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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 13.01.2026

Date of decision: 24.03.2026

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+ W.P.(C) 3083/2003, CM APPL. 13453/2004, CM APPL. 13454/2004,
CM APPL. 3769/2005, CM APPL. 6331/2006, CM APPL. 2862/2010
M/S.THERMOKINGPetitioner

Through: Mr. Ashim Vachher, Sr. Advocate
with Ms. Saiba M. Rajpal, Mr.
Vinayak, Advs.

versus

P.O.& RASHTRIYA GEN.MAZ.UNIONRespondent

Through: None

CORAM:

HON'BLE MS. JUSTICE SHAIL JAIN

JUDGMENT

SHAIL JAIN, J.

1. The instant Writ Petition has been filed by the Petitioner, M/s Thermoking, through its Proprietor Shri Pradeep Khanna, under Articles 226 and 227 of the Constitution of India, *inter alia*, seeking quashing of the Award dated 20.08.2002 passed by the learned Labour Court No. IV, Karkardooma Courts, Shahdara, Delhi in Industrial Dispute bearing No. 222/91 (hereinafter '*Impugned award*'). The said dispute arose between the Management of M/s Thermoking and its workmen represented through Rashtriya General Mazdoor Union (Regd.), wherein the Labour Court held that the services of the workmen had been terminated illegally and



unjustifiably and accordingly directed their reinstatement along with back wages.

BRIEF FACTS:

2. The Petitioner is a proprietorship concern engaged in the manufacture of electrical appliances having its factory situated at A-24, Phase-I, Naraina Industrial Area, New Delhi. Respondent Nos. 3 to 12 were employed with the Petitioner during different times in various capacities and were members of Rashtriya General Mazdoor Union/Respondent No. 2.

3. The Respondent/workmen, however, through Respondent No.2 *vide* letter dated 05.11.1990 addressed to the Labour Inspector, contended that they had been illegally refused employment and that their services had been terminated without compliance with law. They requested the Labour Inspector to direct the management to take workers back into service and also sought intervention of the Labour Inspector for being allowed to perform their duties and for payment of earned wages etc. Consequently, the Labour Inspector directed the workmen to be present at the factory gate on 6.11.1990.

4. On 06.11.1990, when the workmen reported at the factory, an incident took place at the factory premises, following which complaints were lodged by the management and also by the workmen with the police authorities. Pursuant thereto, a meeting was convened before the Assistant Commissioner of Police (A.C.P.), Naraina, in the presence of the Union leader, Sh. Pyare Lal, and the representatives of the Petitioner. In the said meeting, a settlement was reached between the management and Sh. Pyare Lal on behalf of the workmen, whereby, it was agreed that the workmen would resume their duties with effect from 28.11.1990 and would be paid



8.33% bonus along with their salary for the month of October, 1990. Sh. Pyare Lal also assured that all the workmen would report for duties on the agreed date. According to the Petitioner, however, the workmen did not report for duty despite the said settlement, whereas the workmen alleged that they were prevented by the Petitioner itself from resuming their duties.

5. As alleged by the Petitioner, in the year 1990, particularly with effect from 02.11.1990, the Respondent/workmen stopped reporting for duty without proper intimation or any sanctioned leave. In pursuance to which, the Petitioner addressed a letter dated 01.12.1990 to The Rashtriya Hazdoor Union/Respondent No. 2 complaining about the continued absence of workmen without any notice despite the settlement before the A.C.P. & calling upon the workmen, for the last time to resume their duties within three days.

6. Thereafter, the Respondent/workmen approached the 'appropriate government' (Govt. of NCT of Delhi) raising an industrial dispute complaining about the conduct of the Petitioner, pursuant to which Conciliation proceedings were initiated before the Conciliation Officer. During the conciliation proceedings held on 17.01.1991, the Petitioner expressed its willingness to take workmen back on duties without any condition and on the same pay & other benefits as they were receiving earlier. However, workmen did not resume their duties, and, consequently, the conciliation proceedings ultimately failed.

7. Consequently, by reference dated 18.06.1991, the industrial dispute was referred by Secretary (Labour) Delhi Administration, Delhi for adjudication of the dispute to Labour Court-IV, Delhi, and was registered as ID No. 222/91. The terms of reference were:



“Whether the services of S/Shri Kamal Kant, Madan Lal, Ram Vichan, Bhavender, Shankar, Ramu, Baleshwar, Prabhu Nath, Sumant, Bisram and Ram Kishore have been terminated illegally and/or unjustifiably by the management, and if so, to what relief are they entitled and what directions are necessary in this respect?”

