Quess Corp Limited (Formerly Known As ... vs Rajeev Gautam & Anr on 25 September, 2023

Author: Purushaindra Kumar Kaurav

Bench: Purushaindra Kumar Kaurav

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 12592/2023
   QUESS CORP LIMITED (FORMERLY KNOWN AS M/S IKYA
   HUMAN CAPITAL SOLUTION LIMITED) .
   Through: Mr. Aditya Mishra, Ad

   Versus
   RAJEEV GAUTAM & ANR. ..... Responden
   Through: None.
CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV
   ORDER

% 25.09.2023 CM APPL 49623/2023 (Exemption)

1. Allowed, subject to all just exceptions.

2. The applications stands disposed of.

W.P.(C) 12592/2023 & CM APPL 49622/2023 (Stay)

1. The present petition has been filed under Article 226 and 227 of the Constitution of India seeking following reliefs:-

> "(a) Issue a writ, order in the nature of Certiorari thereby quashing and setting aside the afore said Impugned judgment dated 23.05.2023;
>
> (b) Stay the operation of the Impugned Award during the pendency of the present Writ Petition;
>
> (c) Pass such other and/or further· orders as this Hon'ble Court may deem just, fit and proper in the facts and circumstances of the case".

2. The petitioner is a business service provider who had employed respondent no. 1. The respondent no. 1 was later deputed at the premises of This is a digitally signed order.

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3. The respondent no.1 had showed his willingness to part ways from the petitioner and asked the respondent no.2 to relieve him from duty.

4. The respondent no.1 suddenly stopped reporting to duty w.e.f., 21.03.2017, and has straight away filed proceedings before the Labour court, alleging illegal termination.

5. The labour vide order dated 23.05.2023 has passed the impugned order whereby the respondent no. 1 was awarded a monetary compensation for a sum of Rs.2,00,000/- alongwith the cost of Rs.30,000/- under Section 11(7) of the Industrial Disputes Act, 1947.

6. Being aggrieved by the impugned order the petitioner has filed the present petition.

7. Learned counsel appearing on behalf of the petitioner submits that in the instant case the impugned award dated 23.05.2023 has been passed by the concerned court without appreciating the evidence in right perspective. According to him, no demand notice has ever been served on petitioner- Management no.1. He further submits that the respondent-workman despite adequate opportunity did not join the services.

8. I have considered the submissions made by learned counsel for the petitioner and have also perused the impugned award.

9. The Labour Court has framed the following issues:-

> "1. Whether the claimant had left the services of management on his own after settling all his dues in full and final? O.P.M.
>
> 2. Whether the services of workman had been terminated illegally and/or unjustifiably by the management and if so, to what consequential relief is the workman entitled for? O.P.W.
>
> 3. Relief."

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10. With respect to issue no.1, the Labour Court has appreciated that the burden of proof of the said issue is on the management. In paragraph Nos. 9.1 to 9.6 it has been discussed as under:-

"9.1 The burden of proof of present issue is on the management. The management has pleaded that demand notice was not served upon it and the burden of proof of service of demand notice has to be discharged by the workman. The workman has sent the demand notice Ex. WW1/2 dated 15.06.2017 vide postal receipt Ex. WW1/3. Management has not put any question to WW1 on Ex. WW1/3. The postal receipt though got in evidence are not confronted to WW-1 by management when WW1 has deposed that he does not have any proof to show that the demand notice Ex. WW1/2 was received by management no.1. MW-1 during cross-examination dated 24.02.2023 has admitted that address mentioned in Ex. WW1/2 of management no.1 is correct. However it is denied that the management no.1 did not reply to Ex. WW1/2 and it is deposed voluntarily that the management has not received Ex.WW1/2. The postal receipt are Ex. WW1/3 bearing serial no. 1 and 2. At serial no.2 the service was effected on management no.1. The address is accepted by management no.1 that it bears correct address of management no.1. When the management no.1 has admitted address as correct in notice Ex. WW1/2 which was sent vide Ex.WW1/3 then presumption arise in favour of the workman that when the notice was so sent at the correct address of the management then under Section 27 General Clauses· Act, 1897 such notice was duly served on both the management. With such rise of presumption bare denial of receipt of such notice by management no.1 is not sufficient and onus has shifted on management no.1 after such admission of correct address on the demand notice sent vide postal receipt Ex. WW1/3. Hence the workman has discharged the burden of proof of service of demand notice and management has failed to discharge the onus shifted on it. Accordingly it is held that the demand notice Ex.WW1/2 was duly served on the management no.1 and 2 vide postal receipt Ex. WW1/3 at serial no.1 and 2.

