event of demise of the respondent employer is not found appropriate.

12. The question however arises whether the compensation awarded is adequate. It has been enquired whether the said compensation has been paid or tendered. The answer is in the negative. It has also been enquired whether the respondent employer challenged the award. The answer is again in the negative. The compensation of ₹60,000/- as of today, for the illegal termination in the year 1993 is found inadequate. The respondent employer having not paid / tendered the compensation till now, are liable for payment of interest thereon. Even if interest were to be added on the said compensation, the same would take the amount of compensation to over ₹1,00,000/-.

13. In the entirety of the facts and circumstances of the case, I am of the view that the justice will be done if the amount of compensation together with interest etc. due thereon till today is enhanced to ₹1,50,000/-. Since the component of interest till today has been taken into consideration in arriving at the said figure, future interest on the

said amount at the rate of 10% per annum shall run only if the said amount remains unpaid for four weeks of today. The award of the Labour Court is modified accordingly. The respondent employer is directed to pay the sum of ₹1,50,000/- to the petitioner workman within four weeks of today failing which besides the other remedies of the petitioner workman, the said amount shall also incur interest at the rate of 10% per annum.

The petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MARCH 25, 2011
'gsr'..

IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) 5144/2003****DHANA THAKUR****Petitioner****Through: Mr. H.K. Chaturvedi with Ms. Anjali Chaturvedi, Advocates.****versus****MGT.OF M/S.INDIA CRAFT and ANR.****Respondents****Through: Mr. Puneet Saini, Advocate.****CORAM:****HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW****ORDER****19.05.2010**

1. The writ petition impugns the award dated 5th March, 2003 of the Labour Court holding the termination by the respondent no.1 employer of the services of the petitioner workman to be illegal and directing the respondent no.1 employer to reinstate the petitioner workman, without however any back wages or other benefits. The respondent no.1 employer has not impugned the award. However, the respondent no.1 employer did not reinstate the petitioner workman on the ground that the unit in which the petitioner workman was employed had closed down. The petitioner workman by this writ petition, in addition to the relief of reinstatement claims back wages with continuity of service. The petitioner workman is also informed to have filed an application under Section 33 C (2) before the Labour Court for computation of the amounts due after the award. The

said application of the petitioner workman was dismissed vide order dated 23rd September, 2006 of the Labour Court. No challenge to the said order has been made.

2. The matter was being adjourned to enable the parties to amicably settle the same. The counsel for the parties today inform that the matter has been amicably settled. The respondent no.1 employer has agreed to pay to the petitioner workman a sum of Rs.70,000/- within six weeks of today in full and final settlement of all claims of the petitioner workman against the respondent no.1 employer under the award including in lieu of reinstatement and otherwise. The statement of the petitioner workman present in court has been recorded.

3. The settlement aforesaid is found to be in the interest and benefit of the parties and is allowed. The award impugned in this writ petition is modified in terms of the settlement aforesaid. The undertaking of Mr. Vinod Chopra proprietor of the respondent no.1 employer through counsel to pay the said sum of Rs.70,000/- within six weeks is accepted and he is ordered to be bound by the same and made aware of the consequences of breach of undertaking given to the

court.

4. The writ petition is disposed of, leaving the parties to bear their own costs

RAJIV SAHAI ENDLAW, J

MAY 19, 2010

PP

W.P.(C) 5144/2003

STATEMENT OF SH. DHANA THAKUR AGED ABOUT 35 YEARS S/O SH. MOHAN THAKUR R/O

H.NO.437, KHASRA NO.322, NEB SARAI, NEW DELHI ON S.A.

I am the petitioner above named. I have settled all my disputes with the respondent no.1 employer. On receipt of Rs.70,000/- (Rupees Seventy Thousand Only) from the respondent no.1 employer by Pay Order in my name within six weeks of today, I shall be left with no claims against the respondent no.1 employer under the award including in lieu of reinstatement or otherwise. I confirm that there are no other complaints/proceedings filed by me against the respondent no.1 employer and I shall, in future also, not institute any complaint or proceeding against the respondent no.1 employer.

ROandAC.

RAJIV SAHAI ENDLAW, J

MAY 19, 2010

PP

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **REVIEW PETITION 207 of 2005**
IN
WRIT PETITION (CIVIL) 3379 OF 2003

Reserved on: 16th July, 2008

Date of Decision: 11th September, 2008

KRISHAN CHANDER Petitioner

Through: Mr. H.K. Chaturvedi, Adv.
versus

DELHI TRANSPORT CORPORATION & ANR. Respondents

Through: Ms. Aarti Mahajan, Adv.

% **CORAM:**
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present petition seeks review of order dated 11th October, 2004 in view of the judgment of the Constitution Bench of Supreme Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma & Others***, reported as (2002) 2 SCC 244.

2. By the judgment and order dated 11th October, 2004 this Court disposed of two writ petitions being Writ Petition (Civil) No. 3379 of 2003 and Writ Petition (Civil) No. 5712 of 2003 filed by the workman and the Delhi Transport Corporation (for short "Corporation") respectively. The writ petition filed by the workman prayed for issuance of an appropriate writ/direction to the respondent to grant

him reinstatement with consequential benefits after rejection of the application filed by the Corporation under Section 33(2)(b) of the Industrial Disputes Act, 1947 vide order dated 23rd October, 2002. The other petition filed by the Delhi Transport Corporation challenged the correctness of the order passed by the learned Industrial Tribunal dated 23rd October, 2002. Since both the petitions arose from one and the same award, it was considered appropriate to dispose of both these petitions by a common judgment.

3. Before addressing the rival contentions of the parties it will be relevant to adumbrate the facts giving rise to the present application:

- (a) The applicant-workman was employed as a Driver with the Delhi Transport Corporation. He was served with charge sheet on 25th October, 1991 with the allegations that he availed 40 days leave without pay during the period between 1st January, 1991 to 30th June, 1991.
- (b) Upon conclusion of a domestic enquiry held in accordance with the Rules a show-cause notice was served upon the workman on 24th November, 1992. Eventually, an order of punishment removing the workman from service of the Corporation was passed on 7th January, 1993.
- (c) The Corporation, thereafter, applied for approval of the action under the provision of Section 33(2)(b) of the Act. The Industrial Adjudicator declined to approve the action of the Corporation and rejected its application vide order dated 23rd October, 2002.

- (d) As aforesaid, the order dated 23rd October, 2002 was the subject matter of the writ petitions filed by both the parties before this Court. This Court vide order dated 11th October, 2004 after noticing that the workman had already been taken back into service by the Corporation and after careful consideration of the evidence recorded by the Industrial Adjudicator held that the impugned order dated 23rd October, 2002 did not call for any interference.
- (e) On the merits of the writ petition filed by the workman claiming the relief of full back wages by virtue of the order dated 23rd October, 2002, this Court held that “...*there are no specific averments made in the petition that he was not employed during the interregnum period of dismissal of his service till the date of his reinstatement. Furthermore, it cannot be presumed that he is a person who was incapable of earning. Workman is admittedly a driver. Thus, in normal course of life he would be able to make his two ends meet. In these circumstances and keeping in view the judgment of this Court in **M.P. State Electricity Board vs. Smt. Jarina Bee**, JT 2003 (5) SC 544, it is not necessary for this Court to go into greater detail in relation to payment of back wages and particularly in view of the fact that there are no pleadings to the effect that workman was not able to get employment despite his best efforts*”.
- (f) This Court vide the order dated 11th October, 2004 thereafter proceeded to consider the relevant portion of

the judgment in *M.P. State Electricity Board vs. Smt. Jarina Bee (supra)* and thereupon held as follows:

“14. For the reasons afore-recorded, I allow this petition and direct the respondents to reinstate the workman with continuity of service with back wages, however restricted to 25% of the said wages for the interregnum period i.e. from the date of termination till reinstatement. I have restricted the back wages to 25%, keeping in view the absence of specific pleadings and normal conduct of the workman in the facts and circumstances of this case.”

- (g) Aggrieved and dissatisfied with the order of this Court allowing partially the writ petition vide order dated 11th October, 2004 the workman preferred an appeal numbered as LPA No. 1147 of 2005.
- (h) A Division Bench of this Court vide its order dated 27th May, 2005 disposed of LPA No. 1147 of 2005 with the following order:

“There is an inordinate delay of 165 days in preferring the appeal. On realizing the situation counsel came out with a case that the judgment delivered by the Constitution Bench of the Supreme Court cited before the learned Single Judge has not been considered. We find no reference to this in the impugned order. It is required to be noted that it was the duty of the counsel immediately after the judgment was received to move the concerned court but he has not done the same and is making grievance before this Court which cannot be granted. Therefore we are not entertaining the appeal. However it will be open for the appellant to file a review application in accordance with law. Permission granted. Rejected as withdrawn.”

- (i) In these circumstances the workman filed the present application dated 13th July, 2005 praying for a review of order dated 11th October, 2004 and consequently for grant

of full back wages instead of 25% back wages granted thereby.

4. Mr. Chaturvedi, counsel appearing on behalf of the applicant firstly submitted that this Court had not considered the decision of the Constitution Bench in the case of *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma & Others (supra)*, in terms of which the applicant was entitled for 100% back wages. Counsel for the applicant secondly submitted that the judgment under review dated 11th October, 2004 erred in fact, inasmuch as, there was a specific averment in the affidavit accompanying the writ petition to the effect that the workman was still unemployed and not working in any establishment and facing great financial hardship because the Corporation was not reinstating him with consequential benefits.

5. Per contra, Ms. Aarti Mahajan, counsel for the Corporation firstly stated that not only was the review petition filed belatedly after the rejection of the Letters Patent Appeal, and after a gap of more than nine months from the date of the order under review, but even the LPA No. 1147 of 2005, as noticed by the Division Bench, had been filed after an inordinate delay of 165 days. It was her submission that the review application is not maintainable as being time barred as it is neither accompanied by an application for condonation of delay, nor any explanation has been offered for the same. Counsel secondly urged that in the judgments cited in the order under review dated 11th October, 2004 fully support and substantiate the decision of the Single Judge of this Court. Lastly, she urged that there was no

mistake or error in the order dated 11th October, 2004, inasmuch as, there was absolutely no specific averment in the body of the writ petition that the workman was not employed during the interregnum, and further that the affidavit in support of the petition does not constitute the petition itself. Furthermore, even in the affidavit in support, relied upon by the workman, it had only been stated that the workman was still unemployed and it was nowhere stated that he was unemployed even earlier or that he was continuously unemployed from the date of his dismissal from service.

6. Before considering the contentions raised before me during the course of hearing it would be useful to extract the relevant portions of the decisions relied upon by the parties in support thereof.

- 1) In ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma & Others (supra)***, the Supreme Court after considering the question whether the rejection of approval under Section 33(2)(b) of the Industrial Disputes Act, 1947 renders the order of dismissal ineffective from the date it was passed or from the date of non-approval held that:

“Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b)

dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement.”

- 2) In ***M.P. State Electricity Board vs. Smt. Jarina Bee*** (**supra**), and relied upon in the order under review dated 11th October, 2004 the Supreme Court stated that:

“6. Shri S.K. Agnihotri, learned counsel appearing for the Board, submitted that the Industrial Court as well as the High Court fell in grave error by holding that the award of back wages was the natural consequence in all cases where the order of removal was set aside. Mr. B.S. Banthia, learned counsel appearing for the respondent (widow of the employee) submitted that the High Court was justified in its conclusion considering the fact that the order of dismissal was without sanctity in law. Alternatively, it was submitted that full back wages are to be paid, considering the nature of the allegations and findings recorded by the Labour Court, Industrial Court and the High Court and the directions cannot be faulted on the facts of the case.

7. In *P.G.I. of Medical Education and Research, Chandigarh v. Raj Kumar* (JT 2001(1) SC 336), this Court found fault with the High Court in setting aside the award of the Labour Court which restricted the back wages to 60% and directing payment of full back wages. It was observed thus:

"The labour court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail

the finding of the Tribunal or the labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect."

Again at paragraph 12, this Court observed:

"Paying of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety."

8. The position was reiterated in *Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya and Anr.* (2002 AIR SCW 3008) and *Indian Railway Construction Co. Ltd. v. Ajay Kumar* (JT 2003 (2) SC 295).

9. Applying the legal principles, the inevitable conclusion is that the High Court committed an error in holding that the award of full backwages was the natural consequences."

- 3) In *Allahabad Jal Sansthan vs. Daya Shankar Rai and Another*, reported as 2005 V AD (SC) 224, the Supreme Court after considering and analyzing earlier decisions stated that:

"17. We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realized that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at.

18. In view of the fact that the Respondent had been reinstated in service and keeping in view the

fact that he had not raised any plea or adduced any evidence to the effect that he was remained unemployed throughout from 24.1.1987 to 27.2.2001, we are of the opinion that the interest of justice would be sub-served if the Respondent is directed to be paid 50% of the back wages.”

- 4) In *Delhi Transport Corporation vs. Virender Singh*, 116 (2005) DLT 26, a Single Judge of this Court after considering the question of reinstatement with back wages pursuant to rejection of an application seeking approval of the Tribunal under Section 33(2)(b) of the Industrial Disputes Act, 1947, held as follows:

“19. Learned counsel appearing for the workman while relying upon the judgment of the Supreme Court in *M.D.Tamil Nadu State Corporation v. Neethivilangam* (supra) contended that wherever a direction under Section 33(2)(b) of the Act is declined inevitable conclusion will be that workman continues in employment as is his services were never terminated. **This of course in law cannot be disputed but claim of back wages is not something which automatically flows to the principal relief of reinstatement granted to the workman in all cases and without exemption.** In the writ petitions no averment has been made and it is not even normal human conduct that a workman would remain unemployed for this long period.

20. In view of the above judgments of the Supreme Court, I am of the considered view that the workman is entitled to reinstatement with back wages. However, in the interest of justice and keeping in view the circumstances of the present case I am further of the view that awarding of 40% back wages to the petitioner would meet the ends of justice.”

7. It is true, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But,

there are definitive limits to the exercise of the power of review. The power of review may be exercised for the correction of a mistake but not to substitute a view. The power of review can be exercised where there is some mistake or error apparent on the face of the record, but cannot be exercised where different views on the same subject are possible. The limitations of the power of the Court under Order 47 Rule 1 CPC are similar and applicable to the jurisdiction available to the High Court under Article 226 of the Constitution of India. The Court in exercise of its power to review has to proceed with caution so as to ensure that such power is not exercised or permitted to be used for an arguably erroneous decision to be reheard and corrected. The review cannot be treated as an appeal in disguise and can be exercised only for correction of a patent error of law which is apparent on the face of the record and not an error which has to be traced after elaborate arguments being noted for establishing it. A review of a judgment is not maintainable if the only ground for review is that the point is not dealt in correct perspective, so long as the point is dealt with and answered. In *Parsion Devi vs. Sumitri Devi*, reported as (1997) 8 SCC 715, the Supreme Court held as under:

“It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be

remembered has a limited purpose and cannot be allowed to be an appeal in disguise. An error which is not self evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record.”

8. In the present case, it is observed that it is the case of the applicant that the order under review dated 11th October, 2004 did not consider the decision in the case of ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma & Others (supra)***, inevitably and automatically entitling the workman for 100% back wages. It was urged on behalf of the petitioner himself that the said decision was cited in the petition before this Court. In this behalf it is noticed that in the order under review dated 11th October, 2004 this Court after considering the judgment of the Supreme Court in ***M.P. State Electricity Board vs. Smt. Jarina Bee (supra)***, came to the conclusion that the award of full back wages was not warranted in the facts and circumstances of the case. The opinion so expressed constitutes a different view on the subject of payment of back wages, albeit a view that is possible, and as such, cannot be a ground to review the order dated 11th October, 2004. Furthermore, it is seen that the view expressed in the order under review relying upon the decision of the Supreme Court in ***M.P. State Electricity Board vs. Smt. Jarina Bee (supra)***, has been cited with approval by the Supreme Court in the decision in ***Allahabad Jal Sansthan vs. Daya Shankar Rai and Another (supra)*** and followed by this Court in the decision in ***Delhi Transport Corporation vs. Virender Singh (supra)***. It is not a sufficient ground for review that the court should have taken a different view or the judgment proceeded on an

incorrect exposition of the law. A mere error of law is not a ground for review, since a decision cannot be reviewed on the ground that it is erroneous. It must be an error of law apparent on the face of the record to be amenable to review. For that the point of law involved must be indisputable. That situation, in any view, does not obtain in the instant case in relation to the issue of payment of full back wages. Therefore, the first submission on behalf of the applicant cannot be countenanced.