8. Before the Labour Court, the Petitioner pleaded that the workmen had abandoned their services on their own will and were gainfully employed elsewhere, whereas the workmen alleged that their services had been illegally terminated. In the Statement of Claim, the Respondent/workmen further contended that the management had failed to provide statutory benefits, including appointment letters, minimum wages, bonus, and other service entitlements, and that the dispute arose when such benefits were demanded by them. Evidence was led by both sides. Shortly before the pronouncement of the Award, the Petitioner filed an application dated 20.08.2002 seeking to place on record additional material regarding the alleged gainful employment of the workmen; however, the said application was not adjudicated separately. Consequently, the Labour Court on the basis of the pleadings and evidence(s) led by the parties *vide ‘Impugned award’* held the termination to be illegal and directed reinstatement with back wages. The said order reads as under:

“Even if, for sake of arguments, we assume the stand of management correct, then, at least, workmen can be held to be guilty of abandoning the job. Abandonment is the specie of mis-conduct and for that management was duty bound to hold proper enquiry.- Admittedly neither any charge-sheet was issued, nor, any enquiry was held. I have, thus, no hesitation in holding that



services of the workmen were terminated illegally and unjustifiably. They are directed to be reinstated. They shall be entitled to wages at the rate prescribed under Minimum Wages Act for the intervening period. Reference is answered accordingly.”

9. Aggrieved thereby, the Petitioner filed the present Writ petition. The operation of the ***Impugned award*** was initially stayed *vide* order dated 19.05.2003; however, the said stay was subsequently vacated *vide* order dated 02.11.2004, and the Petition itself was dismissed for non-prosecution. The petition was thereafter restored to its original position *vide* order dated 08.04.2005. It is pertinent to note that during the pendency of the present proceedings, the Respondent/workmen did not appear on several occasions and were proceeded *ex parte*, thereafter the matter was heard on merits.

10. During the pendency of the Writ petition, this Court *vide* order dated 09.09.2004, issued certain *interim* directions regarding rejoining of duties by workmen. In compliance thereof, some of the workmen reported for duty but admittedly worked only for a limited period and thereafter again stopped reporting for duty.

11. On 13.02.2006, the workmen submitted a written complaint to the S.H.O., P.S. Naraina, New Delhi, as well as to the Labour Commissioner, stating that when they reported for duty in the morning, the employer asked them to wait at the factory gate. After making them wait for a considerable period, the management allegedly stated that they had received no such order from the High Court and, therefore, no workman would be allowed to enter the premises. It was further stated that when the workmen produced a copy of the Court's order before the management, the management became agitated and asked them to leave, stating that they did not care about such



orders. The workmen also addressed a letter dated 17.02.2006 to the Labour Commissioner requesting him to direct the management to take them back on duty.

12. Subsequently, *vide* order dated 14.03.2006, this Court appointed Local Commissioner (hereinafter 'LC') to supervise compliance with the directions passed by this court in its earlier orders, by making surprise visits to the premises.

13. Pursuant to the directions of this Court, inspections of the Petitioner's premises were conducted on various dates between 27.03.2006 and 11.04.2006 to ascertain the status of the workmen. During the visits, discussions were held with the workmen and also with the management. The attendance records were also inspected. The parties initially agreed that the workmen would resume duties from 31.03.2006, and the workmen were subsequently allowed to join duty. However, disputes arose regarding wages and payment rates, leading to the workmen refusing to accept the payment offered by the management. Thereafter, it was reported that the workmen stopped reporting for duty from 01.04.2006 onwards.

14. The reports of the learned LC recorded that while some workmen reported for duty and marked attendance, others did not continue regularly and disputes arose regarding wages and working conditions. The reports of the LC further indicated that compliance with the *interim* directions remained partial and contested.

15. On 30.03.2006, the workmen again submitted a written complaint to the S.H.O., P.S. Naraina, New Delhi, stating that when they reported for duty in the morning, the employer denied them entry into the premises and also refused to pay their earned wages.



16. Subsequently, the workmen filed an application before this court on 03.04.2006, contending that they were not being allowed to join their duties and neither their earned wages were paid. They accordingly prayed that the Petitioner be directed to allow the Respondent /workmen to join and perform their duties and to disburse the earned wages to the Respondent/workmen in cash forthwith.

