IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on:24.07.2026
Judgment pronounced on:08.09.2026
Judgment uploaded on: 08.09.2026

CNR No. DLHC010237192009
\+ **W.P.(C) 888/2009 & CM APPL. 23292/2024, CM APPL. 29046/2026**

TARKESHWAR ..... Petitioner

versus

A.V. ENGINEERING INDUSTRIES PVT. LTD. ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Urvi Mohan, Adv.

For the Respondent : Mr. Achin Goel, Adv.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

J U D G M E N T

1. The present Writ Petition under Articles 226 and 227 of the Constitution of India is filed assailing the Award dated 30.08.2008 passed by the Learned Presiding Officer, Labour Court-I, Karkardooma Courts, Delhi in I.D. No. 284/2006, whereby the claim

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of the Petitioner/Workman, seeking reinstatement and back wages, was dismissed.

2. Succinctly stated, the Petitioner joined the services of the Respondent/Management on 01.08.1987, as a Spray Painter and discharged his duties for nearly nineteen years. His last drawn monthly wages were Rs. 3,931/-.

3. It is the case of the Petitioner that he had proceeded on sanctioned leave with effect from 15.05.2006 till 03.06.2006 for visiting his native village. During the said period, he allegedly fell ill and was unable to resume duties on the scheduled date. However, allegedly, he had informed the Respondent regarding his illness and dispatched his medical certificate through Registered Post on 02.06.2006.

4. Thereafter, the Respondent issued a communication dated 15.06.2006 calling upon the Petitioner to report for duty. Subsequently, his services were terminated on 26.06.2006.

5. Aggrieved by the refusal of employment and non-payment of his dues, the Petitioner caused a demand notice dated 17.08.2006 to be served upon the Respondent.

6. Since no relief was granted, the Petitioner instituted an industrial dispute before the Learned Labour Court by filing a Claim Petition.

7. The Respondent contested the claim by filing a Written Statement wherein it denied the allegations of illegal termination and pleaded that the Petitioner had voluntarily abandoned his employment.

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It was specifically asserted that the Petitioner failed to report for duty despite being called upon to do so.

8. Upon completion of pleadings, the Learned Labour Court framed the following issues, *vide* order dated 16.01.2017:

> *"(i)Whether the workman had abandoned the job of his own?*
> *(ii)Whether the services of the workman had been terminated illegally and unjustifiably by the management?*
> *(iii)Relief."*

9. *Vide* the impugned Award dated 30.08.2008, the Learned Labour Court dismissed the Petitioner's claim, holding that the Petitioner had not been able to prove that he had rejoined duty or had approached the Management after his termination or had furnished any fitness certificate as claimed, thereby implying that he had himself abandoned his employment. It was further observed that since he had himself abandoned his employment, the question of illegal termination by the management does not arise. Consequently, he was held not entitled to reinstatement or any consequential relief.

10. Aggrieved, the Petitioner has now approached this court.

11. The learned Counsel for the Petitioner submits that the learned Labor Court has failed to consider that the Petitioner had remained in continuous service of the Respondent since 01.08.1987 and had never intended to sever the relationship of employment. It is argued that the submitted that the Petitioner's absence from duty during the relevant period was solely attributable to illness suffered while he was at his native village and that the Respondent had been duly informed of his

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medical condition. Upon recovery he approached the Respondent with the requisite fitness certificate and unequivocally expressed his willingness to resume duties, but was unlawfully refused employment.

12. It is further submitted that the Respondent terminated his services without issuing any notice, conducting any domestic enquiry, or complying with the mandatory statutory safeguards governing termination of service.

13. It is further submitted that the Learned Labour Court has recorded findings unsupported by any evidence adduced by the Management and has erroneously dismissed the Petitioner's claim by treating the alleged abandonment of service as proved despite the Respondent having failed to lead any oral or documentary evidence in support of its defense.

14. Hence, it is urged that the impugned Award be set-aside and the Petitioner be reinstated in service with continuity of service and consequential benefits.

15. *Per Contra*, the learned Counsel for the Respondent has submitted that the writ is meritless and is liable to be dismissed as all the grounds have already been elaborately discussed in the impugned judgment. Even otherwise, the Management and the Company has closed down and the Director, Mr. Y. P. Khanna has also expired on 30.11.2012.

16. It is further urged that though Mr. Arun Khanna, son of Late Y.P. Khanna has been impleaded as a party, the claim is in any case not maintainable against him as the company does not exist anymore.

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17. Submission heard and the impugned order has been perused.