9. Insofar as the second submission urged on behalf of the applicant is concerned, I find considerable force in the contention made on behalf of the Corporation that, (a) there was no specific averment in the body of the writ petition that the workman was not employed during the interregnum period, (b) that the affidavit in support of the petition, although it mentioned that the workman is unemployed, cannot be said to constitute a part of the main body of the petition and (c) even otherwise the affidavit in support, only stated that the workman was still unemployed, without any specific pleading that the workman had been unemployed earlier or that he was continuously unemployed from the date of his dismissal from service.

10. Apart from the merits of the submissions made on behalf of the workman, it is observed that the application for review was filed only on the 13th July, 2005, after a gap of about nine months from the date of the order under review i.e. 11th October, 2004. Also that, even the LPA filed against the order under review had been filed after an inordinate delay of 165 days. Furthermore, the present application for

review was not filed immediately after the rejection of the LPA on the 27th May, 2005 and was filed only on 13th July, 2005. The application for review is not accompanied by any application for condonation of delay, nor has any explanation been offered for the delay in filing the same. In this behalf, it is observed that, the Limitation Act prescribes a uniform period of 30 days for a review of judgment. The application for review is, thus, not maintainable even on this ground. In addition, the concept of finality of judgment ought to be enforced with its normal rigour. If the practice adopted by the applicant in the present case is permitted it will amount to undermining the concept of finality of proceedings, and in every case, the party who is not satisfied with the judgment, would seek a rehearing of the matter in the guise of review. It is a settled canon of law that merely because the parties are not satisfied with the judgment of the Court, or it was possible to take another view on reasonable interpretation of law and facts, that would itself be no ground for review of judgment. In the circumstances the application for review is an attempt on the part of the workman to have a rehearing which is impermissible in law.

11. For the foregoing reasons the review petition is without any merit and is accordingly dismissed, leaving the parties to bear their own costs.

SIDDHARTH MRIDUL, J.

September 11, 2008

mk

IN THE HIGH COURT OF DELHI AT NEW DELHI**WP(C) No. 3308/2003 and CM No. 5669/2003****01.03.2005****Date of decision: March 01, 2005**

**Shri Mamraj Petitioner
Through Mr. H. K. Chaturvedi with
Mr. B.K. Pandey, Advocates.**

versus

**Management of M/s Shanti
Developers and Promoters (I) Ltd. and Anr. Respondents
Through Mr. S.N. Bhandari, Sr. Advocate with
Mr. Amit Seth, Advocate.**

Coram:**HON'BLE MR. JUSTICE MUKUL MUDGAL**

**1. Whether Reporters of local papers may be allowed to
see the judgment? NO**

2. To be referred to the reporter or not? YES

3. Whether the judgment should be reported in the Digest? YES

MUKUL MUDGAL J. (ORAL)

1. Rule. With the consent of the learned counsel for the parties, the writ petition is taken up for final hearing.

2. The petitioner was a Site Engineer working with the respondent. Upon termination of his services, he approached the Labour Court, who by the impugned award dated 7th February, 2003 was pleased to hold that the reference was not maintainable as the c

laimant/petitioner herein was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act (hereinafter referred to as the 'Act'). Section 2(s) of the Act reads as follows:-

Ge~Ge~(s) Ge~Ge~WorkmanGe~TMGe~ means by person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or impleie , and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharg or retrenchment has led to that dispute, but does not include any such person--

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee or a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand

six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

3. The Labour Court has found that in 1985, the petitioner had been appointed in a managerial and supervisory capacity on the wages of Rs.4,150/- per month. The Labour Court had examined various documents showing that the petitioner was the site incharge of the construction sites undertaken by the respondent No. 1 company. The petitioner had written several letters in his capacity as a site Engineer. Certification of measurement was also issued by him. Even the workmen were paid by him as per the documents exhibited by the petitioner before the Labour Court. The petitioner has sought to rely upon the measurement books filled in by the petitioner by hand to contend that his nature of work performed by him was manual and clerical and considering the voluminous nature of the register filled in by him, the petitioner was performing clerical and manual duties and hence was a 'workman' falling under Section 2(s) of the Act. The Labour Court has found that the nature of work performed by the petitioner was to look after the construction at site as a managerial capacity and to supervise the subordinate staff with regard to day-to-day work of payment etc. This is a finding of fact and thus inference under Article 226 of the Constitution of India is not called for.

4. The petitioner has relied upon the judgment of the Hon'ble Supreme Court in Arkal Govind Raj Rao vs. Ciba Geigy of India Ltd., AIR 1985 SC 985, and particularly paragraph 8 thereof to contend that the Hon'ble Supreme Court has held that on mere incidental performance of supervisory work, the person concerned would not cease to be the workman and he must be a person who is engaged for supervisory capacity. The relevant portion of the aforesaid judgment reads as follows:-

The definition of the expression workman hereinbefore extracted clearly shows that the person concerned would not cease to be a workman if he performs some supervisory duties but he must be a person who must be engaged in a supervisory capacity. Even as a Group Leader of the Group II, the evidence produced would show that primarily he continued to work and perform the same duties which have been found to be clerical but along with others in the group he also incidentally looked after the work of other members of the group who were only two in number.

5. In my view this judgment does not support the case set up by the petitioner itself for the reason that the petitioner was performing supervisory duties as Site Engineer though he may have incidentally performed the duty of filling up the site register

s. The dominant nature of his work being managerial and supervisory, even if the filling up of the registers was manual and clerical it was only incidental to his managerial and supervisory capacity. Accordingly, there is no reason for interference in the finding of the Tribunal that the petitioner was working as a site Engineer and doing managerial/supervisory work.

4. The writ petition is thus dismissed.

Sd/-

March 01, 2005 (MUKUL MUDGAL)

kkb JUDGE

IN THE HIGH COURT OF DELHI AT NEW DELHI**W. P. (C) 3185/2003****RAM BAKSH and ORS. Petitioners
Through: Mr. H.K. Chaturvedi, Advocate****versus****MANAGEMENT OF M/S. ASSOCIATED
INSTRUMENTS MANUFACTURERS and ANR Respondents
Through: Mr. Mukesh Gupta, Advocate for R-1****CORAM: JUSTICE S. MURALIDHAR****ORDER****01.09.2011**

- 1. The workmen, who are aggrieved by the impugned Award dated 26th October 2002 passed by the Industrial Tribunal I (?Tribunal?) rejecting the claim ID No. 254/96 (Old ID No. 1292/1990) have filed this writ petition.**
- 2. The case of the workmen was that they were active members of the Engineering Workers Lal Jhanda Union (Regd.) at Karampura, New Delhi and were working with Respondent No. 1, Associated Instruments Manufacturers (hereinafter ?Management No. 1?). The Management No. 1 displayed a closure notice dated 4th March 1989 which was objected to by the workmen. Resultantly an industrial dispute was raised before the Conciliation Officer. A settlement was entered into between the workmen and the Management No. 1 on 17th April 1989 and the workmen were paid their dues before the Conciliation Officer.**
- 3. Thereafter the workmen raised a dispute stating that the unit of the Management No. 1 was in fact not closed down. They claimed that the assets and machinery were shifted from the premises of Management No. 1 to M/s. AIM Perfects Instruments Private Limited (hereinafter ?Management No. 2?). It was further claimed that some of the workmen retrenched from Management No. 1 had been transferred to Management No. 2. It was further stated that one of the Directors of Management No. 1 had become the Director of Management No. 2. The machines of Management No. 1 had been transferred to Management No. 2. The defence of the two Managements was that each of them was a separate unit with separate licences and sales tax registrations. The Management No. 2 denied that it had taken any of the workmen of Management No. 1. One of the workmen, Mr. Gurbachan Singh, had refused to take the settlement money pursuant to settlement dated 17th April 1989.**

4. Evidence was led before the Tribunal on both sides. The workmen examined 14 witnesses but only two of them were produced for cross-examination with the consent of the parties. The Tribunal concluded that the two units, i.e., Management No. 1 and Management No. 2, were distinct and separate. Once there was a proper closure in terms of the Industrial Disputes Act, 1947 (?ID Act?) and compensation was also paid to the workmen pursuant to such settlement, there was no reason to reopen the settlement. It may be mentioned that after passing of the impugned Award the workmen filed an application for setting aside the Award on the ground that in terms of definition of ?closure? under Section 25FFF ID Act there was no effective closure of the unit of Management No. 1. This application was rejected by the Tribunal on 22nd November 2002.

5. This Court has heard the submissions of Mr. H.K . Chaturvedi, learned counsel for the Petitioners and Mr. Mukesh Gupta, learned counsel for Respondent No. 1.

6. Mr. H.K. Chaturvedi is not able to persuade this Court that the Tribunal had erred in appreciation of the evidence or in its conclusion that Management No. 1 and Management No. 2 were two distinct and separate units, which were unrelated to each other. The record of the Tribunal has also been perused by this Court. The original signed receipts by each workman in acknowledgement of receipt of the compensation amount in terms of the settlement arrived at before the Conciliation Officer have been placed on record. Mr. Chaturvedi sought to rely on a document which is purported to be an agreement entered into on 1st August 1987 between Management No. 1 and Management No. 2. The fact remains that the original of this agreement was never produced before the Tribunal and could not be proved by the workmen. The evidence of Mr. Shiv Kumar Kalra (WW-13) shows that all the workmen except Mr. Gurbachan Singh had accepted the compensation amount in terms of the conciliation settlement dated 17th April 1989. This witness admitted that the settlement had been arrived at with the free will and consent of the workmen. The Respondent No. 1 was able to prove that the workmen were never transferred to Management No. 2 and that there was no relation of any kind between the two managements.

7. This Court is not persuaded to interfere with the impugned Award of the Tribunal. In the event that Mr. Gurbachan Singh who refused to accept

the compensation amount in terms of settlement dated 17th April 1989, approaches the Management No. 1 for payment of the said sum within a period of four weeks, such request may be considered and payment made to him.

8. The writ petition is dismissed.

**S. MURALIDHAR, J
SEPTEMBER 1, 2011
rk**

W.P.(C) 3185/2003 Page 1 of 5

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2973/2003

**RAJ PAL Petitioner
Through Mr.H.K. Chaturvedi**

versus

**D.T.C. and ANR. Respondent
Through Mr.Hanu Bhaskar**

**CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR**

**ORDER
21.07.2004**

**In view of the orders passed in WP (C) No.4313/2003, counsel for the Petitioner does not press this writ petition and seeks leave to withdraw this petition.
Dismissed as withdrawn.**

**MADAN B. LOKUR, J
JULY 21, 2004
kapil**

IN THE HIGH COURT OF DELHI AT NEW DELHI**01.04.2009**

Present: – Mr. H.K. Chaturvedi, Advocate and Ms. Anjali Chaturvedi, Advocate for petitioner.

Mr. Bhavya Sethi, Advocate for respondent.

W.P.(C) No. 2794/2003

Counsel for the respondent states that the matter between the parties has been settled before the Continuous Lok Adalat on 25.3.2009. Counsel further submits that the settlement dated 25.3.2009 has been duly signed and executed between the parties. Counsel further submits that in terms of the said settlement the respondent has agreed to pay a sum of Rs.30,000/- in full and final settlement of all the claims of the petitioner. Counsel for the respondent also submits that the petitioner had filed a complaint against the respondent before the Workmen Compensation Authority which he had agreed to withdraw after the payment of said amount of Rs.30,000-. Counsel also states that the said amount was paid by the respondent to the petitioner on the same date i.e. 27.3.2009 when the said complaint was withdrawn by him.

Mr. Chaturvedi, Counsel representing the petitioner submits that although the petitioner has not contacted him, however, he does not dispute the above position as the statement is being made by the counsel for the respondent at bar.

In view of the said position the matter is disposed of as finally settled between the parties. The parties shall remain bound by the terms of the settlement deed and the order dated 25.3.2009 passed by the Continuous Lok Adalat. In view of the above position the impugned order and the petition is disposed of as settled.

**April 01, 2009 KAILASH GAMBHIR, J.
pkv**

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IN THE HIGH COURT OF DELHI AT NEW DELHI**20.07.2006**

**Present: Mr. H.K. Chaturvedi for the petitioner.
Mr. Rajat Aneja for the respondent.**

WP(C) No.2698/03

**A draft of Rs.16700/- has been handed over by the counsel for the respondent to the counsel for the petitioner. A cost of Rs.2000/- be imposed on respondent for dishonour of cheque earlier given. The dishonoured cheque is returned to the respondent. Cost of Rs.2000 be paid by way of another bank draft through counsel within two weeks from today.
The writ petition stands disposed of with these directions.**

**SHIV NARAYAN DHINGRA,J
July 20, 2006
rd**

A-10



High Court of Delhi

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Search Result For Type :W.P.(C) No :2345 year :2003* are : 1			
S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 2345/2003 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	MAHAVIR SINGH Vs. D.T.C. & ANR. Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 12/05/2003
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Search Result For Type :W.P.(C) No :2194 year :2003* are : 1			
S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 2194/2003 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	PRABHAT KISHORE Vs. SEC. TO THE GOVT. OF INDIA & O Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 13/08/2003
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Search Result For Type :W.P.(C) No :2085 year :2003* are : 1			
S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 2085/2003 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	CHRISTOPHER Vs. D.T.C. Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 16/09/2004
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IN THE HIGH COURT OF DELHI AT NEW DELHI

29.08.2005

**Present : Mr. H.K. Chaturvedi, Adv. for the petitioner
Mr. H.C. Sharma, Adv. for the respondent**

W.P.(C) NO.2/2003

**Learned counsel for the petitioner prays for leave to withdraw this writ petition.
The same is accordingly dismissed as withdrawn.**

**GITA MITTAL
JUDGE
AUGUST 29, 2005
kr**

IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) 1947/2003****A.K.BOSE Petitioner
Through Mr. H.K. Chaturvedi, Adv.****versus****MGT.OF M/S.TECHNOFAB ENGG. Respondent
Through Mr. Raj Birbal, Sr. Adv. with
Mr. Joy Basu, Adv.****CORAM:
HON'BLE MS. JUSTICE GITA MITTAL****ORDER
05.09.2005**

Learned counsel for the parties submit that all claims of the petitioner have been settled and the petitioner has agreed to receive a sum of Rs.35,000/- in full and final settlement of his entire disputes and claims in respect of his employment with the respondent. It is further contended that the petitioner has agreed that the petitioner may be treated as having been resigned from the services of the respondent and he has no claims of wages or of any other kind against the respondent upon receipt of t is amount of Rs.35,000/- Learned counsel for the respondent submits that this amount shall be paid within a period of two weeks from today.

In this view of the matter, learned counsel for the petitioner does not press this petition which is accordingly dismissed.

Dasti**GITA MITTAL, J
SEPTEMBER 05, 2005
kr**



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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 1326/2003 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	RAM SUBHAG Vs. MGT.OF M/S.BULAKI COLD STORE Advocate : MR.H.K.CHATURVEDI	DISPOSED OFF on 15/03/2011
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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 1270/2003 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	NIRANJAN PASWAN Vs. MAGT. OF SEA HAWK CARGO CARRIERS P.LTD. Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 21/02/2003
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IN THE HIGH COURT OF DELHI AT NEW DELHI
WP (C) 1032/2003

Judgment Reserved on : October 12, 2004

14.10.2004

Date of Decision : October 14, 2004

Shri Bed Ram
S/o Shri Singh Ram
R/o Village Mungeshpur, Buana,
Delhi.
... Petitioner
Through : Mr. H.K.Chaturvedi, Advocate.

versus

1. The Management of:
M/s. Lala Ram Sarup Institute of
T.B. and Allied Diseases,
Sri Aurobindo Marg,
Mehrauli, New Delhi.

2. The Presiding Officer,
Industrial Tribunal No. III,
Delhi.
... Respondents
Through: Mr. Manish Malhotra,
Advocate

CORAM :

HON'BLE MR. JUSTICE SWATANTER KUMAR

- 1. Whether reporters of local paper may be allowed to see the judgment?**
- 2. To be referred to the reporter or not?**
- 3. Whether the judgment should be referred in the Digest?**

SWATANTER KUMAR, J.

1.The short question that comes up for consideration of the Court in this petition under Article 226 of the Constitution of India is whether the Presiding Officer, Industrial Tribunal No. III, Delhi failed to exercise the jurisdiction vested in it in accordance with law, in concluding that the case of the workman was not properly espoused by the hospital Karamchari Union of Lala Ram Sarup Institute of T.B. and Allied Diseases, Aurobindo Marg, Mehrauli, New Delhi?