17. Furthermore, *vide* order dated 21.07.2009, liberty was granted to the workmen on an explicit request made by them before this Court to explore the possibility of a settlement with the Petitioner; however, no settlement could be arrived at. Subsequently, on 02.03.2010, the workmen filed an application before this Court seeking reference of the present matter to the Mediation Cell for discussions across the table. Accordingly, *vide* order dated 15.04.2010, this Court directed the parties to appear before the Mediation Cell of this Court on 26.04.2010.

18. *Vide* order(s) dated 7.05.2015 and 14.12.2017, the Writ Petition again came to be dismissed in default due to non-appearance of the parties but was subsequently restored *vide* order(s) dated 22.05.2015 and 29.07.2019 upon applications filed by the Petitioner explaining his absence and requesting for restoration of the same.

ISSUES INVOLVED:

19. The sole question before this Court at present is:

- ***Whether the Learned Labour Court was justified in answering the reference in favour of the workmen by directing reinstatement of their services with back wages?***



SUBMISSIONS OF PARTIES:

20. At the outset, learned counsel for the Petitioner submits that the ***Impugned award*** is vitiated as it proceeds on the erroneous assumption that the services of the workmen were terminated by the management, whereas no termination order, oral or written, was ever issued. It is submitted that in the absence of any order of termination, the very reference itself was misconceived and the finding of illegal termination is unsustainable.

21. It is further submitted that the consistent stand of the management has been that the workmen, from 02.11.1990, voluntarily stopped reporting for duty and abandoned their services on their own accord. Learned counsel submits that the management had issued notice dated 05.11.1990 and subsequent communications calling upon the workmen to resume their duties, the receipt of which was never disputed, but the workmen failed to respond positively and did not rejoin.

22. Learned counsel further points out that in the rejoinder filed before the Labour Court, the workmen admitted receipt of the management's letter dated 01.12.1990, yet despite such admitted communication and repeated opportunities, they did not report back for duty, thereby clearly demonstrating their lack of intention to continue the service.

23. It is also submitted that after the incident dated 06.11.1990, a settlement was arrived at on 28.11.1990 before the Assistant Commissioner of Police, Naraina, wherein the workmen agreed to resume duties. However, despite the said settlement and the readiness of the management to take them back, the workmen did not rejoin. The conciliation proceedings further record that the management was willing to reinstate the workmen without conditions, but the workmen themselves failed to avail of the opportunity.



24. In this backdrop, learned counsel for the Petitioner submits that the Labour Court erred in accepting the allegation of oral refusal of employment while disregarding the consistent evidence on record showing voluntary abandonment. It is further submitted that prolonged and unexplained absence without leave or intimation constitutes abandonment of service. Reliance in this regard is placed on ***Punjab and Sind Bank v. Sakattar Singh***, (2001) 1 SCC 214, ***Vijay S. Sathaye v. Indian Airlines Ltd.***, (2013) 10 SCC 253, and ***Vivekanand Sethi v. Chairman***, (2005) 5 SCC 337, wherein it has been held that abandonment can be inferred from conduct and continued absence beyond the permissible period and it gives rise to a presumption that the employee has ceased to remain in service, shifting the burden on the workman to prove otherwise.

25. Reliance is also placed on the judgment of the Division Bench of this Court in ***Sukhdev Singh v. Delhi Development Authority***, 2011 SCC OnLine Del 4680, to submit that abandonment of service can be inferred from surrounding circumstances and conduct, and the requirement of a domestic enquiry is not absolute in every such case.

26. Learned counsel further submits that even during the pendency of the present Writ petition, despite opportunities granted pursuant to the orders of this Court, the workmen did not continuously report for duty. Also, the reports of the LC appointed by this Court record that the workmen were not interested in working, raised disputes regarding wages, and thereafter remained absent without justification, thereby reinforcing the management's case of abandonment.



27. Lastly, it is submitted that in view of the prolonged absence of the workmen and their failure to demonstrate continuous willingness to work, no presumption of unemployment can be drawn. Reliance is placed on **Navin J. Suri v. Modi Rubber Ltd.**, MANU/MH/1333/2004, to submit that where a workman does not explain how he sustained himself during the period of absence, the Court may draw an inference that he was gainfully employed elsewhere.

28. Since none appears on behalf of the Respondent(s) despite ample opportunity, this Court is left with no other option but to proceed with the matter *ex parte*.

29. Respondent Nos. 3–12, who are the concerned workmen, have not been appearing before this Court for a considerable period and have remained unrepresented on several dates of hearing. Accordingly, their stand is noticed only on the basis of the counter affidavit and other documents filed on record.