18. At the outset, it is apposite to note that the scope of interference under Articles 226 and 227 of the Constitution of India against an Award passed by the Labour Court is undoubtedly limited. This Court does not sit as a Court of appeal over the findings returned by the Labour Court and ordinarily would not re-appreciate the evidence merely because another view is possible. However, where the findings recorded are manifestly perverse, unsupported by the evidence on record, or suffer from a patent misapplication of settled legal principles, interference in exercise of supervisory jurisdiction would be warranted.

19. The principal defence of the Respondent before the Learned Labour Court was that the Petitioner had voluntarily abandoned his employment and, therefore, there was no termination of service by the Management. The Learned Labour Court accepted the said plea and consequently held that the question of illegal termination did not arise.

20. A perusal of the impugned Award, however, reveals that the said conclusion cannot be sustained. The Learned Labour Court has proceeded on the premise that since the Petitioner failed to produce his medical certificate, fitness certificate and the alleged reply to the communication dated 15.06.2006, the plea of abandonment stood established. Such an approach, in the opinion of this Court, is legally unsustainable.

21. It is well settled that abandonment of service cannot readily be inferred merely from absence from duty. Before such a conclusion is

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reached, the employer must establish, on the basis of cogent material, that the employee *intended* to permanently sever the relationship of employment. The burden to establish such abandonment squarely rests upon the employer who raises the said plea.

22. In the present case, despite specifically pleading abandonment of service, the Respondent admittedly chose not to lead any oral or documentary evidence before the Learned Labour Court. No witness entered the witness box on behalf of the Management. Consequently, there was no evidence whatsoever to establish that the Petitioner had voluntarily deserted his employment or that the Management had treated his absence as voluntary abandonment in accordance with law.

23. The Learned Labour Court has, however, shifted the entire burden upon the Petitioner and concluded that since he failed to substantiate his explanation regarding illness and his alleged attempt to rejoin duties, the plea of abandonment stood proved. A finding of abandonment cannot rest solely upon the weakness of the employee's case in the complete absence of evidence led by the employer in support of its specific defence.

24. Another circumstance which weighs with this Court is that the alleged absence itself was of a relatively short duration. The Petitioner had proceeded on leave from 15.05.2006 to 03.06.2006 and, within a matter of weeks, the Respondent treated him as having abandoned service. Notice was issued on 15.06.2006, only 12 days after his leave was over, and his services were terminated on 26.06.2006 without holding any departmental enquiry or affording an opportunity to the

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Petitioner to defend its case. Subsequently, the Petitioner had also issued demand notice in August. *Abandonment of service* cannot be readily inferred from such a brief spell of absence, when the employer has not discharged the burden of proving the same, particularly in the case of a workman who had admittedly rendered nearly nineteen years of continuous service with the establishment. In such circumstances, a finding of voluntary abandonment could not have been returned in the absence of clear and convincing evidence demonstrating an *intention* on the part of the Petitioner to permanently forsake his employment.

25. In the considered opinion of this Court, the finding returned by the Learned Labour Court on Issue No.1 is therefore based upon an erroneous application of the burden of proof and is unsupported by any evidence adduced by the Respondent. The same consequently suffers from perversity and cannot be sustained.

26. Since wilful abandonment was not proved by the Management, and the Petitioner was a direct employee of the Petitioner, the Company ought to have followed the procedure as enumerated in Section 25F of the Industrial Disputes Act, 1947 and could not have terminated services without holding a proper enquiry and affording an opportunity of being heard to the Petitioner.

27. Consequently, the impugned Award dated 30.08.2008 is liable to be set aside.

28. Having arrived at the aforesaid conclusion, the question that next arises is with regard to the appropriate relief to which the Petitioner would be entitled.

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29. It is trite law that a finding of illegality in termination does not, by itself, mandate reinstatement in every case. The Hon'ble Apex Court has repeatedly held that reinstatement is not an automatic or mechanical consequence of violation of Section 25F and that the relief must be moulded having regard to the nature of employment, length of service and the surrounding circumstances of the case.