2.The case of the workman is that he was performing his duties of ward boy in that hospital with effect from 14th November, 1980 and was being paid wages of unskilled

workman as fixed under the Minimum Wages Act. His counterparts-the regular ward boys were being paid higher amounts in the pay scale of (revised 750-940) in addition to other admissible allowances; as such the respondents treated the petitioner discriminately right from the date of his appointment. The workman then issued a notice thro

ugh his Counsel claiming these reliefs on the principle of equal pay for equal work. The workman raised an industrial dispute which was referred by the appropriate Government for determination of the Industrial Tribunal/Labour Court in terms of its order

dated 8th January, 1998. Union had not taken up the workman's case as such but had engaged a representative. Vide award dated 16th January, 2002 the Industrial Tribunal held that the reference is not maintainable for want of proper espousal. It was t

eated to be an individual's dispute and thus, not referable as an industrial dispute within the definition under Section 2 (k) of the Industrial Disputes Act. This award is challenged by the workman in this petition.

3.The facts are hardly in controversy in the present case. While referring the dispute raised by the workman the appropriate Government in its order dated 8th January, 1998 had clearly noticed that the dispute was between the hospital and the workman Be

d Ram, represented by the Union. The workman had given his address as 'care/of' Union. The reference was formulated as under:-

莊 TERMS OF REFERENCE.

莊 Whether Shri Bed Ram daily rated/casual/Muster roll ward boy is entitled to the same wages in the proper pay scale as are admissible to the regular counterparts from the date of his initial appointment, and if so, what directions are necessary in this r
spect?耐

(CHAMAN LAL)

SECRETARY (LABOUR) GOVT. OF N.C.T OF DELHI.

NO. F.24(4308)/97-Lab./681-85 Dated 8.1.98

4.The above dispute was obviously stated to be a dispute between workman Bed Ram and the Management and in fact his cause was not espoused by the Union. Merely giving the address as 'care/of' without any participation from the union, the conclusion arri

ved at by the Industrial Tribunal hardly calls for any interference. The case of the workman remains an individual dispute rather than a dispute espoused by the Union or even a dispute of number of workers collectively or representatively. While reject

ng the claim of the workman the Industrial Tribunal made a reference and rightly so, to the fact that the workman had engaged his independent representative, may be after written consent/direction of the Union which was exhibited as Ex.WW1/X1. Perusal o

this document shows that the cause of the workman for grant of pay scale with allowances, on the principle of equal pay for equal work was considered by the Union and then sought to be espoused by its Executive Committee, vide its resolution dated 3rd F

bruary, 1998. The order of reference by the appropriate Government was dated 8th January, 1998. In other words, Ex.WW1/X1 was subsequent even to the order of reference. During the pendency of the conciliation proceedings, obviously the workman was per

sing his own cause individually. The learned Counsel appearing for the respondent relied upon the judgment of the Supreme Court in the case of Bombay Union of Journalist and Ors. vs. 莊Hindu耐 Bombay and another, 1961 Labour Law Journal 436 to support t

e contention that persons who seek to support the cause of a workman must themselves be directly and substantially interested in the dispute. He also relied upon the following observation of the Supreme Court in that case:-

As subsequent withdrawal of support will not take away the jurisdiction of an industrial tribunal, on the same reasoning subsequent support could not convert what was an individual dispute at the time of reference into an industrial dispute.

5. It was for the workman to discharge the onus of proving that it was not an individual dispute but was an industrial dispute within the provisions of Section 2 (k) of the Act. In the present case, the workman had failed to discharge this onus. On the c

ontrary he produced a document Ex. WW1/X1 which clearly frustrated the very argument on behalf of the workman that his cause was espoused by the Union and was a collective cause of a number of workers. Having failed to discharge this onus the workman ca

not be permitted to alter his stand before this Court now to the contrary. Reference can be made to the judgment of the Andhra Pradesh High Court in the case of Sri Kripa Printing Press vs. Labour Court, and another, 1960 Labour Law Journal 53.

6. In view of my above discussions, I am unable to see any error of law or jurisdiction in the award of the Industrial Tribunal dated 16th January, 2002. Consequently, this writ petition is dismissed leaving the parties to bear their own costs.

SWATANTER KUMAR

JUDGE

October ____, 2004

sk

IN THE HIGH COURT OF DELHI AT NEW DELHI

CCP 272/2002

**AJIT SINGH Petitioner
Through Mr. H.K. Chaturvedi,
Advocate.**

versus

**K.S.VEDWAN & ANR. Respondent
Through**

**CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR**

ORDER

23.07.2002

**Learned counsel for the Petitioner wishes to
withdraw the petition.
Dismissed as withdrawn.**

**MADAN B. LOKUR, J
JULY 23, 2002
'ban'**



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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	CRL.M.C. 302/2002 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	RAJ NARAYAN POATHAK Vs. STATE Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 29/01/2002
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IN THE HIGH COURT OF DELHI AT NEW DELHI**04.08.2005****Present: Mr. H.K. Chaturvedi for the appellant
Mr. R.D. Makheeja for the respondent****CM 10796/05 and LPA 741/2002**

Heard learned counsel appearing for the parties on this application which is filed by the appellant praying of restoration of CM No.8808/2004, which was dismissed for non-prosecution. CM 8808/04 was filed for restoration of the appeal which was dismissed for non-prosecution on 16th March 2004 For the reasons stated in CM 8808/2004, the same is allowed and appeal is restored to its original number recalling order dated 16th March 2004 For the reasons stated in CM No.10796/05, the same is also allowed and permission is granted to the withdraw the appeal. The appeal is accordingly dismissed as withdrawn leaving the parties to bear their own costs.

MUKUNDAKAM SHARMA, J**SANJIV KHANNA, J
AUGUST 04, 2005
GAIIGAIIVGAIIGAI**



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1.	LPA 419/2002 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	VIRENDER KUAMR Vs. D.T.C. & ANR. Advocate : MR. H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 20/07/2005
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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	LPA 412/2002 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	CHRISTOPHER Vs. D.T.C. & ANR. Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 25/09/2002
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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	LPA 363/2002 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	SURAJ MAL Vs. D.T.C. & ANR. Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 25/09/2002
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IN THE HIGH COURT OF DELHI AT NEW DELHI**LPA 298/2002****SHYAM LAL Appellant
Through Mr.H.K.Chaturvedi****versus****D.T.C. and ANR. Respondent
Through Mr.Vibhu Shanker****CORAM:****HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR****ORDER
18.11.2005**

Heard learned counsel for the parties. It appears that the Industrial Tribunal had refused to grant approval to the management in an application under Section 33(2)(b) of the Industrial Disputes Act by its order dated 5.8.1999. Against that judgment the management filed a writ petition which was allowed by a learned Single Judge by order dated 21.12.2001. Against the judgment of learned Single Judge, the workman filed an appeal before the Division Bench which was allowed by judgment dated 25.9.2002. Against the judgment of the Division Bench, the management went up to LPA 298/2002 page 1 of 2 the Supreme Court which allowed the appeal by its judgment dated 12.8.2004 and remanded the matter to this court.

We are informed that a reference under Section 10 of the Industrial Disputes Act regarding the validity and propriety of the termination order is already pending before the Labour Court. It is well settled that an order under Section 33(2)(b) of the Industrial Disputes Act is not res-judicata in respect of a reference under Section 10 of the Act vide Management, DTC vs. Ram Kumar, 1982 LIC 1378. Hence, in our opinion, no useful purpose would be served by deciding this writ appeal. We are of the opinion that the matter should be finally decided in the reference under Section 10 of the Act by the Labour Court expeditiously preferably within four months from production of a certified copy of this order.

With these observations, this appeal is disposed of.

CHIEF JUSTICE

MADAN B. LOKUR, J
NOVEMBER 18, 2005
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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 5777/2002 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	RAJINDER SINGH Vs. DTC Advocate : H.K.CHATURVEDI,ANAND JHA	Court No. : 0 DISPOSED OFF on 03/04/2003
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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 1961/2002 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	GAURI SHANKAR SHAH & ANR. Vs. PO.LABOUR COURT II & ANR Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 22/10/2003
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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 1859/2002 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	PARSHU RAM Vs. MGT.M/S.INDRAPRASTH CHEMICAL & ANR. Advocate : H.K.CHATURVEDI,RK SAINI	Court No. : 15 DISPOSED OFF on 07/05/2008
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1.	W.P.(C) 1022/2002 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	ANIL KUMAR DUBEY Vs. THE COLLECTOR & ANR. Advocate : H.K.CHATURVEDI	Court No. : 16 DISPOSED OFF on 18/09/2007
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IN THE HIGH COURT OF DELHI AT NEW DELHI**CRLW 997/2002****DARSHAN SINGH & ANR. Petitioners
Through Kumari Bindu, advocate.****versus****UOI & ANR. Respondents
Through Mr. A.K. Dutt for CBI.****CORAM:****HON'BLE MR. JUSTICE DALVEER BHANDARI
HON'BLE MR. JUSTICE S.K. AGARWAL****ORDER
11.02.2003**

This petition has been filed for quashing the entire prosecution proceedings emanating from FIR No. RC-15/85-DLI dated 25.2.1

**learned Standing Counsel for CBI on instructions from Inspector R.C. Grewal submits that on the next date of hearing and on
Contd.....2**

: 2 :

We direct the concerned court to conclude the trial of this case as expeditiously as possible, in any event, within four mon

**With the above observations, this petition is disposed of.
Dasti.**

DALVEER BHANDARI, J**S.K. AGARWAL, J
FEBRUARY 11, 2003**



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1.	LPA 591/2001 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	BISHAN SWARUP SHARMA Vs. M/S BHARAT ELECTRONICS LTD. & Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 31/10/2001
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1.	LPA 275/2001 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	ARUN KUMAR Vs. THE MAG. FREEZE KING INDUSTRIE Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 06/03/2006
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IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) 7907/2001****NAWAB SINGH Petitioner****Through : Mr.H.K.Chaturvedi, Adv.****versus****DVB AND ANR. Respondents****Through : Mr. Sandeep Prabhakar, Adv. for****R-3/BSES.****CORAM:****HON'BLE MR. JUSTICE VALMIKI J. MEHTA****ORDER****19.02.2015**

After arguments, this writ petition is disposed of with the consent order that the disciplinary authority will pass a speaking order giving reasons as to why the disciplinary authority disagrees with the report of the Inquiry Officer dated 19.01.1996 by which the Inquiry Officer had exonerated the petitioner of all charges. A reading of the order of the disciplinary authority dated 21.12.1999 and of the appellate authority dated 31.10.2001 shows that both the orders are non-speaking orders as they do not give reasons for disagreeing with the findings of the Inquiry Officer. Let the departmental authorities now positively pass the speaking order in accordance with law within a period of three months from today. The departmental authorities before passing a speaking order will give a personal hearing to the petitioner.

The writ petition is disposed of in terms of the aforesaid observations.

Dasti to the counsel for the parties.

VALMIKI J. MEHTA, J**FEBRUARY 19, 2015**

?sn?

Date of Order : 19.03.2002

**Present : Mr.H.K. Chaturvedi for the petitioner.
Ms. Avnish Ahlawat for the respondents.**

CASE NUMBER : CW 7246/2001

Notice to show cause was issued in view of the contention of the learned counsel for the petitioner that document submitted by the petitioner to the respondent being Annexure P3 has not been considered for the purpose of consideration of his selection.

Learned counsel for the respondents today has filed the counter affidavit in Court. It is stated in the counter affidavit that the petitioner was short listed on the basis of the written test held on 15.7.2001 but she did not come within the zone of consideration. It is stated that the total score of the written examination and the academic merit is 80 and the score of last candidate selected in unreserved category is 84. The score of last OBC candidate selected is 63.80.

In view of the aforesaid position the grievance made by the petitioner is not born out. Learned counsel for the petitioner now contends that the petitioner should be considered as OBC candidate and thus would be eligible for appointment. Learned counsel for the petitioner states that the petitioner had stated in her application that she is an OBC candidate. A bare reading of the writ petition shows that no such ground has been raised in the petition. It may however be noted that in para 4 of the counter affidavit it is not disputed that the petitioner had mentioned in her application that she is an OBC candidate but it is further stated that the petitioner failed to produced any documentary evidence in support of her claim as a candidate in the reserved category. Along with the counter affidavit annexure R-1 has been filed which is an index of what the petitioner had filed. Against serial No.15 dealing with caste certificate issued by GNCT of Delhi on or before 29.12.2000 a cross (X) has been put. Thus admittedly no certificate had been submitted by the petitioner as an OBC candidate.

In view of the aforesaid position, I find no merit in the petition.

Dismissed.

March 19, 2002 SANJAY KISHAN KAUL,J.
mb

Date of Order : 10.12.2001.

Present: Mr.H.K.Chaturvedi for the petitioner.

Mr.Jagat Arora for the respondents.

CASE NUMBER : C.W.6703/2001

This writ petition is filed by the petitioner seeking for a direction to the respondent/bank to consider the request of the petitioner for appointment on compassionate ground. The husband of the petitioner, who was working with the bank, died on 5.7.98 leaving behind the petitioner and three minor children at the time of his death. The petitioner filed an application on 17.1.99 before the respondent/bank contending, inter alia, that her husband, who was working in the bank as a part-time Sweeper, died on 5.7.98 and, therefore, she should be considered for appointment on compassionate ground. The aforesaid request of the petitioner was considered by the respondent bank and the same was not found feasible by the respondent/bank and accordingly rejected the same by letter dt.10.3.99. The respondent/bank, however, paid an amount of Rs.1,52,000/- being lumpsum compensation payable to spouse and children of the deceased in lieu of compassionate appointment. The said amount was received by the petitioner and while acknowledging receipt of the aforesaid amount, a receipt was issued by the petitioner under her clear signature, which is dt.10.4.2000. In the said receipt it is categorically stated that the aforesaid amount is received by her being lumpsum amount of compensation in lieu of her claim for compassionate appointment on the death of her husband. An indemnity bond was also furnished by her to the bank in respect of payment of the aforesaid amount, which was stated to be in full and final settlement in lieu of her claim for compassionate appointment in the bank consequent upon the demise of her husband. The aforesaid fact of receiving monetary compensation in lieu of compassionate appointment was not mentioned in the writ petition and was conveniently suppressed. Therefore, the petitioner has also not come to this court with clean hand, which itself could be a ground for dismissal of the writ petition in the light of the ratio of the decision of the Supreme Court in CHANCELLOR & ANOTHER VS. DR.BIJOYANANDA KAR reported in 1994 SC 579.

In view of the aforesaid position and the

petitioner having accepted the monetary compensation with eyes open in lieu of appointment on compassionate ground, no relief could be granted in favour of the petitioner, as sought for in this writ petition. The principle of waiver and estoppel is applicable also against the petitioner. The petition is without merit and is dismissed accordingly.

(DR. MUKUNDAKAM SHARMA)

JUDGE.

DECEMBER 10, 2001.

sjs



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1.	W.P.(C) 6592/2001 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	MAHESH KUMAR SHARMA Vs. THE COLLECTOR & ANR. Advocate : H.K.CHATURVEDI,V.K.TANDON	Court No. : 0 DISPOSED OFF on 07/05/2002
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IN THE HIGH COURT OF DELHI AT NEW DELHI**04.03.2010**

**Present:- Mr. H.K. Chaturvedi for the petitioner.
Mr. Mohit Gupta for the respondent No. 2.**

Review Petition No. 433/2006 in W.P.(C.) No. 6348/2001

This review application has been filed by the petitioner workman seeking review of judgment dated 25.09.2006 passed by HMJ Manju Goel dismissing his writ petition on merits.

The petitioner workman had filed a writ petition being W.P.(C.) No. 6348/2001 seeking to challenge an industrial award dated 28.01.2000 in I.D. No. 301/1996 awarding him compensation of Rs.50,000/- in lieu of his claim for reinstatement and back wages for alleged illegal termination of his services by the management of the respondent w.e.f. 28.08.1995. This writ petition filed by him was dismissed on merits by a detailed judgment passed by this Court vide judgment dated 25.09.2006. Aggrieved therefrom, the petitioner has filed the instant review application seeking review of the said judgment.

Arguments have been heard on this review application.

In the course of hearing, Mr. H.K. Chaturvedi, learned counsel appearing on behalf of the review petitioner, has conceded that the grounds taken by him for review of judgment dated 25.09.2006 are, in fact, grounds to be taken in appeal and that the judgment cannot

W.P.(C.) No. 6348/2001

page 1 of 2

be reviewed on the said grounds taken by him in the review application. He submits that he may be permitted to withdraw the instant review application with liberty to file an appeal against the judgment dated 25.09.2006 as per law. Mr. Chaturvedi says that he will apply for condonation of delay and for exclusion of time spent during pendency of the review application.