(As Emerging from the Counter Affidavit on Record)

30. From the counter affidavit, it is the stand of Respondents that the Writ petition is not maintainable, *inter alia*, on the ground that the Petitioner has allegedly not approached this Court with clean hands and has concealed and misrepresented material facts.

31. It is further averred in the counter affidavit that the Writ petition raises disputed questions of fact which, according to the Respondents, ought not to be examined in exercise of Writ jurisdiction, particularly when the Labour Court has already returned findings on evidence.

32. The Respondents have pleaded that the Petitioner is seeking to re-agitate issues already decided by the Labour Court, including the rejection



of the application dated 20.08.2002 for leading additional evidence, which, according to them, was not separately challenged and has attained finality.

33. Respondents further have denied abandonment of service and have asserted that their services were illegally terminated when they demanded statutory benefits, including bonus and earned wages. It is their pleaded case that it is improbable for workmen to abandon service abruptly without claiming service benefits.

34. The Respondents have further averred that they continued to report for duty but were refused entry by the management, compelling them to approach the Labour Inspector and the police. They have disputed the allegations relating to the incident dated 06.11.1990 and have alleged that they were manhandled by the management.

35. It is also the Respondents' case, as pleaded, that there was no valid settlement as claimed by the Petitioner and that the notices relied upon by the Petitioner, including the notice dated 01.12.1990, were either fabricated or issued to create evidence. They have denied that they failed to report for duty pursuant to any such settlement or notice.

36. The counter affidavit further states that during conciliation proceedings, it was the Petitioner who allegedly refused to take the Respondents back on duty, and that the failure of conciliation, according to the Respondents, cannot be attributed to them.

37. The Respondents have supported the ***Impugned award*** in their pleadings by contending that the Labour Court afforded full opportunity to both sides, appreciated the evidence on record, and rightly disbelieved the testimony of the management witness, while granting reinstatement with back wages on the ground that the Respondents remained unemployed.



38. The Respondents submit that they duly reported for duty pursuant to the interim orders of this Court but were permitted to join only under supervision and were neither assigned regular work nor paid the amounts and wages directed, owing to repeated obstruction and denial of entry by the Petitioner-management. It is submitted that the alleged non-working of the Respondents was not voluntary, but a direct consequence of the Petitioner's wilful non-compliance with the orders of this Court.

DISCUSSION:

39. This Court has heard the learned counsel for the Petitioner/Management. The Respondent/workmen have remained absent despite repeated opportunities and therefore are proceeded *ex parte*. However, this Court has independently perused the ***Impugned award***, the pleadings, applications, and documentary material placed on record by the Respondent/workmen, in addition to the submissions and material relied upon by the Petitioner/Management, in order to adjudicate the present petition on its merits.

40. In light of the rival submissions, the issue that arises for consideration before this Court is whether the Labour Court erred in holding that the services of the Respondent/workmen had been illegally terminated, despite the plea of voluntary abandonment and in the absence of any written or formal order of termination.

41. It is well settled that while exercising jurisdiction under Articles 226 and 227 of the Constitution of India, this Court does not act as a Court of appeal over the findings recorded by the Labour Court. The scope of judicial review is limited and interference is warranted only where the ***Impugned***



award suffers from patent illegality, perversity, jurisdictional error, or where material evidence has been ignored or irrelevant considerations have been taken into account.

42. At the same time, it is equally settled that the power of judicial review is intended to ensure that grave injustice is not perpetuated and that findings which are unsupported by evidence or based on erroneous application of law do not sustain. Where the conclusions drawn by the Labour Court are not borne out from the material on record or are contrary to settled legal principles, this Court would be justified in exercising its supervisory jurisdiction to interfere with the Award.

43. The principal grievance of the Petitioner is that it were the workmen who had abandoned their duties on their own, despite the willingness of the Petitioner to allow them to continue working with all necessary and consequential benefits. According to the Petitioner, it was never the case that the management denied them employment or terminated their services. On the other hand, the workmen have, since the inception of the dispute, consistently maintained that they were always ready and willing to work but were not permitted to do so by the management, despite the directions issued by the Labour Court as well as by this Court.

44. The Labour Court, after due consideration of the pleadings and the documents placed on record, answered the reference in favour of the workmen and directed their reinstatement and minimum wages for the intervening period. The Labour Court further held that the workman could at best be held to have abandoned the job. It further went on to hold that abandonment being a species of misconduct, the management was duty-



bound to hold a proper domestic enquiry before taking any adverse action against the workman.

