

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

+ **W.P.(C.) No. 593/2008**

% **Date of Decision: 20th August, 2009**

S.N. Tiwari

..... PETITIONER

! Through: Mr. N.P. Singh, Advocate.

VERSUS

\$ Govt of NCT, Delhi & Anr

.....RESPONDENTS

^ Through: None.

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 petitioner in this writ petition seeks to challenge an award dated 28.03.2007 passed by the Industrial Adjudicator granting no relief to him for the alleged termination of his services by the respondent w.e.f. 01.07.2000.

2 The management of the respondent had contested the claim of the petitioner for reinstatement broadly on two grounds, one that he himself had abandoned the service of the respondent when he was transferred from DMRC Project site to the Head Office of the management w.e.f. 02.04.2000 and the second ground on which the claim was contested was that there was no industrial dispute between the parties as the petitioner did not make any demand for his reinstatement before approaching the Conciliation Officer with regard to his alleged termination. The management of the respondent in its written statement

filed before the Labour Court also took a plea that the petitioner had failed to join duties despite he was asked to join duties by the management of the respondent vide its letter dated 24.11.2000. The petitioner in fact gave a reply to the said letter of the management dated 24.11.2000 and in his reply also, he did not raise a dispute with regard to his alleged termination and confine his claim only for unpaid salary during the period he had worked with the respondent.

3 The Labour Court in its impugned award has relied upon a judgment of the Supreme Court in ***Sindhu Resettlement Corporation Ltd. Vs. Industrial Tribunal of Gujarat AIR (1968) SC 529*** and also upon two judgments of this Court, one of Division Bench in ***Fedders Loyed Corporation Vs. Lt. Governor of Delhi*** and other of Single Bench in ***Nagender Sharma Vs. Management of M/s Rajasthan Timbers Corporation, ILR (2006) 1 Delhi 1030*** and on the strength of these three judgments, it was held that since the petitioner had not made a demand for his reinstatement prior to filing of claim for his reinstatement before the Conciliation Officer, industrial dispute between the parties does not exist.

4 Mr. N.P. Singh learned counsel appearing on behalf of the petitioner has contended that the judgment of the Supreme Court in *Sindhu Resettlement Corporation Ltd's case (Supra)* has lost its ground in view of insertion of Section 2-A in the Industrial Disputes Act, 1947 by way of amendment in the Act w.e.f. 01.12.1965. Learned counsel appearing on behalf of the petitioner has also placed reliance on two judges Bench decision of the Supreme Court in ***Shambhu Nath Goyal Vs. Bank of Baroda (1978) 2 SCC 353*** to contend that for coming into existence of an industrial dispute, a written demand by the workman is not a *sine qua non* and according to learned counsel, an industrial dispute comes into

existence as soon as the workman approaches the Conciliation Officer with his grievance against the alleged termination. This argument advanced on behalf of the petitioner is of no consequence because the judgment of the Supreme Court in Shambhu Nath Goyal's case (Supra) has already been considered by this Court in its earlier judgment in Nagender Sharma's case (Supra) where the judgment in Sindhu Resettlement Corporation Ltd's case was also considered and after consideration of those judgments, it was held that unless the workman serves a demand notice for his reinstatement on the management, the industrial dispute does not come into existence till that time. The Labour Court has placed reliance on the judgment of this Court in Nagender Sharma's case in which all judgments including the judgment in Shambhu Nath Goyal's case have been considered and therefore this Court is of the opinion that the view taken by the court below in the impugned award by no means can be said to be perverse calling for an interference by this Court in exercise of its extraordinary discretionary writ jurisdiction under Article 226 of the Constitution of India. This writ petition therefore fails and is hereby dismissed in limine.

AUGUST 20, 2009
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S.N.AGGARWAL, J