In case any appeal or application for condonation of delay is filed by the petitioner, then the same will be decided by the concerned Bench as per law.

In view of the above, this review application is dismissed as withdrawn.

**MARCH 04, 2010 S.N.AGGARWAL, J
'BSR'**

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1.	W.P.(C) 6113/2001 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	THE PURE DRINKS MAZDOOR SANGAT Vs. GOVT. OF N.C.T. OF DELHI & ORS Advocate : H.K.CHATURVEDI,SAURABH	Court No. : 0 DISPOSED OFF on 10/07/2002

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1.	W.P.(C) 6112/2001 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	BISHAN SWARUP SHARMA Vs. MAGT. M/S BHARAT ELETRONICS LT Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 05/10/2001
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IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P. (C) 5607/2001****17.10.2006****Reserved on: 05.09.2006****Date of Decision: 17.10.2006****Sh. Ram Kishan****? Petitioner****Through: Mr. H.K. Chaturvedi, Advocate****Versus****The Secretary Labour and Anr.****? Respondent****Through: Nemo****CORAM: JUSTICE SHIV NARAYAN DHINGRA:****1. Whether reporters of local papers may be allowed to see the judgment?****YES.****2. To be referred to the Reporter or not? YES.****3. Whether the judgment should be reported in the Digest? YES.****: JUDGMENT:**

1. By this writ petition, the petitioner has challenged the validity of the Award dated 02.07.2001, passed by Labour Court-I, whereby the Labour Court came to the conclusion that the claim of the petitioner was frivolous and actuated by greed and not by law.

2. Briefly the facts relevant for the purpose of deciding this writ petition are that writ petitioner was working with the respondent No.3, M/s Pan American World Airways, as Junior Agent Cargo in the year 1984. The management was to retrench those workmen who were employed in the cargo services because it had decided to discontinue the cargo services. However, management gave an offer to the employees, including the petitioner that in case an employee resigns, he shall be paid an ex gratia amount of Rs. 60,000/- apart from other dues. The petitioner in view of this offer resigned from the services on 27.1.1984 and received payment of Rs.60,000/- and other dues. After receiving the dues in January 1984, he raised an industrial dispute after about 15 years that he had not received the full dues and his resignation was not voluntary. He claimed that he was illegally retrenched in the year 1984. The dispute was referred to the Labour Court vide notification dated 5.11.1999 in the following terms:-

? Whether Shri Ram Kishan voluntarily resigned from his services or his services were terminated by the management illegally and/or unjustifiably and if so, to

what relief is he entitled and what directions are necessary in this regard?

3. In statement of claim filed before the Labour Court, petitioner took the stand that he had not signed his resignation letter voluntarily and was forced to sign the same. The Labour Court after recording evidence of both the sides came to the conclusion that the resignation was tendered by the petitioner not only voluntarily but after understanding all the facets of resignation. He had not contacted the management as alleged by him after receiving the amount. He malafidely raised the dispute that he had not tendered resignation voluntarily. There was no ground to raise dispute whatsoever.

4. Petitioner has challenged the Award passed by the Labour Court on the ground that Labour Court could not follow the definition of Section 2 (oo) of the Industrial Disputes Act 1947 and wrongly held that the claim of the petitioner was vague. The Labour Court wrongly came to the conclusion that he had voluntarily resigned. The order of the Labour Court was perverse because he had categorically stated that his signatures were obtained on the resignation against his wishes.

5. I have heard learned counsel for the parties and perused the record.

6. The contents of petitioner's resignation letter are as under:-

? Dear Sir,

I understand that consequent to discontinuance of Freighter Service from Delhi effective December 1, 1983, Pan American World Airways is contemplating reduction of staff. I understand that the axe may fall on persons of my category/

Normally, in the case of retrenchment, only 15 days wages for every completed year of service is paid by way of retrenchment compensation apart from one month's notice. this amount is, however, totally inadequate for the purpose of rehabilitation of the workman. If, however, Pan American is willing to pay me an ex gratia amount of Rs. 60,000/- in addition to 15 days wages for each completed year of service and one month's notice pay, then I would find this amount handy and I would not have difficulty in rehabilitating myself.

I, therefore, tender my resignation, which is conditional on your paying the compensation as desired above.

If you accept the above offer, I undertake not to raise any further dispute against Pan American on any grounds whatsoever whether by way of dues or reemployment or in any other form. this is, of course, apart from my normal dues.

**Thanking you,
Very truly yours,
Sd/-**

Dated: January 27, 1984 (Ram Kishan)?

7. A perusal of the above letter would show that the plea of the petitioner that he was made to sign a printed form of the resignation letter, is false and baseless. Language of the letter itself shows that letter was written after consideration and deliberation and weighing the pros and cons of resignation. Such a letter could not have been obtained by force or under any false pretext. The petitioner's plea that he had not voluntarily resigned on the face of it is liable to be rejected. The Labour Court committed no mistake in dismissing the plea of the petitioner. Moreover, the petitioner had appeared in

the witness box and his evidence has been considered by the Labour Court. From his evidence it is also apparent that the petitioner had approached the Labour Court with unclean hands, only with a motive to extract something more.

8. The findings of the Labour Court is that the petitioner's resignation was voluntary and it was not a case of the retrenchment or termination of a workman. It is a finding of fact and this Court cannot, in exercise writ jurisdiction, sit as a Court of appeal over the finding of the fact arrived at by the Tribunal. Supreme Court in 2006 (1) SCC 106- R.M. Yellatti Vs. Asstt. Executive Engineer, laid down that while exercising powers under Article 226 of the Constitution of India, High Court does not exercise power of appellate authority and cannot substitute its own view in place of view of Labour Court.

9. The claim of the petitioner should also have been dismissed by the Labour Court on the ground of delay and laches. The petitioner resigned in January 1984. He raised industrial dispute after 15 years. No dispute survives with the lapse of such a long time. If the petitioner was aggrieved and had a case that he was retrenched in January 1984, he should have approached the appropriate government for referring the dispute in 1984 itself or within a reasonable time. There is no explanation given by the petitioner as to why he approached the appropriate government after 15 years. Although the provisions of Limitation Act does not apply in case of industrial dispute but that does not give a license to anybody to keep sleeping over the matter and raise a dispute after any number of years. A stale dispute cannot be considered as an industrial dispute. Supreme Court in the case of Nedungadi Bank Limited Vs. K.P. Madhavankutty and Ors 2000(1) SLR 636, has held :-

? Law does not prescribe any time limit for the appropriate government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what

circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising industrial dispute was ex facie bad and incompetent.?

10. I consider this writ petition should be dismissed with costs as it is a case of gross misuse of the judicial process. I hereby dismiss this petition with costs of Rs.5000/- to be deposited with Delhi Legal Services Committee, Delhi High Court, New Delhi. In case cost is not deposited, the same be realized by the Registrar (General) of this Court as land revenue.

October 17, 2006 SHIV NARAYAN DHINGRA J.

kb

IN THE HIGH COURT OF DELHI AT NEW DELHI**27.07.2009**

**Present:- Mr. H.K. Chaturvedi for the petitioner.
Mr. Ajay Kumar for respondent No. 2.**

WP(C) No.548/2001

This writ petition filed by the workman (the petitioner herein) is directed against an award of the industrial adjudicator dated 10.02.2000 in ID No. 417/1994 by which the respondent management was directed to reinstate him in service without benefit of any back wages.

Heard.

The award of reinstatement in favour of the petitioner workman was passed by the Industrial Adjudicator way back on 10.02.2000. This award is stated to have remained unimplemented till date. The grievance of the petitioner/workman in this writ petition is only regarding his back wages not awarded by the Industrial Adjudicator.

The workman who is the petitioner in this writ petition had raised an industrial dispute with regard to his termination stating the management to be a company incorporated under the Companies Act, 1956. Even in the cause title of the present writ petition and also in the memo of parties, the management being respondent No. 2 herein is described as a company. This writ petition was filed by the workman about 8 years back in the year 2001. When on

**WP(C) No.548/2001 Page 1
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15.11.2006 case was taken up by the Court, a submission was made to the Court by counsel for respondent No. 2 that respondent No. 2 was a sole proprietorship concern and that sole proprietor of this firm has passed away. The Court on that day had recorded that a private limited company cannot be a sole proprietorship. Either the name of respondent No. 2 is wrong or counsel is under some misconception.

Mr. H.K. Chaturvedi learned counsel appearing on behalf of the workman today submits that respondent No. 2 against whom this writ petition has been filed is a proprietorship firm and according to him its proprietor has expired long ago. The legal heirs of deceased proprietor of respondent No. 2 firm have not been brought on record till date. Even the cause title of the petition or memo of parties has not been rectified by the petitioner though the proprietor of the management firm has expired more than three years ago but till date his legal heirs have not been brought on record and under the circumstances, I am of the view that this petition has abated.

In view of the above and having regard to the facts of the case, this writ petition is dismissed as having been abated. However, liberty is granted to the petitioner to enforce the impugned award as per law.

JULY 27, 2009 S.N.AGGARWAL, J

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1.	W.P.(C) 4874/2001 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	JAGE RAM Vs. MAGT.DELHI CONS. COOP.WHOLESA Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 14/08/2001
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Search Result For Type :W.P.(C) No :4325 year :2001* are : 1			
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1.	W.P.(C) 4325/2001 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	MANAK CHAND & ORS. Vs. M/S PRASAR BHARATI Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 24/07/2001
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IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) 3005/2001****RAKESH KUMAR Petitioner
Through Mr. H.K. Chaturvedi, Adv.****Versus****MANAGEMENT OF M/S BIRLA TEXTILE MILLS Respondent
Through Mr. Harvinder Singh with Mr. Mohit
Gupta, Advocates****CORAM:
HON'BLE MS. JUSTICE GITA MITTAL****ORDER
01.02.2006**

It is pointed out by the learned counsel for the parties that the petitioner has impugned the order of dismissal passed against him by way of an industrial dispute which has been referred for adjudication by the appropriate Government by an order of reference dated 21st July, 1998. It is stated that this matter is pending adjudication before the concerned Labour Court. There is no dispute that the scope of consideration by the Labour Court under Section 10 of the Industrial Disputes Act, 1947 is much wider than the jurisdiction of the Industrial Tribunal under Section 33(2)(b)

....2/-**-2-****of the Industrial Disputes Act, 1947.**

In this view of the matter, learned counsel for the petitioner seeks leave to withdraw this petition without prejudice to the rights and contentions of the petitioner in the industrial adjudication.

This writ petition and the pending application is permitted to be withdrawn. It is made clear that nothing said herein is an expression in the merits of the matter.

**GITA MITTAL, J
FEBRUARY 01, 2006
SD**



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1.	W.P.(C) 2818/2001 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	RAM LAGAN CHOUDHARY Vs. THE MANG. M/S RELEXO RUBBER LT Advocate : H.K.CHATURVEDI,DEEPALI	Court No. : 0 DISPOSED OFF on 23/08/2001
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1.	W.P.(C) 2720/2001 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	KISHAN KUMAR Vs. VIJAY KUMAR WADHWA & ORS Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on
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Date of Order : 27.11.2001

**Present: Mr. H.K. Chaturvedi for the Petitioner.
Mr. V.K. Tandon for the Respondent.
Mr. O.P. Khanna, Assistant Collector(North
West) Delhi in person.**

CASE NUMBER : CWP 2575/2001.

**Notice issued to the District Collector,
North-West District, Kanjhawala has been served. Mr.
O.P. Khanna Assistant Collector is present in Court.
He has filed an affidavit explaining the whole position.
The explanation which has been put forward is
that since the notice was received only in respect of
Shri Rakesh Dahiya, Partner, M/s. Welcome Restaurant,
Lusa Towers, Azadpur, Delhi, appropriate steps were
taken for effecting recovery. The investigation has
disclosed that Shri Rakesh Dahiya has left to America
and sold out the restaurant. However, the liability of
the other partners still remain. Mr. Chaturvedi,
Learned Counsel for the Petitioner states that he will
take appropriate steps for the issuance of a notice in
respect of the other partners. Liberty is granted.
The Petition is disposed of in the above
terms.**

**NOVEMBER 27, 2001 (VIKRAMAJIT SEN)
'j' JUDGE**

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

Date of decision: 12th May, 2011.

+

W.P.(C) 2557/2001

% **SH. JANG BAHADUR SINGH** **Petitioner**
Through Mr. H.K. Chaturvedi, Advocate.

versus

**M/S THERMOPLASTIC SURGICAL
& SCIENTIFIC INDUSTRIES & ANR.** **Respondents**
Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the Digest? No

RAJIV SAHAI ENDLAW, J.

CM No.6759/2011 (of the petitioner for early hearing).

Allowed.

The writ petition is taken for hearing today itself.

W.P.(C) 2557/2001.

1. For the reasons herein after appearing, even though none appears for the respondent employer but need is not felt to await or hear the respondent.
2. The petitioner workman impugns the order dated 1st March, 2001 of the Industrial Adjudicator allowing the application of the respondent employer for setting aside of the *ex parte* award dated 30th August, 1999 subject to payment of costs by the respondent employer to the petitioner workman of ₹5,000/-.
3. Notice of the petition was issued and on the application of the petitioner workman further proceedings before the Industrial Adjudicator stayed and remain stayed.
4. The application for setting aside of the *ex parte* award was made within 13 days of the *ex parte* award. Upon the application being opposed by the petitioner workman issues were framed thereon, evidence led and thereafter the application allowed.
5. It has been put to the counsel for the petitioner that even if the writ petition of the petitioner workman is to be allowed and the *ex parte* award

to be allowed to remain, opportunity will necessarily have to be granted to the respondent employer to challenge the same by way of writ petition in as much as the respondent employer has had no opportunity to challenge the award owing to the application for setting aside of the *ex parte* having been allowed.

6. Moreover, there are divergent opinions of the Supreme Court on the powers of the Industrial Adjudicator to so set aside the *ex parte* award.

7. In the circumstances, it is felt that no purpose would be served in keeping this writ petition alive. The petitioner workman by preferring the same has already delayed the matter by over ten years.

8. In the circumstances, while dismissing the writ petition and relegating the parties to the Industrial Adjudicator it is directed that the Industrial Adjudicator to now dispose of the proceedings within one year of the parties first appearing before the Industrial Adjudicator.

9. The parties to appear before the Industrial Adjudicator on 8th July, 2011. The counsel for the petitioner to inform the respondent employer and the counsel of the respondent employer of today's order and the said date, to enable the respondent employer to appear before the Industrial

Adjudicator on that date.

10. Liberty is also granted to the petitioner workman to, along with a copy of this order, immediately approach the Industrial Adjudicator for issuance of notice to the respondent employer for 8th July, 2011.

11. The record of Industrial Adjudicator if received in this Court be returned immediately.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MAY 12, 2011

PP



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1.	W.P.(C) 2056/2001 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	NARESH KUMAR RAJAN Vs. U O I Advocate : H.K.CHATURVEDI,ANIL KUMAR	Court No. : 0 DISPOSED OFF on 23/02/2004
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IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) 2032/2001****MAHINDER SINGH and ORS. Petitioner
Through Mr. Vimal Goyal, Adv.****versus****M/S BAL BHAVAN SOCIETY INDIA Respondent
Through Mr. H.K. Chaturvedi, Adv.****CORAM:****HON'BLE MS. JUSTICE GITA MITTAL****O R D E R****16.08.2005**

A status report has been filed by the respondent submitting that the petitioners Mahinder Singh and Harinder Singh have been regularised with effect from 13th January, 2004 as Chowkidars in the pay scale of Rs.2550-55-2660-60-3220/- It is further submit

ted in the status report that the third petitioner, namely Sh. Jagdish, has been kept as G€~G€~Permanent Daily WagerG€™G€~ and shall be regularised on his completion of minimum qualification of G€~G€~DG€™G€~ group employee.

In this view of the matter, noting further survives for adjudication and this writ petition is disposed of in terms of the status report filed by the respondent.

**GITA MITTAL, J
AUGUST 16, 2005
kr**



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1.	W.P.(C) 827/2000 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	LAL CHAND Vs. SEC. LABOUR & ANR. Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 11/02/2000
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1.	W.P.(C) 808/2000 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	GANESH PANDEY Vs. SEC. LABOUR Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on
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1.	W.P.(C) 7554/2000 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	JAGE RAM Vs. GOVT. OF N.C.T. OF DELHI & ORS Advocate : H.K.CHATURVEDI,A.K.SINGH	Court No. : 0 DISPOSED OFF on 02/05/2001
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 1st July, 2013

Decided on : 4th July, 2013

+ **W.P.(C) 6786/2000**

ANURUDH PRASAD Petitioner

Through: Mr. H.K. Chaturvedi, Advocate.

versus

P.O. LABOUR COURT (DELHI-III) AND ORS.