45. Now adverting to the rival submissions urged on behalf of the parties. The preliminary objection of the Petitioner is that the reference was not maintainable in the absence of a written order of termination. Section 2(oo) of the Industrial Disputes Act, 1947(hereinafter 'the Act'), defines 'retrenchment' as:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

[(bb) termination of the service 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; or]

(c) termination of the service of a workman on the ground of continued ill-health;]"

46. The term 'retrenchment' has been defined as the termination by the employer of the service of a workman for any reason whatsoever, except those specifically excluded, namely voluntary retirement, superannuation, or termination on account of the non-renewal of a contract of employment. The statute does not provide that, for an act of termination to constitute retrenchment, a written order or formal communication is mandatory; such termination may also be oral or may be inferred from the conduct of the



employer. Had the legislature intended that retrenchment must necessarily be effected through a written order, it would have expressly incorporated such a requirement in the statute.

47. As also is well settled by judicial precedents that termination of service need not necessarily be evidenced by a formal written order. An oral refusal of employment or denial of duty, if established on evidence, would equally constitute termination within the meaning of the Act. Therefore, the contention that, in the absence of a written order, there can be no retrenchment or termination, is untenable in law and lacks statutory backing. In the present case, the Labour Court, upon appreciation of evidence, has returned a categorical finding that the workmen were refused employment. Such cessation of employment squarely falls within the ambit of Section 2(oo) of the Act, and therefore, the reference made by the appropriate Government under Section 10 of Act cannot be said to be invalid or without jurisdiction.

48. Coming to the second argument of the Petitioner that the workmen voluntarily stopped reporting for duty and abandoned their services on their own accord and management never stopped them from working. The same issue was also raised before the Labour Court and in order to adjudicate this dispute, the Labour Court examined the oral evidence led by the parties. Ten workmen entered the witness box and deposed in support of their claim, whereas the management examined MW-1 Shri Paramjeet Singh. The Labour Court, while evaluating the testimony of MW-1, recorded the following finding:

“The testimony of MW-1 Paramjeet Singh is most damaging. He had testified that he did not know under



what circumstances the workmen were keeping away. It gives credit to the story of the workmen that they had been refused employment. No reason whatsoever has been assigned for refusing duties to the workmen. It just points out to one thing that services of the workmen had been dispensed with without any cogent reason by the management.”

49. The testimony of the sole witness on the behalf of management reflects that it does not support the case set up by the management. Rather, it lends credence to the version put forth by the workmen. The admission made by MW-1 that he was unaware of the circumstances under which the workmen were allegedly kept away from duty weakens the stand of the management and strengthens the contention of the workmen that they had been refused employment. In the absence of any cogent explanation from the management for denying duties to the workmen, the inference drawn by the Labour Court that the services of the workmen had been dispensed with without any justifiable reason cannot be said to be unfounded. Assuming *arguendo*, that the stand of the Petitioner is correct, even then the maximum course of action warranted on the part of the management would have been to initiate disciplinary proceedings by issuing show cause notices and conducting a proper domestic enquiry. Direct termination of the services of the workmen without following the principles of natural justice cannot be justified.

50. The counsel for Petitioner also contended that despite various communications, repeated opportunities and even a settlement agreement to the same, workmen did not report back for duty, thereby clearly demonstrating their lack of intention to continue in service. However, this contention cannot be accepted in toto. The record reflects that the workmen



were also actively pursuing the matter and had even filed an application before this Court when they were allegedly not allowed to resume their duties after the specific directions of this court, seeking appropriate directions to the Petitioner to comply with the orders of the Court and permit them to work. In these circumstances, it cannot be conclusively held that the workmen were voluntarily abstaining from working or intentionally disregarding the directions of this Court.

51. Furthermore, to support his contention Ld. Counsel for the Petitioner places reliance on ***Punjab and Sind Bank (supra)***, ***Vijay S. Sathaye (supra)***, and ***Vivekanand Sethi (supra)***, contending that it has been held by Hon'ble the Supreme Court as also by various High Courts that abandonment can be inferred from conduct and continued absence beyond the permissible period and it gives rise to a presumption that the employee has ceased to remain in service, shifting the burden on the workman to prove otherwise.

52. However, the said decisions do not advance the case of the Petitioner in the facts of the present matter. In those cases, the employer being a Public Sector Undertaking coupled with the fact that several notices were issued to the employees calling upon them to resume duty, clearly spelling out the possible consequences of continued absence. In such circumstances, abandonment of service was inferred. The factual matrix of the present case is materially different and, therefore, the said precedents do not apply squarely to the case at hand.