9.2 According to management no.1 the workman had asked from management no.2 on 21.02.2017 to relieve him from deployment. It is not stated that to whom the workman had so asked in management no.2 nor any witness was produced by management no.1 from management no.2 to depose that to whom the workman had asked to relieve him. Hence the above submission of the management is unsubstantiated. It is further deposed by MW1 that the workman had voluntarily settled his full and final dues under Shop and Establishment Act, 1954. The workman has filed Ex. WW1/4 the claim petition before Competent authority under Shops and Establishment Act, 1954 praying for release of his salary from 20.02.2017 to 22.3.2017 for a sum of Rs 15,868/-. In the said petition the workman has specifically pleaded at para no. 3 that management no. 2 had declined to take him back on work and asked him to contact management no.1. Hence the said petition This is a digitally signed order.

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salary.

9.3 Ex. WW1/4 was received at the office of Deputy Labour Commissioner on 20.07.2017 which is apparent on the receipt stamp bears on the said document. WW1 has deposed that his service was illegally terminated on 22.03.2017. Hence there is gap of about 4 months in filing of Ex.WW1/4 by the workman. Had there been a settlement between the parties then it must have been issued on the date of relieving of workman from the service. Even the salary clues of the workman were not paid by the management to the workman on 21.03.2017 when the workman had allegedly left the service of the management. The management no.1 has claimed that management no.2 had asked to relieve the workman from deployment with effect from 27.03.2017. This means that at least till 26.03.2017 the workman must have worked with management no.2. The management no.1 has claimed that the workman has abandoned the services on 21.03.2017. No such document by management no. 2 to relieve the workman on 27.03.2017 is produced by management no.1 nor the person who has said so is produced in evidence by management no.1 Self serving statement of management no.1in this regard cannot be relied upon and stands rejected. No evidence in the nature of attendance register or entry register is produced by management no.1 if the workman had worked with management no. 2 till 26.03.2017.

9.4 Management no.1 has heavily relied on Ex. WW1/MX1=Ex.MW1/2 which is no dues form. It is submitted that this no dues form was submitted late by the workman and therefore the dues of the workman could not be cleared. According to the management the submission of no dues certificate is voluntary by the workman which shows that workman has himself abandoned the service. In any case submission of no dues certificate cannot be taken as desire of t)1e workman to relieve him from service. Voluntariness of the resignation or abandonment has to appear from facts and circumstances of the case or by a written document. The Ex. MW1/2 bears signature of Administrative Officer and Accounts Officer of the management on 10.05.2017 whereas the workman has alleged the termination of his service on 22.03.2017. Had there been voluntary nature of abandonment or resignation then the no dues certificate must have been obtained by the workman prior to the alleged date of abandonment of service on 22.03.2017 and it cannot be after about a period of 2 months from the alleged date of abandonment. Hence Ex. MW1/2 is nothing but an act on the part of the workman to receive his salary dues from the management which is further substantiated by filing of separate case under Shops and Establishment Act, 1954 vide Ex. WW1/4. Hence Ex. 1\1W1/2 shows that even after the alleged illegal termination of the workman his salary dues were not paid by the management and he was made to run from one place to another place without any reason. It is deposed by WW1 in cross examination that Ex. MW1./2 was submitted somewhere in May 2017 and he had got it signed from official of management no. 2. It is noted that management no.2 is not the employer of the workman but management no.2 is principal employer. The employee and employer relationship