..... Respondent

Through: None.

CORAM:

% **HON'BLE MR. JUSTICE NAJMI WAZIRI**

1. This is a petition filed against the award dated 17.1.2000 passed by the Labour Court No. III in I.D. No. 71/87 which held inter alia that the petitioner was not an employee of M/s Tej Press. The two issues to be determined by the Labour Court were:

1. "Whether there exists any relationship of employer and employee?"
2. "As per terms of reference."

Finding to the said issues was returned as under:

"ISSUE NO. 1

The onus to prove this issues (sic: issue), was on the workman. The workman, however, has not produced any evidence to establish the relationship of employer and employee between him and the management of M/s Tej Press except that 2/3 letters were received by him at the address of the

management. In the notice of demand as well as the statement of claim, the case of the workman was that he was being treated as an employee of the Contractor in violation of the provisions of the Factories Act. However, during evidence, when the workman filed his affidavit, it was stated that the management No. 1, i.e., M/s Tej Press wanted to transfer the services of the workman to Respondent No. 2, i.e., Sh. Hazari Lal, Contractor and when the workman had refused to do so the management got annoyed and terminated his services. The management has produced on record through the testimony of MW1, Sh. Vijay Nanda that the management was publishing only one magazine, namely, 'SUN'. The management was having contract for printing certain other magazines for limited period. The management had a regular Binding Department and that the extra work was being carried out through M/s New Link Binder, Jangpura which was owned by Sh. Hazari Lal. Nothing was brought in cross-examination of Sh. Vijay Nanda. Not even a suggestion was given that there was no establishment in the name and style of M/s New Link Binder or that the same was not being run by said Sh. Hazari Lal. It was not even the case of the workman that M/s New Link Binder was only a camouflage and that really the employees of M/s New Link Binder were the employees of M/s Tej Press. Ofcourse, 2/3 letters were received by the workman at the address of the management. That by itself would not establish the relationship of employer and employee between the parties, particularly,

when it has come during the conciliation proceedings that the workman had worked with Sh. Hazari Lal for some time. Thus, I hold that there was no relationship of employer and employee between the parties, i.e., the workman and the management of M/s Tej Press. The issue is accordingly decided against the workman.

12. ISSUE NO. 2

Since there was no relationship of employer and employee between the parties, there was no question of termination of services by the management of M/s Tej Press. The workman does not alleged the termination of his services by Respondent No. 2, ie., Sh. Hazari Lal. Thus, it cannot be said that services of workman Sh. Anurudh Prasad had been terminated illegally or unjustifiably by the management of M/s Tej Press. The workman is not entitled to any relief. The issue is decided, the reference is answered and an Award is made accordingly.”

2. Counsel for the petitioner argues that the Labour Court had erred in not taking into consideration the fact that the Wages Register for the period 1979 to 1985 was never produced in evidence by the respondent company. Therefore, adverse inference should have been drawn in favour of the petitioner to the effect that there existed an employer and employee relationship between the petitioner and the respondent M/s Tej Press. A perusal of the evidence of Sh. Vijay Nanda, (Personnel) Manager of the respondent shows that he was not cross-examined at all by the workman. Also vide affidavit dated 3rd June, 1999, the said Mr. Nanda had stated that

he tried to procure the relevant record but it was not traceable since it was very old i.e. belonging to 1979 to 1985. The petitioner-workman could have adduced such other evidence, if he had any, to prove that he was an employee of M/s Tej Press, rather than base his case on adverse inference to be drawn from the evidence of the respondent. The petitioner has failed to lead any substantive evidence in his favour. It was always open to the workmen to raise appropriate questions and put suggestions to the deponent so as to establish their case.

3. The conclusion drawn by the Labour Court is based on the correct assessment of the facts and the law. This Court finds no reason to interfere with the same. Accordingly, the writ petition is dismissed.

NAJMI WAZIRI, J
(JUDGE)

JULY 4, 2013
mv

IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) 6745/2000****UDAY SINGH Petitioner
Through Mr. H.K. Chaturvedi, Advocate****versus****UOI and ORS. Respondents
Through Ms. Saroj Bidawat, Advocate****CORAM:****HON'BLE DR. JUSTICE MUKUNDKAM SHARMA
HON'BLE MS. JUSTICE GITA MITTAL****ORDER****05.10.2004**

This writ petition is filed by the petitioner praying for quashing of the order of termination which was passed by the respondents against the petitioner. The petitioner was recruited as a sepoy and he joined the course on 15th November, 1999. The petitioner was granted five days casual leave from 24th March, 2000 to 28th March, 2000. He was to report back to duty on expiry of the aforesaid leave. The petitioner, however, did not report for duty and he had reported for duty at Rajputana Rifles Regimental Centre on 19th May, 2000. The petitioner, therefore, absented himself from basic military training for 52 days. Disciplinary action was initiated against the petitioner. The petitioner was tried under summary court martial under Section 39 of the Military Rules for the offence of over staying leave and he was awarded 14 days pay fine. The petitioner was also discharged from service with effect from 23rd May, 2000 on the ground that he is inefficient and undesirable soldier which is a ground for taking such action as contemplated under the provisions of Rule 13 (3) IV of Army Rule, 1954 and para 4 of Army Headquarters letter no. A/20314/MT-3 dated 28th February, 1986. It is, however, contended by the petitioner that the petitioner was declared medically unfit and he was undergoing treatment in a government hospital. In support of the said contention, the counsel appearing for the petitioner has drawn our attention to a certificate issued by government hospital, Tappal, Aligarh which is dated 18th May, 2000. It is also pointed out by the petitioner that the petitioner is entitled to such treatment in a government hospital when military hospitals are not available nearby and after he was declared fit, the petitioner reported for duty and, therefore, according to the counsel appearing for the petitioner, the action taken by the respondents is illegal and without jurisdiction. Counsel appearing for the respondents has, however, drawn our attention to the fact that the petitioner availed of the casual leave with effect from 24th March, 2000 to 28th March, 2000 and it is the case of the petitioner that he had pain in his leg only on the night of 28th March, 2000. It is also pointed out by her that no communication was sent by the petitioner even assuming the petitioner was unwell and was unfit to move with effect from 28th March, 2000 till 17th

May, 2000.

We have perused the documents placed on record in the light of the aforesaid submissions of the counsel appearing for the parties. The communication allegedly sent by the petitioner on 28th March, 2000 was never delivered and received by the respondents

. No other communication was sent by the petitioner to the respondents intimating the respondents about his illness and treatment at a government hospital till

DR. MUKUNDAKAM SHARMA, J

GITA MITTAL, J

OCTOBER 05, 2004

kr

IN THE HIGH COURT OF DELHI AT NEW DELHI**26.09.2005**

**Present : Mr. H.K.Chaturvedi for the petitioner
Mr.Rakesh K.Khanna and Mr.Shashank Shekhar
for the respondent**

WP (C) No.6116/2000

*

1) Rule. Learned counsel for the respondent waives notice and submits that the counter already filed be treated as the reply on behalf of the respondent. Since the issue raised by the petitioner in the present case is narrow, with the consent of the parties, the petition has taken up for final disposal.

2)The petitioner has impugned the no dispute award dated 11.3.96 and the order dated 20.7.99 passed on the petitioner's application seeking setting aside of the Award dated 11.3.96. It has been contended that the petitioner was being represented by his trade union. On account of termination of the petitioners services by the respondent, the petitioner had raised an industrial dispute and the conciliation authorities under the Industrial Disputes Act, 1947. Despite efforts conciliation failed and the dispute was referred for adjudication of the industrial adjudicator vide dated 5.11.92 made by the Government of NCT of Delhi. The reference was in the following terms:

Whether the services of Shri Attar Singh have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in the respect.

3) The Industrial adjudicator thereafter sent a notice to both the petitioner/workman as well as respondent/management. It is noteworthy that the Government of NCT of Delhi while making an order of reference had directed the petitioner to file the statement of claim coupled with the relevant documents with the Labour Court within 15 days of the receipt of this order. Thereby the compliance was affected of Rule 10 (b) of the Industrial Disputes (Central) Rules, 1957. Neither any claim was filed nor any documents submitted within the period prescribed. Instead of making an award, keeping in view the absence of the workman, the Labour Court preferred to issue notice to him.

4)Perusal of the original record of the Labour Court which has been produced before this Court shows that notice could not be served upon the petitioner despite repeated attempts made pursuant to orders of Labour Court. It has been pointed out that the notice could not be served as the office of the union which was the only address of the petitioner available on the record, was found to be locked. Ultimately, notice was served only on the 13.1.96 for appearance of the workman on the 15.1.96.

5)The petitioner does not dispute that it had received the notice on 13.1.96 and was aware that he had to appear in Court before the Labour Court on 15.1.96. The record of the case shows that he had not appeared before the Court nor was he represented by any authorised representative. The petitioner also made no effort whatsoever to file his statement of claim even at this belated stage.

6)In these circumstances, the Labour Court was left with no option but to make the no dispute award on the 13.1.96. It has to be noticed that no steps were taken either by the union or by the petitioner in respect of the reference w.e.f. 13.1.96 till 11.3.96.

7)Thereafter on the 29.7.96, the petitioner filed an application before the Labour Court seeking setting aside of the Award dated 11.3.96. Perusal of the original application which is

filed on the record in the Labour Court shows that there is no explanation at all and no ground taken for non-appearance on 15.1.96 for any reason that the union did not intimate the requirement of appearance by the petitioner or that as such he was not aware of the date fixed on 15.1.96.

8) Assuming that this was to be held in favour of the workman, I find that no date has been mentioned on which the petitioner gained knowledge of the proceedings or the manner in which he received information about the proceedings before the Industrial Tribunal

resulting in filing of the application by the workman on 21.7.96. The petitioner has given no reason for not taking any action between 13.1.96 till 11.3.96 when the award was made. I find that the petitioner has also failed to explain the reasons

for not taking any action after passing of the award from 11.3.96 till 29.7.96. A vague averment has been made that the petitioner received information of the passing of the award by the Labour Court from the union without referring and giving any details

of the same. As such, the same is not worthy of any credence.

9) The application for setting aside the no dispute award was finally disposed of by the Labour Court vide his order dated 20.7.99 on the ground that the award dated 11.3.96 has been published in accordance with the provisions of Section 17 of the Industrial Disputes Act.

On the principles laid down in the Apex Court in its pronouncement reported in JT 2004 (8) SC 109 entitled M/s Sangham Tape Company vs. Hans Raj, it was held by the Labour Court that on publication of the award, it has become functus officio and it has no jurisdiction to pass any orders. The Labour Court was also of the view that the applicant has failed to show sufficient cause for setting aside the Award in the

forestated circumstances as notice had been sent in view of the fact that there was no explanation as afore noticed.

10) The writ petition impugning the Award dated 11.3.96 and the order dated 20.7.99 has been filed only on the 7.9.2000. The delay in invoking the jurisdiction of this court under Section 226 of the Constitution of India is to be found in para 1 of the writ

petition wherein the petitioner has stated that on account of financial incapacity the petitioner could not approach this Court earlier. I have no reason to disbelieve the petitioner on this account.

11). I may notice that the petitioner has complained of illegal termination of services on 24.6.91. The conciliation proceedings did not meet with any success and as such, a reference order was passed by the competent authority as back as on 5.11.92.

Assuming that the petitioner submits that he was not aware or was financially incapacitated, normal conduct would have been that the petitioner would have agitated against delay in adjudication of the claim made by him and he would have made some kind of

effort to ascertain the status and position of the reference which had been made at his instance. There is not even an iota of an averment as to the efforts made by the petitioner w.e.f from 5.11.92 till 29.7.96 in respect of the challenge which was being urged by him with regard to his alleged termination.

12). Learned counsel for the respondent has vehemently contended that the petitioner/workman was not at all interested in prosecuting the reference in as much as he had voluntarily resigned from the services of the respondent and had received full and final

payment of his accounts pursuant to his letter dated 24.6.91 and had received all amounts including the amount payable towards gratuity, bonus and other amounts in such full and final settlement on 8.7.91. Reliance has been placed on the documents

in this behalf which have been placed on record and also the extract of the statutory register maintained by the respondent/management.

13). I have held that petitioner has failed to make out sufficient cause for non-appearance and delay in taking action in the matter and approaching the Labour Court diligently. Therefore, I am not inclined to make any observations on the statements which

ch relates to the merits of the respect contention of the party.

In these circumstances, I find no merit in the writ petition which is hereby dismissed.

The parties are left to bear their own costs.

GITA MITTAL, J.

September 26, 2005

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1.	W.P.(C) 5000/2000 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	BHUDEV SHARMA Vs. MGT. OF AIRPORT AUTH. OF INDIA Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 08/09/2000
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IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) 4195/2000****KAMESHWAR PRASAD Petitioner****Through: Mr. H.K. Chaturvedi and Ms. Anjali Chaturvedi, Advs.****versus****MGT. OF SAWHNEY RUBBER INDUSTRIES and****ORS. Respondents****Through: None.****CORAM:****HON'BLE MR. JUSTICE A.K. PATHAK****O R D E R****08.11.2013****CM No. 15019/2013 (Restoration)**

Writ petition was dismissed in default on 18th September, 2013. By this application it is prayed that writ petition be restored at its original number. Application is allowed.

W.P. (C) 4195/2000**Arguments heard.**

Secretary (Labour), Govt. of NCT of Delhi referred the Industrial Dispute raised by the petitioner and one Sh. Raj Kumar to the Labour Court, Delhi in the following terms :-

?Whether the services of Shri Kameshwar Prasad, Kameshwar and Raj Kumar have been terminated illegally and/or justifiably by the management and if so, to what relief are they entitled and what directions are necessary in this respect??

As regards Raj Kumar he did not prefer any statement of claim, inasmuch as, did not participate in the proceedings.

Petitioner filed statement of claim alleging therein that he was working with the respondent as 'Press Foreman' for the last five years. His last drawn wages were Rs. 950 per month. Petitioner was not given legal facilities to which he was legally entitled to, inasmuch as, wages were not disbursed to him in time. Petitioner became member of Union at which respondent became revengeful and terminated his service on 2nd January, 1992 without issuing any notice and without tendering any retrenchment compensation in terms of Section 25-F of the Industrial Disputes Act, 1947 ('the Act', for short). Demand notice dated 19th May, 1992 served upon the respondent did not bring any fruitful results. He was unemployed from the date of his termination.

In written statement, respondent denied the allegations contained in the statement of claim. It was alleged that petitioner was engaged on 5th August, 1987 as a 'Helper'. Appointment letter was issued to him. Petitioner was irregular in attending his duties. He used to remain absent unauthorisedly. He absented himself with effect from 5th April, 1991. On 7th April, 1991 he collected his salary for the month of March,

1991 and thereafter again absented himself from duty with effect from 31st July, 1991. It was denied that petitioner worked as Press Foreman.

Petitioner was extended all the statutory benefits to which he was entitled to. It was alleged that compliance of Section 25-F of the Act was not required since petitioner was not retrenched from service by the respondent.

In replication, petitioner denied the averments made in the written statement and reiterated what he had stated in his statement of claim.

On 9th September, 1994 following issues were framed:-

?1. As in terms of reference.?

Petitioner examined himself as WW1. He was cross-examined at length. Petitioner proved demand notice dated 19th May, 1992 as Ex. WW1/1. Copy of the demand notice was proved as Ex. WW1/2. Copy of the letter to Labour Department was proved as Ex. WW1/3. In his cross-examination he was confronted with the three documents by the management which he admitted, thus, were exhibited as Ex. WW1/M1 to Ex. WW1/M3. Per contra, respondent examined its General Manager Subhash Bhasin as MW1. He proved on record certain documents. He categorically deposed that petitioner was appointed as an unskilled worker on a monthly salary of Rs.490/- vide appointment letter dated 5th August, 1987. He never worked as Press Foreman which position used to be hold by a qualified engineer. He supported the version as contained in written statement.

Upon scrutiny of evidence adduced by the parties Industrial Adjudicator has concluded that petitioner was appointed as 'Helper'. He was not qualified to hold the post of Press Foreman. He had taken

shifting stand at different stages. In his cross-examination he failed to give details of the legal facilities which were allegedly denied to him. According to him he was not given over time only. However, he did not make any reference about the non-payment of overtime in his complaints Ex.WW1/M-2 and Ex. WW/M-3, which made his plea of non-extension of legal facilities to him. Industrial Adjudicator has further held that petitioner was asked to join by the Labour Inspector however, he failed to join his duty. He unauthorisedly absented himself, thus, he had himself terminated, his service. In fact, the Industrial Adjudicator has held that petitioner had abandoned his services though he has used the word 'terminated' instead of 'abandoned'.