53. It is also a matter of record that the Petitioner moved an application before this court being CM No. 3769/2005 under Section 151 CPC, 1908 seeking direction from this court against the workmen to accept the



payments in terms of the orders dated 26.10.2004 and 16.02.2005 and to resume duties, asserting its willingness to comply with the orders passed by this Court. *Vide* order dated 16.02.2005, this Court directed that the earlier order dated 26.10.2004 be complied with and further directed that upon workmen reporting for duty, they would be paid wages in accordance with the applicable law. Thereafter, *vide* dated 28.09.2005, this Court recorded the statement made on behalf of the Petitioner that it had no objection to the Respondents continuing the service. Subsequently, *vide* order dated 30.01.2006, specific directions were issued to the workmen to report for duty at the Petitioner's establishment.

54. However, disputes continued between the parties with regard to the actual joining of duties and implementation of this Court's directions. In these circumstances, and in order to resolve the rival contentions, this Court, *vide* order dated 14.03.2006, appointed a LC to remain present at the Petitioner's premises to facilitate the joining of the workmen and to oversee compliance with the Court's directions regarding payment of wages and reporting for duty. These proceedings pertained to the implementation of interim directions during the pendency of the Writ petition and do not detract from the findings returned by the Labour Court on the issue of illegal termination.

55. Pursuant thereto, this Court had appointed Ms. Pragnya Routray, Advocate, as LC, to supervise compliance of its directions regarding payment of wages and performance of duties. In her report, she recorded that the Petitioner/management had prepared the wages and was ready to make payment in her presence. However, the workmen disputed the quantum of wages, contending that they were entitled to wages at the higher



rate applicable to skilled workers instead of the rate offered by the management. The LC noted that the management's representative expressed willingness to place the demand before the proprietor, and she advised the workmen to accept the payment under protest, assuring them that their claim for higher wages and any consequential difference could be considered separately. Despite such assurance and repeated intervention by the LC, the workmen declined to accept the payment and left the premises without receiving their wages.

56. The LC further reported that upon her subsequent visit to the petitioner's premises, none of the workmen were found reporting for duty and the management informed her that the workmen had stopped coming to work with effect from 01.04.2006. The attendance registers were inspected and copies thereof were retained by the LC. In view of the continued absence of the workmen and their failure to communicate any reason for non-reporting, the LC concluded her assignment and submitted her report to this Court, recording as under:

"Since the workers are not reporting for duty for more than 10 days nor they have bothered to intimate me regarding the same I feel more visits of the said premises are not required and therefore, at this stage the report as I was directed to prepare by this Hon'ble Court is required to be submitted now."

57. Similarly, this Court had also appointed Mr. Varun Prasad, Advocate, as LC vide order dated 14.03.2006, to supervise the joining of duties by the workmen. In his report, he recorded that he was present at the Petitioner's establishment on 16.03.2006, when six out of the nine workmen reported for duty and were assigned work by the Petitioner/management in his presence,



and their attendance was duly marked. The remaining workmen were stated to be in their native places and were permitted to join thereafter. The report further records that two workmen joined duties on 20.03.2006 and the last workman joined on 21.03.2006. The LC thus confirmed that, pursuant to the directions of this Court, all the concerned workmen were allowed to resume duties with the Petitioner and their joining stood effected.

58. Subsequently, the Respondent/workmen moved an application under Section 151 of the Code of Civil Procedure, 1908, alleging non-compliance with the order dated 14.03.2006 *vide* which their reinstatement was directed. It was alleged that despite reporting for duty, the Petitioner/management was harassing them, refusing to assign meaningful duties, withholding wages, and preventing them from working within the establishment. It was further alleged that they were denied entry into the premises and were not being paid wages in accordance with the directions of this Court. In response thereto, the Petitioner/management filed a reply denying the aforesaid allegations and asserting that it had complied with the orders of this Court in letter and spirit. It was stated that the workmen had been permitted to join duties and that the management was ready and willing to pay wages in terms of this Court's directions. However, according to the Petitioner/management, the workmen themselves were unwilling to work and were raising disputes regarding the rate of wages and had thereafter stopped reporting for duty.

59. The reports of the Court-appointed Local Commissioners, being independent and contemporaneous records, indicate that the workmen were permitted to join duties and that the management expressed readiness to disburse wages in terms of this Court's directions. The reports further reveal



that disagreements emerged between the parties concerning the wage amounts, following which the workmen ceased to attend work.