30. In ***Assistant Engineer, Rajasthan Development Corporation &Anr. v. GitamSingh*** **: (2013) 5 SCC 136** and ***Bharat Sanchar Nigam Limited (BSNL) v. Bhurumal*** **: (2014) 7 SCC 177**, the Hon'ble Apex Court has clarified that reinstatement is not an automatic consequence of a procedural violation of Section 25F of the Act, and that monetary compensation would ordinarily meet the ends of justice. This principle finds definitive expression in ***Assistant Engineer, Rajasthan Development Corpn. v. Gitam Singh*** (supra). The relevant extract reads as under:

> *"22. From the long line of cases indicated above, it can be said without any fear of contradiction* ***that this Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled to reinstatement in all situations.It has always been the view of this Court that there could be circumstance(s) in a case which may make it inexpedient to order reinstatement. Therefore, the normal rule that dismissed employee is entitled to reinstatement in cases of wrongful dismissal has been held to be not without exception.*** *Insofar as wrongful termination of daily-rated workers is concerned, this Court has laid down that consequential relief would depend on host of factors, namely, manner and method of appointment, nature of employment and length of service. Where the length of engagement as daily wager has not been long, award of reinstatement should not follow* ***and rather compensation should be directed to be paid.*** *A distinction has been drawn between a daily wager and an employee holding the regular post for the*

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purposes of consequential relief."

(emphasis supplied)

31. In ***BSNL v. Bhurumal*** (supra), the Court further explained the rationale for this approach in the following terms:

> *"23.* ***It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases.*** *While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc.* ***However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious."***
>
> (emphasis supplied)

32. In the present case, subsequent developments brought on record during the pendency of the present proceedings disclose that the Respondent/Company has since ceased to function and has been permanently closed. The litigation itself has remained pending before this Court for nearly two decades. In such circumstances, directing reinstatement of the Petitioner at this stage would not be practicable.

33. Equally, this Court is not inclined to award back wages. Except making a claim for reinstatement with consequential benefits, the Petitioner has neither pleaded nor led any material to establish that he remained continuously unemployed or was not gainfully employed during the interregnum. In the absence of any evidence in this regard, an award of back wages would not be justified.

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34. Having regard to the totality of the circumstances, this Court is of the considered opinion that the ends of justice would be adequately served by awarding lump-sum monetary compensation in lieu of reinstatement and back wages.

35. Undisputedly, the workman had served for 19 years and accordingly, in substitution of the relief of reinstatement and back wages, the Petitioner is held entitled to lump-sum compensation of ₹4,00,000/- to be paid by the erstwhile employer within 8 weeks.

36. Now, this Court also deems it appropriate to deal with *CM APPL. 23292/2024* preferred by Mr. Arun Khanna, seeking deletion of his name and address from the array of parties.

37. The principal contention of the Applicant is that he was never a party before the Learned Labour Court, was never the employer of the Petitioner, the Respondent/Company has since ceased to exist in 2007 (struck off from the ROC as well), his father Mr. Y.P. Khanna (erstwhile Director) has also expired in 2011, he is neither the successor in interest of the company/management, the private limited company is a distinct legal entity, and therefore, he is neither a necessary nor a proper party to the present proceedings.

38. *Per contra*, the Petitioner submits that the Applicant is admittedly the son and one of the legal representatives of Late Shri Y.P. Khanna, who admittedly represented the Respondent/Company during the pendency of the present proceedings. It is further urged that the Applicant has himself admitted having acquired rights in respect of the property/asset from where the Respondent/Company admittedly

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carried on its business i.e. i.e., D-1, Okhla Industrial Area, Phase – 1 and, therefore, his presence is necessary to enable this Court to effectively adjudicate the controversy.

39. Admittedly, Late Shri Y.P. Khanna represented the Respondent/Company during the pendency of the present proceedings and expired only thereafter. The employer-employee relationship between the Respondent/Company and the Petitioner was never disputed. Thus, when this Court has concluded that the termination was unjustified, deletion of the Applicant from the proceedings at this stage would not be appropriate, as he is admittedly the son and Legal Representative of Late Shri Y. P. Khanna.

40. It is, however, clarified that this Court has not examined nor expressed any opinion on the personal liability of the Applicant or any other Legal Representative of Late Shri Y.P. Khanna to satisfy the monetary compensation awarded herein. The present adjudication is confined to determining the legality of the impugned Award and the consequential relief to which the Petitioner is entitled.

41. The question as to against whom, and to what extent, the monetary compensation awarded by this Court is enforceable, including all objections relating to the liability of the Respondent/Company, its legal representatives, successors, or any person claiming through it, shall remain open to be urged and decided in appropriate execution proceedings, if and when initiated, in accordance with law. Nothing contained in the present judgment shall be construed as a conclusive determination of such questions of

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personal liability, successor liability, and the extent of recoverable assets.

42. Accordingly, the writ is disposed of along with the pending application(s).

AMIT MAHAJAN, J

SEPTEMBER 8, 2026
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