Findings of fact have been returned by the Industrial Adjudicator on critical analysis of the evidence adduced by the parties. Ocular as well as documentary evidence led by the parties has been examined at threadbare. Findings returned by the Industrial Adjudicator cannot be interfered with upon re-appreciation of evidence by this Court while exercising writ jurisdiction under Article 226 of the Constitution of India.

It is trite law that findings of fact returned by the Industrial Tribunal or Labour Court, on appreciation of evidence, cannot be interfered with by High Court in exercise of its power of judicial review under Article 226 of the Constitution of India by re-appreciating the evidence. This Court can interfere with the Award in case it is shown that the same is based on no evidence or is perverse or suffers from any manifest error of law. In the present case, I do not find the view taken

by the Industrial Adjudicator to be based on no evidence. Findings have been returned by the Industrial Adjudicator on appreciation of evidence in detail and I do not find the same to be perverse as the same are based on reasons.

Accordingly, writ petition is dismissed.

A.K. PATHAK, J.

NOVEMBER 08, 2013

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1.	W.P.(C) 3966/2000 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	D.T.C. Vs. MAHESH GUPTA Advocate : K.K.TYAGI,H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 01/08/2001
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IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) 3773/2000****M/S D.P. STEEL INDUSTRIES Petitioner****Through : Mr. Deepak Kumar, advocate.****versus****PRESIDING OFFICER LABOUR COURT Respondent****Through : Mr. H.K. Chaturvedi, advocate for workman.****CORAM:****HON'BLE MR. JUSTICE SIDDHARTH MRIDUL****ORDER****17.11.2008**

Counsel for the petitioner submits that he has no instructions in the matter. Even on 19th August, 2008 and 4th November, 2008, the learned counsel for the petitioner had prayed for time to move an appropriate application seeking discharge.

Counsel for the petitioner submits that despite communication in this behalf he has still not received any instructions from the petitioner with regard to the prosecution of the writ petition. In view thereof, the writ petition is dismissed in default for non prosecution.

SIDDHARTH MRIDUL,J**NOVEMBER 17, 2008****j****44**

IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) 6559/1999****MUNNA and ORS. Petitioners****Through: Mr. H.K. Chaturvedi, Adv.****versus****M/S K.B.S.H. EXPORT HOUSE and ANR. Respondents****Through: None.****W.P.(C) 1456/2000****TINI PRASADPetitioner****Through: Mr. H.K. Chaturvedi, Adv.****versus****M/S K.B.S.H. EXPORT HOUSE and ANR. Respondents****Through: None.****CORAM:****HON'BLE MR. JUSTICE A.K. PATHAK****ORDER****13.09.2013**

By the above writ petitions, petitioners have challenged the Award dated 12th August, 1998 passed by Labour Court No. III, Tis Hazari, Delhi whereby no claim award has been passed qua them. It may be noted that along with the petitioners Smt. Subhadra Devi also raised industrial dispute which was also referred for adjudication and vide the Award reference was answered in her favour.

Petitioners claimed that their services were terminated illegally by the respondent no.1. Upon close scrutiny of evidence adduced by the parties Industrial Adjudicator has returned a categorical finding that services of petitioners were never terminated, inasmuch as, they themselves did not report for duty after respondent no.1-management shifted its factory premises from Karol Bagh, New Delhi to 256, Okhla, New Delhi, though, other workmen joined at the newly shifted place.

Petitioners did not join their duties, without assigning any reason. Industrial Adjudicator has mentioned in the order that petitioners admitted that they did not report for duty to the newly shifted premises.

It is not the case of the petitioners that award is based on no evidence. Findings returned by the Industrial Adjudicator, upon scrutiny of evidence, cannot be interfered with by this Court in its power of judicial review under Article 226 of the Constitution by re-appreciating the evidence. Award is based on the evidence adduced by the parties. Leaned counsel for the petitioner has failed to point out any manifest error of law or jurisdiction in the impugned Award. Petitioners themselves stopped reporting for duties which fact was even admitted by them. I do not find any perversity in the view taken by the Industrial Adjudicator.

In view of above discussions, both the writ petitions are dismissed.

A.K. PATHAK, J.

SEPTEMBER 13, 2013/ga

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1.	W.P.(C) 5154/1999 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	MAGIR Vs. THE SECRETARY (LABOUR) & ORS Advocate : H.K.CHATURVEDI,V.K.DIWAN	Court No. : 15 DISPOSED OFF on 24/08/2009
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1.	W.P.(C) 4535/1999 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	RAM BACHAN SINGH Vs. SECY (LABOUR) & ORS Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 20/12/2002
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1.	W.P.(C) 4410/1999 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	RAJNI KANT JHA Vs. P.O.,LABOUR COURT NO. VII & ANR Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on
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1.	W.P.(C) 3861/1999 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	DHARAM SINGH Vs. COLLECTOR & ORS Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 24/09/1999
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1.	W.P.(C) 3860/1999 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	SONE LAL & ORS Vs. SECY. LABOUR & ORS Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 05/07/1999
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1.	W.P.(C) 2732/1999 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	SIYA RAM Vs. THE COLLECTOR & ORS Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 07/03/2001
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Date of Order : 19.11.2001

**Present: Mr. H.K. Chaturvedi for the Petitioner.
Ms. Ratna Dwivedi Dhingra for Respondent 4.
Mr. M.G. Kapoor for Respondent No.5.**

CASE NUMBER : CWP 2300/99.

In view of the judgment of the Hon'ble Supreme Court in Steel Authority of India Ltd.and Others etc. etc.vs. National Union Water Front Workers and Others, JT 2001 (7) SC 268 decided on August 30, 2001, learned Counsel for the Petitioner submits that the Petition may be disposed off with liberty to the Petitioner to initiate appropriate legal proceedings before the appropriate Authority.

As requested the Petition is disposed off with liberty granted as prayed for.

Interim orders are recalled.

**NOVEMBER 19, 2001 (VIKRAMAJIT SEN)
'j' JUDGE**



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1.	W.P.(C) 2021/1999 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	RUKMANI DEVI Vs. M/S HINDUSTAN PRIMER & ORS Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on 19/07/2000
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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 736/1998 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	HORTICULTURE DEPARTMENT Vs. BIMLA & ORS Advocate : H.K.CHATURVEDI,SHUBANGI	Court No. : 0 DISPOSED OFF on 07/08/2001
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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 2534/1998 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	JAGDISH CHAND Vs. D.T.C. & ORS Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on
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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 82/1997 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	ANIL JAIN PROP.MGT.OF NUTAN ART PRINTERS Vs. JAGDISH CHANDER ETC. Advocate : P.K.JAIN,H.K.CHATURVEDI,	Court No. : 0 DISPOSED OFF on 09/12/1999
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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 2112/1997 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	MANMOHAN Vs. M/S EAGLE PLAYING CARDS & ORS Advocate : H.K.CHATURVEDI,ASHISH	Court No. : 0 DISPOSED OFF on 03/02/2005
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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 3527/1996 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	MATA PRASAD Vs. MGT. OF M/S VENGUARD PLASTIC INDUS & ORS Advocate : H.K.CHATURVEDI,A.K.GOEL	Court No. : 0 DISPOSED OFF on
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1.	CONT.CAS(C) 305/1995 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	RAM GOPAL Vs. KULDEEP DUGGAL & ORS Advocate : H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on
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1.	CRL.M.C. 652/1995 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	BISHAN SWARUP SHARMA Vs. R.P.PANDEY & ORS. Advocate : H.K.CHATURVEDI.	Court No. : 0 DISPOSED OFF on
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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 2459/1995 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	M/S.KULDEEP ART PRESS Vs. GOVT.OF NCT OF DELHI. Advocate : D.C.KUMAR,H.K.CHATURVEDI	Court No. : 0 DISPOSED OFF on
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Search Result For Type :W.P.(C) No :2103 year :1990" are : 1

S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 2103/1990 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	RAMESH CHAND JAIN Vs. SECY. LABOUR & ORS Advocate : H.K.CHATURVEDI,VINAY	Court No. : 0 DISPOSED OFF on 26/02/2003
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IN THE HIGH COURT OF DELHI AT NEW DELHI**15****LPA 499/2009****VIJAY SINGH****Appellant****Through Mr. H.K. Chaturvedi with****Ms. Anjali Chaturvedi, Advocate.****versus****THE MANAGEMENT OF DTC** Respondent**Through Mr. Hanu Bhaskar, Advocate.****CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE DR. JUSTICE S. MURALIDHAR****ORDER****23.11.2009**

- 1. This appeal is directed against an order dated 3rd August 2009 passed by the learned Single Judge dismissing the Appellant's Writ Petition (Civil) No. 10615 of 2009.**
- 2. The Appellant was appointed as a Driver with the Delhi Transport Corporation (DTC) since 1977. He was served with the charge sheet dated 15th January 1992 for unauthorised absence from duty for a period of 102 days during the period from 1st January 1991 to 31st December 1991. In the domestic inquiry, he was found guilty of the said charge. The disciplinary authority, by an order dated 28th March 1992, imposed the punishment of removal of service with immediate effect. Aggrieved by the said order, the Appellant raised an industrial dispute. By an order dated 13th May 2008 the Labour Court held that the inquiry by the DTC was valid. Thereafter by an Award dated 1st April 2009, the Labour Court, while upholding the removal of the Appellant, directed the DTC to pay him gratuity and also consider his case for pension uninfluenced by the order of his removal.**
- 3. The Appellant filed the aforementioned Writ Petition (Civil) No.10615/2009 challenging the Award dated 1st April 2009. The learned Single Judge dismissed the writ petition holding that there was no infirmity in the impugned Award which called for interference under Article 226 of the Constitution.**
- 4. We have heard the learned counsel for the parties. With their consent, the appeal is being disposed of finally.**

5. We find that the Labour Court in para 18 of the Award accepted the case of the workman that he had adduced a genuine reason for his absence on account of the abnormal behaviour of his minor daughter. The observations of the Labour Court in para 18 read as under:

?18. From the terms of reference, I am only to decide the legality of removal. Considering the spirit of section 11 A of the I. D. Act, this court cannot interfere with the wisdom of the disciplinary authority as regards the imposition of penalty. The record shows that the workman had consistently assigned the reason for his absence due to the abnormal behaviour of his minor daughter. Even in the enquiry he had requested the enquiry authority to appreciate his predicament. For the show cause notice also, the same prayer was made expressing his willingness to work. While passing the order of removal dated 28.04.1992, the disciplinary authority noted that the past record was considered. In view of the past record, no leniency was shown. As per the settled position of law the disciplinary has to state the supporting reasons as held in *Roop Singh Negi Vs. Punjab Natonal Bank, 2009 LLR 252*. While giving the reasons, the disciplinary authority has never touched the ground urged by the workman for his absence. The past record is for the incidents that once the glass was found broken and that he was on leave without pay once misbehaved with the passengers, refused to switch on the light inside the bus. He was also once punished for the same reason of availing excessive leave.?

6. Having come to the above conclusion, the Labour Court nevertheless felt constrained to uphold the removal of the Appellant and only granted a limited relief. We are unable to appreciate why the Labour Court did not hold the removal of the workman to be a punishment disproportionate with his alleged misconduct.

7. We find that the reference made by the learned Single Judge to the decision of the Supreme Court in *Delhi Transport Corporation v. Sardar Singh AIR 2004 SC 4161* to be misplaced. Para 6 of the judgment in *Sardar Singh* shows that the Supreme Court was dealing with a batch of appeals in which the number of days of

absence in different cases alone was noticed. Those cases were ultimately remanded for a fresh consideration. Every case would have to be decided on its own peculiar facts. There is nothing in *Sardar Singh* to indicate that any of these cases involved absence on account of the abnormal behavior of the minor daughter of the employee, which is the case here.

8. The learned counsel for the DTC submitted that the Appellant had not made a representation to this effect before the disciplinary authority and, therefore, the order of removal could not be held to be bad for that reason.

9. We find that the order dated 28th March 1992 of the disciplinary authority is a cryptic one. It neither refers to any past misconduct of a similar nature nor the reason given by the Appellant for his absence during the period in question. The order dated 28th March 1992 passed by the disciplinary authority suffers from non-application of mind. In the circumstances the punishment of removal from service awarded to the Appellant is, in our view, unsustainable in law.

10. We accordingly set aside the impugned Award dated 1st April 2009 passed by

the Labour Court as well as the impugned order dated 3rd August 2009 passed by the learned Single Judge. The Appellant will be reinstated in service with 25% back wages.

11. The appeal is accordingly allowed with the above directions with costs of Rs.5,000/- which will be paid by the Respondent to the Appellant within a period of four weeks from today.

CHIEF JUSTICE

S. MURALIDHAR, J.

NOVEMBER 23, 2009

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LPA No.499/2009 Page 4 of 4

IN THE HIGH COURT OF DELHI AT NEW DELHI**LPA 355/2009 and CM 10520/2009****JAGDISH PRASAD Appellant
Through Mr. H.K. Chaturvedi, Advocate****versus****THE MANAGMENT OF DTC Respondent
Through Ms. Saroj Bidawat, Advocate.****CORAM:****HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN****ORDER
11.08.2009**

Present Letters Patent Appeal has been filed challenging the judgment and order dated 14th May, 2008 whereby the appellant-petitioner's writ petition seeking reinstatement and quashing of the Labour Court's award dated 21st April, 2007 was dismissed.

Learned counsel for appellant-petitioner contended that the termination order was bad as it was a case of no evidence inasmuch as the passenger to whom the appellant-petitioner is supposed to have sold the bogus ticket was not examined by the Inquiry Officer. Learned counsel further submitted that the Checking squad had not even recorded the statement of the said passenger. In our opinion, the learned Single Judge has rightly held that there is no need for the passenger to be present before the Inquiry Officer. The Supreme Court in State of Haryana and Anr. v. Rattan Singh reported in (1977) 2 SCC 491 has held as under:

3. The principal ground on which the courts below have declared the termination bad is that none of the 11 passengers have been examined at the domestic enquiry. Secondly, it has been mentioned that there is a departmental instruction that checking inspectors should record the statements of passengers, which was not done in this case. The explanation of the State, as borne out by the record, is that the inspector of the flying squad had said that they had paid the fares but they declined to give such written statements. The third ground which weighed with the courts was, perhaps, that the co-conductor in the bus had supported with this evidence, the guiltlessness of the respondent.

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible.

There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence-- not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any

evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

**5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, nor rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the administrative tribunal. In conclusion, we do not think the courts below were right in over-turning the finding of the domestic tribunal.?
(emphasis supplied)**

The Supreme Court in U.P. State Road Transport Corpn. v. Vinod Kumar reported in (2008) 1 SCC 115 held as under:

??? Without burdening the judgment with all the judgments of this Court on this point, we may only refer to a recent judgment in Divisional Controller, N.E.K.R.T.C. v. H. Amaresh AIR 2006 SC 2730 wherein this Court, after taking into account the earlier decisions, held in para 18 as under:

?18. In the instant case, the mis-appropriation of the funds by the delinquent employee was only Rs.360.95. This Court has considered the punishment that may be awarded to the delinquent employees who mis-appropriated the funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence is the primary factor and not the amount of money mis-appropriate and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of mis-appropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. The judgment in Karnataka State Road Transport Corporation v. B.S. Hullikatti (2001) 2 SCC 574 was also relied on in this judgment among others. Examination of the passengers of the vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a mis-conduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This omission was sufficient to hold him guilty. This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum.?

(emphasis supplied)

In the present case, the appellant-petitioner was admittedly found in possession of excess money and since on six earlier occasions, minor punishments had been awarded to the appellant-petitioner, in our opinion, the impugned orders calls for no interference. Accordingly, present appeal and application are dismissed but with no orders as to costs.

CHIEF JUSTICE

**MANMOHAN, J
AUGUST 11, 2009
js**

LPA 355/2009

#1

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

+ **W.P.(C) No. 9923/2009**

% **Date of Decision: 08 July, 2009**

Subhash Chander

..... Petitioner

! Through: Mr. H.K. Chaturvedi, Advocate.

Versus

\$ M/s. Aakarshan Jewellery Palace & Others

.....Respondents

^ Through: Nemo

CORAM:

HON'BLE MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J (ORAL)

+CM No. 8181/2009 (for exemption) in WP(C) No.9923/2009

*

Exemption as prayed for is granted, subject to all just exceptions.