60. In this context, the reports of the learned LC tasked with supervising compliance assume considerable importance. They indicate that, although arrangements had been made by the management to facilitate payment in accordance with the Court's directions, the workmen disputed the rate of wages and declined to accept the same. It is further recorded that the workmen remained absent from duty for a continuous period exceeding ten days without any intimation, prompting submission of the report. These reports, prepared pursuant to judicial directions, form part of the record and shed light on the manner in which compliance proceedings unfolded.

61. The Respondents have, at the outset, objected to the maintainability of the Writ petition on the ground that it raises disputed questions of fact, impermissible in Writ jurisdiction, particularly in light of the findings recorded by the Labour Court. It is contended that the Petitioner seeks to re-agitate concluded issues, including the rejection of the application dated 20.08.2002 for additional evidence, which has attained finality.

62. On merits, the Respondents deny abandonment of service and assert illegal termination upon their demand for statutory benefits. They contend that they continued to report for duty but were denied entry by the management, and dispute the incident dated 06.11.1990, alleging manhandling.

63. They further deny the existence of any valid settlement, terming the documents relied upon by the Petitioner, including the notice dated 01.12.1990, as fabricated, and assert that the failure of conciliation is attributable to the Petitioner.



64. Supporting the ***Impugned award***, it is submitted that the Labour Court, upon due appreciation of evidence, rightly disbelieved the management's case and granted reinstatement with back wages. It is lastly contended that their non-working, despite reporting pursuant to interim orders, was due to the Petitioner's non-compliance and not voluntary.

65. It is well settled that termination of service affecting the livelihood of a workman must comply with the principles of natural justice. In ***D.K. Yadav v. J.M.A. Industries Ltd.***, (1993) 3 SCC 259, the Hon'ble Supreme Court held that the right to livelihood is an integral part of the right to life under Article 21 of the Constitution of India and that, before taking any action putting an end to the tenure of an employee, fair play requires that a reasonable opportunity be afforded and a domestic enquiry be conducted. The Supreme Court further held that where no such opportunity is given and no enquiry is held, the action would be arbitrary, unjust, and unfair. In the present case, the Labour Court examined the question of cessation of employment on the basis of the evidence on record and recorded its finding that no charge-sheet was issued and no domestic enquiry was conducted prior to cessation of employment. The said finding, being based on appreciation of evidence, does not suffer from perversity, patent illegality, or jurisdictional infirmity warranting interference by this Court in exercise of its supervisory jurisdiction under Articles 226 and 227 of the Constitution of India.

66. The rival submissions of the parties, including the contention of the Petitioner/management that the workmen had abandoned service and were unwilling to resume duties, and the assertion of the workmen that there was deliberate non-compliance with the reinstatement and wage directions, have



been considered in the light of the material on record, particularly the reports of the learned LC appointed by this Court. These reports assume significance in assessing the implementation of this Court's directions, the factum of joining of duties, and the readiness and willingness of the management to comply with the orders passed.

67. While this court as of now is inclined to accept that the finding of the Labour Court on the issue of illegal termination does not call for interference within the limited scope of judicial review under Article 226 of the Constitution, whereas the subsequent developments during the pendency of the Writ petition, including the compliance proceedings and the reports of the learned LCs, are relevant for determining the nature and extent of consequential relief to be granted.

68. It is evident that the Labour Court founded its conclusion on two principal considerations, namely, that the management had failed to establish abandonment of service, and that even otherwise; no domestic enquiry or disciplinary proceedings had been conducted before bringing about cessation of employment.

69. The aforesaid finding returned by the Labour Court is a finding of fact based upon appreciation of oral and documentary evidence led by the parties. This Court, in exercise of its limited jurisdiction under Articles 226 and 227 of the Constitution, does not sit in appeal over such findings. The Petitioner has not demonstrated that the said finding suffers from perversity, is based on no evidence, or is vitiated by any jurisdictional error. The plea of abandonment was specifically raised by the Petitioner, considered, and rejected by the Labour Court on the basis of evidence on record, and no perversity or illegality has been shown in such finding. Even assuming that



the plea of abandonment was available to the Petitioner, the Labour Court having rejected the same on appreciation of evidence, this Court cannot re-appreciate the evidence to take a different view in exercise of Writ jurisdiction. In the absence of any such infirmity, the conclusion of the Labour Court holding the cessation of employment to be illegal does not warrant interference.

70. This Court cannot lose sight of the fact that relief under Writ jurisdiction must balance equities and ensure fairness to both sides. While the Respondent/workmen cannot be denied relief altogether in view of the finding that termination was illegal, it would be equally unjust and inequitable to saddle the Petitioner/management with the burden of reinstatement and back wages after more than three decades, particularly when maximum workmen have already superannuated and the management had complied with the interim directions of this Court during the pendency of the proceedings.