WP(C) No. 9923/2009

The workman (petitioner herein) has filed this writ petition seeking to challenge the award dated 21.09.2007 passed by Ms. Mamta Tayal, Presiding Officer, Labour Court I, Delhi rejecting his claim for reinstatement and back wages.

2. Heard.

3. The petitioner alleges termination from the services of the three managements who are respondents no. 1 to 3 herein w.e.f. 09.05.2000. He raised an industrial dispute with regard to his alleged termination

which was referred by the appropriate Government to the Labour Court for adjudication. The petitioner filed his statement of claim before the Labour Court in which he stated that he was employed as the Accounts Clerk by respondent no. 1 w.e.f. 01.07.1996 at a salary of Rs. 2100/- per month. His further case in the statement of claim was that though he was appointed as Accounts Clerk only by respondent no. 1 management but he was working on instructions of respondent no. 1 with respondent no. 2 and 3 management also. The petitioner has also stated in his statement of claim that he was paid Rs. 700/- per month by all the three managements separately. The written statement before the Labour Court was filed only by respondent no. 1 and not by the other two respondents. The defence set up by the respondent no. 1 in his written statement was that the petitioner was employed as a part-time accountant for assisting the respondent no. 1 management and that he was coming to assist the respondent no. 1 management in connection with writing of account books only once or twice every week and that too for maximum one to three hours. No appointment letter was given by any of the respondent's management to the petitioner. The Court below has given a well-reasoned award for arriving at a conclusion that the petitioner has failed to prove that his services were illegally terminated by the respondents and for that reason declined his claim for reinstatement and back wages. The witness of respondent no. 1 management in his evidence before the Court below has testified that the account books used to be written by he himself and that the petitioner has been coming only to assist him in some matters relating to accounts. This testimony of the management witness has remained totally un-rebutted on record.

4. Upon going through the impugned award and other relevant material, I do not find any merit in this writ petition which fails and is hereby dismissed in limine.

July 08, 2009
ma

S.N.AGGARWAL
[JUDGE]

IN THE HIGH COURT OF DELHI AT NEW DELHI**09.04.2009**

**Present: Mr. H.K. Chaturvedi, Advocate for the Petitioner.
Ms. Latika Chaudhary for Ms. Anusuya Salwan, Advocate for the Respondent.**

WP (C) No. 8091/2009 and CM No. 4684/2009

After some arguments, learned counsel for the petitioner seeks permission to withdraw this petition with liberty to take other course of action available to the petitioner.

Consequently, the present writ petition along with pending application is dismissed as withdrawn with the liberty as prayed for.

A.K.SIKRI, J

**SURESH
KAIT, J
April 09, 2009
sb**

#15.



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Search Result For Type :W.P.(C) No :8060 year :2009* are : 1			
S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 8060/2009 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	LACHMAN SINGH Vs. UOI & ANR. Advocate : H.K. CHATURVEDI	Court No. : 5 DISPOSED OFF on 08/04/2009
Page : 1			

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IN THE HIGH COURT OF DELHI AT NEW DELHI**18.10.2010****Present: Mr. H.K.Chaturvedi, Advocate for the petitioner.
Ms. Zubeda Begum, Advocate for the respondent.****WP(C) No. 13185/2009****Counsel for the petitioner prays for leave to withdraw this petition with liberty to move the Central Administrative Tribunal for such reliefs as he may be entitled to, in accordance with law. He is permitted to do so. The petition is dismissed as withdrawn.****CM No. 14324/2009 in WP(C) No. 13185/2009****In view of the orders passed in the main writ petition, this application is rendered infructuous and the same is dismissed as such.****SUDERSHAN KUMAR MISRA, J.****October 18, 2010****sl****i.6**

IN THE HIGH COURT OF DELHI AT NEW DELHI**09.09.2009****Present:- Mr. H.K. Chaturvedi for the petitioner.
Mr. Amiet Andlay for the respondent.****W.P.(C.) No. 10621/2009****The counsel for both parties have agreed for passing of a consent order in the present petition.****Mr. Amiet Andlay learned counsel appearing on behalf of the respondent submits that in case the fresh address of the management is furnished by the petitioner workman to his client, necessary steps for implementation of the award in his favour will be taken by the respondent immediately. Mr. H.K. Chaturvedi learned counsel appearing on behalf of the petitioner workman submits that he will furnish the present correct address of the management along with details of assets to the respondent as early as possible and he agrees that the present writ petition may be disposed of with directions to the respondent to take necessary steps for implementation of the award in favour of the workman as soon as the present correct address along with details of the assets of the management is furnished by the petitioner workman to the respondent. Having regard to the submissions made by counsel for the parties, this writ petition is disposed of with directions to the respondent to take necessary steps for implementation of the award****W.P.(C.) No. 10621/2009 Page 1
of 2****in favour of the workman as soon as the present correct address of the management along with details of its assets is furnished by the workman.****SEPTEMBER 09, 2009 S.N.AGGARWAL, J
'a'****W.P.(C.) No. 10621/2009
Page 2 of 2**

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

+ **W.P.(C) No. 10615/2009**

% **Date of Decision: 03rd August, 2009**

Shri Vijay Singh

..... PETITIONER

! Through: Mr. H.K. Chaturvedi

VERSUS

\$ Delhi Transport Corporation

.....RESPONDENT

^ Through: Nemo.

CORAM:

Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J (ORAL)

This writ petition filed by the workman (petitioner herein) is directed against an award dated 01.04.2009 passed by the Industrial Adjudicator holding his removal from the service of respondent Corporation to be legal and just.

2. Heard.

3. Briefly stated, the facts of the case are that the petitioner was appointed as a driver with the respondent since 1977 and he was served with a charge sheet dated 15.01.1992 for unauthorized absence from duty for a period of 102 days during the period from 01.01.1991 to 31.12.1991. Domestic inquiry was held against the petitioner in which he was found guilty of remaining unauthorizedly absent for a period of 102 days. The Disciplinary Authority, after considering the inquiry report and past conduct of the petitioner, decided to remove him from its service

and accordingly, the petitioner was removed from the service of the respondent w.e.f. 28.04.1992.

4. The petitioner, aggrieved by his removal from the service of the respondent, raised an industrial dispute which was referred by the appropriate Government for adjudication to the Labour Court and was registered as ID No. 199/1994 (New No. 272/2008). The Court below vide its order dated 13.05.2008 decided the inquiry issue against the petitioner and in favour of the respondent management. After deciding the inquiry issue against the petitioner, the Labour Court vide its impugned award dated 01.04.2009 has held the removal of the petitioner from the service of the respondent as legal but still granted some relief to him and that was that the respondent was directed to calculate and pay the gratuity for the period of the service rendered by the petitioner and also to consider his case for pension, if found eligible without being influenced by the order of removal.

5. Mr. H.K. Chaturvedi, learned counsel appearing on behalf of the petitioner, has argued that the impugned award suffers from perversity because according to him, the principles of natural justice were not followed while conducting domestic inquiry into the charges against the petitioner. Mr. Chaturvedi has contended that there was no Presenting Officer before the Inquiry Officer and according to him, the Inquiry Officer who conducted the inquiry into the charges of unauthorized absence against the petitioner acted as Inquiry Officer as well as Presenting Officer himself. Mr. Chaturvedi has also argued that no witness was examined by the respondent management before the Court below to prove the legality and validity of the inquiry.

6. I have given my anxious consideration to the above arguments advanced by the learned counsel for the petitioner but I have not been

able to persuade myself to agree with him on any of the above two points.

7. The contention raised on behalf of the petitioner that the inquiry is vitiated as no Presenting Officer was appointed by the appointing authority appears to be misconceived. The domestic inquiry cannot vitiate only on the ground that there was no Presenting Officer before the Inquiry Officer. The inquiry on this aspect can vitiate only in case there is some rule in the department which mandates appointment of a Presenting Officer before the Inquiry Officer. No such rule has been shown to me by the learned counsel appearing on behalf of the petitioner. Therefore, it cannot be said that the domestic inquiry held against the petitioner was vitiated for non-appointment of Presenting Officer.

8. As far as the argument of the petitioner's learned counsel that the inquiry is vitiated for non-examination of any witness by the management to prove the legality and validity of inquiry is concerned, it will be significant to refer to a portion of the impugned order dated 13.05.2008 on inquiry issue, relevant portion of which is extracted herein below :-

“It has been specifically mentioned in the Enquiry proceedings Ex.WW-1/M-1, that the workman himself stated that he does not require assistance of any co-worker. This clearly suggests that the workman was offered assistance of co-worker but it is the workman who refused to take the assistance. The workman was given opportunity to ask question from the witness Narain Singh and the workman himself did not ask any question to witness Narain Singh. This clearly suggests that the Enquiry officer gave full opportunity to the workman to defend his case. In the enquiry proceedings when the charge sheet was read over to the workman, the workman stated that he had taken the leave in accordance with the record but he had taken the leave under some MAZBOORI (compelling circumstances). Even during the enquiry, the workman has admitted that he has taken the leave, as per the record available with the management. Even the workman has not cross-examined MW-Narain Singh who has deposed during the enquiry that as per

MAR, Shri Vijay Singh Driver, had availed 102 excess leave, during the period January 1991 to December 1991, out of which for 79 days leaves, he did not give any application and leave applications for 23 leaves, was rejected. Accordingly there is nothing on record to disbelieve the statement of MW-Narain Singh. All this clearly suggests that the Enquiry was conducted by the Enquiry officer in accordance with the principles of natural justice and is not perverse. The workman was given proper opportunity to defend his case.”

9. It may be seen from the above extracted portion contained in the impugned order on inquiry issue that the petitioner has admitted his unauthorized absence for 102 days before the Inquiry Officer. The Court below has also taken note of the fact that the workman was given an offer by the Inquiry Officer to take assistance of a co-worker to defend him in the inquiry proceedings but he refused to take the said assistance. The workman was also given an opportunity to cross-examine the witness examined by the management before the Inquiry Officer and for that reason, it cannot be said that the domestic inquiry held against the petitioner was vitiated. What is important to notice is the admission of the petitioner himself that he remained unauthorizedly absent for a period of 102 days during the period from 01.01.1991 to 31.12.1991.

10. The Hon'ble Supreme Court in **DTC Versus Sardar Singh AIR 2004 SC 4161** has held that the unauthorized absence of a driver or a conductor in DTC amounts to a grave misconduct and has justified their removal from the service of DTC on proof of such misconduct against them.

11. In the present case, the petitioner admits his unauthorized absence for 102 days for which he was charged vide charge sheet dated 15.01.1992. In view of the said admission of the petitioner, I fail to understand how he was prejudiced by the inquiry held against him by the respondent Corporation. It may be seen from the impugned order on inquiry issue and also the impugned award dated 01.04.2009 that the

petitioner had only tried to justify his unauthorized absence for 102 days during the period from 01.01.1991 to 31.12.1991. It is not his case that he had applied for leave or that his leave was sanctioned. The misconduct on the part of the petitioner of his remaining absent unauthorizedly for a period of 102 days is squarely covered by the judgment of the Hon'ble Supreme Court in Sardar Singh's case (supra).

12. For the foregoing reasons, I do not find any infirmity or illegality or perversity in the impugned award that may call for an interference by this Court in exercise of its extra-ordinary discretionary writ jurisdiction under Article 226 of the Constitution of India. This writ petition, therefore, fails and is hereby dismissed in limine.

AUGUST 03, 2009
'ma'

S.N.AGGARWAL, J

IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) 2936/2004****SHRI MAHESH KUMAR SHARMA Petitioner
Through Mr. H.K. Chaturvedi and Mr. B.K. Pandey,
Advocate alongwith workman in person****versus****THE MANAGEMENT OF M/S A.K. ENG Respondent
Through Mr. Vikas Nagpal, Advocate alongwith
Mr. Anil Jain, Sole Proprietor of the respondent****firm in person****CORAM:
HON'BLE MS. JUSTICE GITA MITTAL****ORDER
06.03.2006**

Learned counsel, on instructions from the parties who are present in court submit that the matter has been. It is stated that the respondent has agreed to pay a total sum of Rs.70,000/- in full and final settlement of all disputes and claims of the petitioner including his claim of reinstatement into service with the respondent. The petitioner who is present in person submits that he has already recovered a sum of Rs.60,000/- in proceedings initiated by him for recovery of the award. The balance amount agreed to be paid by the respondent has been paid by cash in court today. It is contended by the petitioner that in view of the receipt of the full amount which he has agreed to receive in full and final settlement of his entire claims, he does not press the award or the present petition against the respondent. This writ petition is accordingly disposed of in terms of the settlement between the parties.

**GITA MITTAL, J
MARCH 06, 2006
kr**



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Search Result For Type :W.P.(C) No :1933 year :2004" are : 1

S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 1933/2004 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	BIMLA Vs. HORTICULTURE DEPTT.,NCT OF DELHI Advocate : H.K. CHATURVEDI & CO	Court No. : 0 DISPOSED OFF on 09/09/2004
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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	LPA 9/2000 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	RAM BACHAN SINGH Vs. SECRETARY(LABOUR) & ANR Advocate : H.K. CHATURVEDI	Court No. : 0 DISPOSED OFF on 28/11/2001
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IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) 3433/2000****DHARMVIR Petitioner
Through Mr. H.K. Chaturvedi, Adv.****versus****THE MANAGEMENT OF D.T.C. and ANR Respondents
Through Mr. S.K. Luthra, Adv.****CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR****ORDER
01.03.2004**

Learned counsel for the Petitioner says that an affidavit has been filed, but the same is not on record. He says that he is satisfied with the contents of the affidavit and the pay of the Petitioner has been correctly refixed. He says that the amount, however, is still to be released. Learned counsel for the Respondent will endeavor to release the amount in terms of the affidavit within a period of four weeks. In view of the aforesaid, learned counsel for the Petitioner does not press this writ petition

**The writ petition stands dismissed as not pressed.
CM 8910/2000 also stands dismissed as not pressed.**

**MADAN B. LOKUR, J
MARCH 01, 2004
rkr**



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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 2661/2000 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	RAJINDER SINGH NAGI Vs. THE MANAG. OF JNU Advocate : H.K. CHATURVEDI,AJIT	Court No. : 0 DISPOSED OFF on 20/09/2001
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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 1872/2000 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	INDIAN PRINTING PRESS WORKS Vs. N.C.T. OF DELHI & ORS. Advocate : H.K. CHATURVEDI, DN VOHRA	Court No. : 0 DISPOSED OFF on
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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 1528/2000 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	BACHAN LAL Vs. THE MANAGEMENT OF M/S COX KING Advocate : H.K. CHATURVEDI	Court No. : 0 DISPOSED OFF on 20/05/2010
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1.	CRL.M.C. 762/1997 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	DODAR Vs. THE STATE & ANR. Advocate : H.K. CHATURVEDI	Court No. : 0 DISPOSED OFF on 03/06/1997
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IN THE HIGH COURT OF DELHI AT NEW DELHI

#4

LPA 649/2009**LEELU RAM****..... Appellant****Through Mr. H.K. Chaturvedi, Adv.****versus****MANAGEMENT OF AJUDHYA TEXTILE MILLS Respondent****Through Mr. Sanjoy Ghose, Adv.****CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MUKTA GUPTA****ORDER****11.05.2010**

The Appellant was terminated by the management of M/s Ajudhya Textile Mills with effect from 1st April, 1989.

The Labour Court was of the view that the Appellant had not been able to show that he had put in 240 days of service in a year. Therefore, the Labour Court came to the conclusion that the Appellant was not able to show that his termination was illegal or unjustified. The Award was made by the Labour Court on 6th November, 1999.

About three years later the Appellant preferred a writ petition which came to be dismissed by a learned Single Judge on 24th September, 2009. The learned Single Judge did not find any perversity or illegality with the LPA 649/2009

Page 1 of 2

award passed by the Labour Court.

It is submitted by learned counsel for the Appellant that his client ought to be granted some relief in the case. In our opinion, since the Appellant was unable to prove that he had been employed for 240 days, there is no question of providing any relief since there is no violation of the provisions of Section 25F of the Industrial Disputes Act, 1947.

It may also be noted that M/s Ajudhya Textile Mills was subsequently taken over by the National Textile Corporation which itself is under liquidation under orders passed by the Board for Industrial and Financial Reconstruction. There is no merit in the appeal. The appeal is accordingly dismissed.

ACTING CHIEF JUSTICE**MUKTA GUPTA, J**

MAY 11, 2010
dk

LPA 649/2009
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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 93/2010

AMAR CHAND CHAUHAN Petitioner

Through Mr. H.K. Chaturvedi, Advocate

versus

DD SALES COPRPORATION Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

17.11.2014

The petition has been listed as the disputes between the parties could not be settled before the Lok Adalat.

Accordingly, list the matter as per its own turn and seniority.

VIBHU BAKHRU, J

NOVEMBER 17, 2014

sd

§ 18

IN THE HIGH COURT OF DELHI AT NEW DELHI**06.07.2009**

**Present:- Mr. H.K. Chaturvedi for the petitioner
Mr. Harvinder Singh for the respondent.**

WP(C) No.5791/2005

This writ petition is taken up for disposal by a consent order in view of consent given by counsel for both the parties.

The petitioner is the workman and respondent No. 1 was his employer. The petitioner was removed from the service of the respondent w.e.f. 12.01.1995 and at the time of his removal, an industrial dispute relating to general demands of the Union (I.D. No.27/1992) was pending for adjudication before the Industrial Tribunal.

Since the removal of the petitioner from service of the respondent was unconnected with the industrial dispute being ID No. 27/1992, the respondent (management) filed an application under Section 33 (2)(b) of Industrial Disputes Act, 1947 for approval of the Tribunal of its action for removal of the petitioner. Hearing on the approval application was ordered to be kept in abeyance vide order dated 09.09.1997 passed by the Tribunal to await the outcome of adjudication on reference under Section 10 made by the petitioner/ workman regarding his removal from service of the respondent. The review

WP(C) No.5791/2005 Page 1

of 3

application filed by the petitioner against the said order dated 09.09.1997 was also dismissed by the Tribunal vide order dated 16.05.2000. Thereafter, the petitioner aggrieved by the same, filed the present writ petition for directions to the respondent (management) to treat him as continuing in its employment and pay him full back wages with all consequential benefits. The petitioner has also prayed for in the alternative that the court below may be directed to decide the approval application on merits within four weeks of filing of the writ petition filed on 27.03.2005.

Counsel for both the parties have agreed that this Court may direct the concerned Tribunal to hear and decide the approval application of the respondent on merits expeditiously. Counsel for both the parties have further agreed for setting aside the impugned orders dated 09.09.1997 and 16.05.2000.

In view of the above and having regard to the facts of the case, the impugned orders dated 09.09.1997 and 16.05.2000 are hereby set aside. The Tribunal below is directed to hear and decide the approval application of the respondent under Section 33 (2)(b) of the Industrial Disputes Act, 1947 expeditiously and preferably within three months of the date

WP(C) No.5791/2005 Page 2

of 3

fixed for appearance of the parties before the Tribunal. The parties are directed to appear before the Tribunal below for further directions at 2:00 PM on 10.07.2009.

A copy of this order be sent to the concerned Tribunal forthwith for compliance.

In view of the above, this writ petition stands disposed of.

Order dasti to counsel for both the parties under the signatures of the Court Master.

**JULY 06, 2009 S.N.AGGARWAL, J
'a'**

**WP(C) No.5791/2005 Page 3
of 3**

IN THE HIGH COURT OF DELHI AT NEW DELHI

23.02.2004

**Present: Mr.A.S.Chandhiok, Sr.Advocate with
Mr.R.M. Aggarwal and Ms.Amita Sehgal for petitioner.
Mr.H.K.Chaturvedi for the respondent.**

CA.No.173/2004 and 198-199/2004 in CP.No.55/2000

Notice to the non-applicants, for 12th March, 2004, the date already fixed. Dasti.

February 23, 2004 S.K.AGARWAL, J.

'ssn'

IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) 682/2003****K.L.TIN BOX Petitioner
Through Mr. Rajesh Kumar, Proprietor of
Petitioner in person****versus****THE P.O.,LABOUR COURT-X, and ORS Respondent
Through Mr. H.K. Chaturvedi, Adv.****CORAM:****HON'BLE MR. JUSTICE MADAN B. LOKUR****O R D E R****16.02.2004**

Rajesh Kumar, proprietor of the Petitioner is present in Court. He has handed over two demand drafts of Rs.25,000/- each and Rs.10,000/- in cash to the Respondent/workman Salik Ram.

The parties say that with this payment having been made, the disputes between the parties have been fully and finally settled.

The Respondent/workman says that he has no further claim against the Petitioner.

Under the circumstances, the Petitioner seeks leave to withdraw the petition.

Dismissed as withdrawn.

MADAN B. LOKUR, J**FEBRUARY 16, 2004****ncg**



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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 3953/2003 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	D.T.C. Vs. SATPAL SINGH Advocate : J.B.MALIK,HK CHATURVEDI	DISPOSED OFF on 15/03/2011
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1.	W.P.(C) 15/2003 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	SURAJ MAL EX DRIVER Vs. DTC Advocate : HK CHATURVEDI,VIBHU	Court No. : 0 DISPOSED OFF on 17/09/2004
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IN THE HIGH COURT OF DELHI AT NEW DELHI**05.03.2004****Present: Mr.H.K. Chaturvedi for the petitioner.****CM No.2206/2004 in WP(C) No.1/2003**

*

This is an application filed by the petitioner praying for clarification of the order dated 3.1.2003. The said order, in my considered opinion, is self explanatory, clear and explicit. It was the contention of the counsel for the petitioner before this

court in the writ petition that no concession was given by the A/R before the Labour Court as stated in paragraph 19 of the award. In the light of the submission made it was observed that the said contention is to be raised before the appropriate forum

and not in the Writ Petition. The petition was allowed to be withdrawn with the liberty to the petitioner to file an appropriate application for redressal of such grievance before the competent court.

This application stands disposed of in terms of the aforesaid order.

(DR. MUKUNDAKAM SHARMA)**JUDGE****MARCH 05, 2004****nm**



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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 884/2002 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	M/S RAJIV AUTOMOBILES WORKSHOP Vs. HANS RAJ PRAJAPATI & ANR. Advocate : K.SUNIL,HK CHATURVEDI	Court No. : 0 DISPOSED OFF on
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1.	W.P.(C) 6382/2002 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	M/S.FORTUNE FASHIONS P.LTD. Vs. AJIT KUMAR & OTHERS Advocate : B.L.CHAWLA,HK CHATURVEDI,	Court No. : 14 DISPOSED OFF on 27/11/2013
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IN THE HIGH COURT OF DELHI AT NEW DELHI**16.07.2003**

**Present: Mr. H.K. Chaturvedi with Mr. R.K. Ranjan and
Ms. Bandana for petitioner.
Mr. A.K. Dutt for respondent CBI.**

CRLW 493/2002

The petitioner has approached the court for quashing of the entire prosecution proceedings emanating from FIR No. RC-23/85-DLI dated 25th April, 1985 including the charges framed by the trial court on 12th November, 1990 titled as CBI vs. Kalicharan etc

. The petitioner has approached the court for quashing the charges primarily on the ground of delay and the contention of the petitioner is that petitioner's right to speedy trial has been violated. Learned counsel appearing for CBI has submitted that

he entire evidence has been recorded and the case is listed for pronouncement of judgment on 19th July, 2003.

In this view of the matter, nothing further survives in this matter, and the same is accordingly disposed of.

DALVEER BHANDARI, J**H.R. MALHOTRA, J****JULY 16, 2003****dkg**



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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 4948/2001 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	D.T.C. Vs. S.C. MEHRA Advocate : GITA SHARMA, HK CHATURVEDI	Court No. : 0 DISPOSED OFF on 29/11/2002
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3734/2000 with C.M. No. 32985/2016, C.M. No.
32986/2016 and C.M. No. 32987/2016

NATIONAL AGRI.COOP MKTG.FED.OF INDIA LTD

..... Petitioner

Through: Mr. Rakesh Kumar, Trilochan Ravi
and Ms. Anubha Singh, Advocates

versus

LD.PRESIDING OFFICER LABOUR COURT & ORS.. Respondents

Through: Mr. S.R. Sharma, Advocate for LRs
of respondent No.2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

10.08.2018

%

C.M. No. 32988/2016 (for condonaton of delay of 2068 days in filing the application), C.M. No. 32987/2016(under Order XXII Rule 4CPC) & C.M. No. 32989/2016

1. These applications have been moved by five persons, who claim to be the legal representatives of the respondent No.2– Smt. Sheela Devi in the writ petition. The five persons are the husband– who was 82 years old at the time of moving of the application on 10.08.2016, five children comprising of two sons and three daughters aged between 35 years and 53 years as on the date of moving of the application. By C.M. No. 32988/2016, the applicants seek condonation of delay of 2068 days in filing C.M. No. 32987/2016 under order XXII Rule 4 read with section 151 of the C.P.C to bring on record the legal representatives of the deceased respondent No.2-

Smt. Sheela Devi. Vide C.M.No. 32986/2016, they seek condonation of delay of 1275 days in filing of the application seeking recall (the delay being between 21.01.2013 and 08.08.2016) i.e. C.M. No. 32985/2016. By this application, the applicants are seeking setting aside/ recall of the order dated 21.01.2013, whereby the writ petition was disposed of by this Court.

2. The petitioner had preferred the writ petition to assail the award dated 03.12.1999 passed by the Learned Presiding Officer Labour Court-IV in I.D. No. 207/1993. By the said award, the Labour Court had directed reinstatement with full back wages of the two workmen, namely, Smt. Sheela Devi-respondent No.2 and Smt. Shakuntala-respondent 3. The writ petition was preferred in the year 2000. As it now transpires Smt. Sheela Devi passed away on 12.11.2010 during the pendency of the writ petition. No application to bring on record the legal representatives of the deceased Smt. Sheela Devi was moved by the petitioner or his legal representatives. The petitioner claims not to have any knowledge about the demise of Smt. Sheela Devi and, therefore, no application could be moved by the petitioner. Evidently Smt. Shakuntala-respondent No.3 also passed away during the pendency of the writ petition, and upon application being moved by her legal representatives, they were brought on record.

3. On 21.01.2013, the following order came to be passed by the Court.

“Respondent No.3(b) is present. He states that respondent No.2(a) Sh.Hari Ram, the husband of the deceased Smt. Shakuntla and father of respondent No.3(b) has also passed away on 23.04.2005.

It is surprising that no further application has been moved to bring his legal heirs on record. In any event, respondent No.3(b) states that he has settled the disputes with the petitioner.

The representative of the petitioner has brought a cheque bearing No.174230 dated 19.12.2012 for an amount of Rs.27,000/- drawn in favour of Sh. Raj Kumar, which he accepts in full & final settlement of all the claims of late Smt. Shakuntala against the petitioner in terms of the impugned award.

The representative of the petitioner Mr. R.P. Sharma, Assistant Manager, states that the claim of respondent No.2 Smt. Sheela Devi already stands settled. She is not present despite service.

In view of the aforesaid position, the petition stands disposed of, as satisfied.”

4. Thus, it would be seen that so far as Smt. Sheela Devi was concerned, it was informed to the Court that she had already settled her claim with the petitioner. On the said date, none appeared on behalf of the respondent no. 2 and this aspect was also noticed in the order dated 21.01.2013. Consequently, the writ petition was disposed of.

5. The aforesaid applications including C.M. No. 32988/2016 and C.M. No. 32986/2016 were moved by the applicants firstly on 10.08.2016 and after repeated refilling, they came to be listed before the Court on 09.09.2016. The reasons found in the aforesaid two applications to seek condonation of delay are the same. The applications contain the following identical averments.

“The applicants could not come to know about proceedings went in the above-noted petition thereafter as she herself used to pursue the case. She also did not say anything about the proceedings or the counsel for her. Therefore applicant could not pursue the matter any further.”

6. Learned counsel for the applicants submits that since the legal representatives of the deceased Smt. Sheela Devi were themselves old and independent, they were unaware of the present proceedings since Smt. Sheela Devi was pursuing her case on her own. She had not informed her legal representatives of the said proceedings.

7. Learned counsel for the applicant submits that the said explanation is completely satisfactory. In support of his submission, he places reliance on the judgement of the Supreme Court in *N. Balakrishnan v. M. Krishnamurthy* AIR 1998 SC 3222 and in particular the following passage from the said decision.

*“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. **Length of delay is no matter, acceptability of the explanation is the only criterion.** Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay*

afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

*11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a*

legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari [AIR 1969 SC 575 : (1969) 1 SCR 1006] and State of W.B. v. Administrator, Howrah Municipality [(1972) 1 SCC 366 : AIR 1972 SC 749].

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss” (emphasis supplied)

8. On a reading of the aforesaid decision, what emerges is that first and foremost, the explanation furnished to seek condonation of delay should be found by the Court to be acceptable and satisfactory. While considering an application to seek condonation of delay, the Court would also have to examine whether the opposite party has been put to any prejudice on account of the said delay.

9. The explanation as furnished by the applicant— which is extracted hereinabove, is not convincing and satisfactory at all. The legal representatives include not only the grown up children of the deceased— respondent No.2, but also her husband. When Smt. Sheela Devi passed away in the year 2010, her husband Sh. Ram Saran would have been about 74 years considering that he was 82 years old as in August 2016. At the time of demise of Smt. Sheela Devi all her children were also major and grown up. At that point of time her eldest daughter was about 47 years and the youngest child/ daughter was about 29 years. There were three other children, including two sons who would have been about 44 and 36 years of age in the year 2010.

10. Since the services of Smt. Sheela Devi were terminated and litigation was, firstly, pending before the Labour Court and then before this Court, it does not stand to reason that neither her husband, nor her children would be aware of the same. In fact, the stand taken in paragraph 3 of the aforesaid applications is contradicted by some of the averments made in paragraph 4. In paragraph 4 it is, inter alia, stated that in the last week of July, 2016 the counsel representing Smt. Sheela Devi was contacted by the daughter— Anita as she recollected that once the said counsel appeared in the matter and she had asked him to find out the status.

11. This explanation furnished by the applicants for their highly belated move in seeking substitution as the legal representatives of the deceased—respondent No.2, is not convincing and satisfactory at all. On the one hand, the applicants feign ignorance of the writ proceedings. On the other hand, it is claimed that the eldest daughter contacted the counsel- which means she was aware of the case and the counsel handling the same.

12. I also find that the immense delay in bringing on record the legal representatives of the deceased- respondent no.2, if condoned, would lead to prejudice to the petitioner.

13. The industrial dispute was pending since the year 1993. The Labour Court award came on 03.012.1999 where after the writ petition was preferred in the year 2000. The writ petition remained pending for over 12 years. During this period, the legal representatives of the deceased—respondent No.3, Smt. Shakuntala, accepted an amount of Rs. 27,000/- in full and final settlement of the award. It was then stated by the petitioner's representatives that the claim of respondent No.2— Smt. Sheela Devi already stood settled. With the passage of time, it would not be fair to expect of the petitioner to produce the said settlement with Late. Smt. Sheela Devi— if one had been arrived at and implemented. The possibility of the legal representatives of late Smt. Sheela Devi deliberately not moving earlier— to allow passage of time so that the petitioner may not be able to substantiate the settlement made on 21.01.2013, cannot be ruled out.

14. Learned counsel for the petitioner submits that the officer who had appeared before the court and made settlement on 21.01.2013 had since retired on superannuation.

15. There is yet another aspect of the matter that may be noticed. The

record shows that late Smt. Sheela Devi had disclosed her age, in the affidavit filed by her before this Court as 50 years as on 16.07.2001. She passed away in 2010 at the age of about 60 years according to the averments made by the applicants themselves. Pertinently, even according to the applicants, late Smt. Sheela Devi received payment under Section 17-B of the Industrial Disputes Act till January 2010.

16. Thus, in any event she could not have got any further payment and she was substantially compensated for the wrong done to her by her illegal termination— even if one were to assume that the said termination was illegal.

17. For all the aforesaid reasons, I find no merit in these applications.

18. The application stands disposed of in the aforesaid terms. .

VIPIN SANGHI, J

AUGUST 10, 2018

N.Khanna



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1.	W.P.(C) 2527/2000 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	M/S HARRISW ENGINEERS Vs. GOVT. OF N.C.T. OF DELHI& ANR/ Advocate : JAGAT ARORA, HK CHATURVEDI	Court No. : 0 DISPOSED OFF on
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1.	W.P.(C) 3447/1998 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	JALEEL AHMED Vs. THE MGT OF M/S VINDHYA EXTNUSIONS P.LTD Advocate : HK CHATURVEDI,ANIL GROVER	Court No. : 0 DISPOSED OFF on
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1.	W.P.(C) 1695/1997 [DISPOSED OFF] <input type="button" value="Order(s) Judgement(s)"/>	DIWAN SINGH Vs. MGT.OF M/S.JINDAL TRADERS & ORS Advocate : HK CHATURVEDI,SK DUBEY,	Court No. : 0 DISPOSED OFF on 07/09/2006
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