71. Applying the aforesaid principles to the present case, while the Labour Court rightly held that the cessation of employment was not preceded by a domestic enquiry, the subsequent events during the pendency of the Writ petition are relevant for moulding the relief. The reports of the learned LCs, appointed pursuant to the directions of this Court, record that the workmen were permitted to join duties and the management had expressed readiness to disburse wages in compliance with Section 17-B of the Act; however, disputes arose regarding the wage rates, the payments offered were not accepted, and the workmen thereafter did not continue to report for duties. These contemporaneous reports, forming part of the record, reflect the course of compliance proceedings and are relevant for assessing



the conduct of the parties while determining the nature and extent of consequential relief.

CONCLUSION:

Quoting R.G. Collingwood:

“The only clue to what a man can do is what man has done.”

72. Upon considering the various issues arising in the present matter, particularly the fact that more than 36 years have elapsed since the alleged termination/abandonment of service, it becomes evident that the workmen have not diligently pursued the proceedings for a considerable period. It is further noted that, despite repeated efforts by this Court to afford them an opportunity to rejoin duties, as reflected in the report of the Labour Commissioner, the workmen failed to avail such opportunity.

73. These circumstances give rise to a strong inference that the workmen are not inclined to resume employment with the Petitioner. It may also be reasonably inferred that they might have been gainfully employed elsewhere, which could explain their non-appearance for rejoining duties. Accordingly, the relief of reinstatement would not be an appropriate relief to be granted at this stage that too when the workmen are not even pursuing the case for the very relief.

74. Equally well settled is the principle that grant of back wages is not automatic and depends upon the facts and circumstances of each case. In the ***U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey***, (2006) 1 SCC 479, the Hon’ble Supreme Court held as under:

“22. No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the



facts and circumstances of each case... It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act.”

42. A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the function of an industrial court shall lose much of their significance.”

45. The Court, therefore, emphasised that while granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages, therefore, cannot be the natural consequence.” The aforesaid exposition makes it clear that even where termination is held to be illegal, grant of back wages is not automatic and the relief is required to be moulded in the light of the facts of the case.”

75. Therefore, the relief of back wages is also liable to be rejected. As, despite a clear and binding order passed by this Court directing them to join duties, the workmen did not come forward to resume their services. Even assuming, for the sake of argument, that the Petitioner had prevented them from rejoining, the workmen had efficacious remedies available in law, including approaching the Labour Commissioner for enforcement of the order or seeking appropriate directions for non-compliance thereof. However, no such steps were taken by any of the workmen. This conduct again gives rise to an inference that the workmen might have been gainfully employed elsewhere; as it is difficult to believe that they were able to sustain themselves and their families without any source of livelihood for such a long period. Having failed to pursue such remedies, the claim for back wages cannot be sustained.



76. The record further shows that during the pendency of the Writ petition, the Respondent/workmen filed an application under Section 17-B of the Act seeking payment of last drawn wages during the pendency of this petition. *Vide* order dated 09.09.2004, this Court directed the petitioner that a sum of ₹2000/- would be paid to each workman. As also, *vide* order dated 26.10.2004, while hearing the application under Section 17-B, this Court directed that the workmen shall be paid last drawn wages from the date of filing of the Writ petition till they rejoined duties, without prejudice to the rights and contentions of either party, and further directed that the payment be made in cash against receipt.

77. As regards the grant of compensation, which is ordinarily awarded in lieu of reinstatement in similar cases and has also been granted by this Court in appropriate matters, the same is not considered justified in the present case. Notably, in the year 2004, this Court had permitted the workmen to rejoin the services of the Petitioner, yet they did not avail themselves of that opportunity. Their refusal to rejoin the services clearly indicates a lack of interest in continuing employment with the Petitioner. In these circumstances, this Court is not inclined to grant compensation as well. Therefore, whatever amount, if any, has been disbursed in compliance with the order of Section 17B, the same shall be treated as lump sum compensation or back wages.

78. In these circumstances, this Court is of the considered view that while the finding of the Labour Court in the ***Impugned award*** holding the termination of the Respondent/workmen to be illegal deserves to be upheld, the direction for reinstatement with back wages cannot be sustained and is accordingly set aside.



79. In abovementioned terms, the Writ is disposed of. Pending applications, if any, stand disposed of. No order as to costs.

**SHAIL JAIN
JUDGE**

MARCH 24, 2026/HP