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9.5 It is admitted as correct by WW1 that no official from management no.1 had ever declined assignment of duty to him. It is further admitted by WWl1in cross examination that he had not visited the office management after March 2017 for assignment of duties. However the workman is not confronted with para no.3 of evidence by way of affidavit that management no. 2 had declined the workman to join the duties. The management no. 1 had placed the workman on duty with management no. 2. The management no.1 has not proved on record by evidence of management no. 2 that duties were not declined to the workman. It is not the case of the management no.1 that it had placed the workman in any other deployment other than management no. 2. Management no.2 is ex-parte. When the workman is deployed with management no. 2 and management no. 2 has declined duties to the workman then it has the same effect as management no. 1 has declined duties to the workman. Hence by not confronting para no. 2 of Ex. WW1/A to the workman during cross examination the statement by workman that management no.1 has not declined duties to the workman is not sufficient to discharge the burden of abandonment. The WW-1 had to be con fronted under Section 145 of Indian Evidence Act, 1872 by drawing attention of WW1 to para no. 2 with the statement that no official from management no.1 had ever declined assignment of duty to him. Hence the statement of workman in absence of such confrontation remained unproved and cannot be relied for the purpose of abandonment. Hence the above statement of workman is consistent with the remaining evidence of WW1 that management no.2 had declined him to join his duties and not management no.1 as the workman was deployed with management no. 2.

9.6 It is admitted by WW1 that he did not visit management no.1 after March 2017 for assignment of duty which means that the workman did not visit for assignment of

> duty from 01.04.2017. The management has suggested to workman in cross examination dated 15.10.2019 that the last working day of the workman was 27.03.2017 whereas at para no. 2 of WS on preliminary objection it is pleaded by the management that the workman has voluntary left the service of the management on 21.03.2017. Both the pleadings and suggestion by the management are contradictory to each other would further This is a digitally signed order.
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> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 27/09/2023 at 23:10:58 substantiate the deposition of the workman that his service was terminated by the management on 21.03.2017 when management no.2 did not allow him to join the duty and management no. 1 had not issued any instruction either to the workman or management no. 2 regarding continuation of duties of the workman."

11. It has been noted by the Labour Court that the petitioner-Management no.1 had placed the respondent-workman on duty with respondent- Management no.2. The petitioner-Management no.1 did not prove by adducing sufficient evidence of respondent-Management no.2 that the duties were declined by the respondent-workman. It has also come on record that when the respondent-workman was deployed with respondent-Management no.2 and the respondent-Management no.2 did not allow the respondent- workman to perform his duties, it would have the same effect as the Management no.1 had declined duties to the respondent-workman.

12. The Labour Court has noted that petitioner- Management no.1 has not successfully proved that it is a case of abandonment of service.

13. With respect to issue no.2, the labour court in paragraph No.10.2 has discussed as under:-

> "10.2 It is already held above that the management has failed to prove the abandonment of service on the part of workman. The WW1 has deposed that he was not paid salary from 20.02.2017 to 22.03.2017. The plea of the management is that this salary could not be paid to the workman because the workman has not obtained no dues certificate whereas plea of abandonment is taken. The management has suggested to workman that his last working day was 27.03.2017 whereas the date of abandonment is claimed as 21.03.2017. It is pleaded by the management that the workman had asked management no. 2 on 21.02.2017 to relieve him from the deployment. However it is not disclosed that to whom the workman had asked with management no. 2 to relieve him nor it is proved on record by any evidence. Neither any communication is produced between management no. 2 near the date of 21.02.2017 that workman had asked to relieve him from service. Hence bald statement without evidence stands discarded. Had the workman wanted to abandon service on 21.02.2017 then why he allegedly continued to work with the management till 27.03.2017. The management no. 1 or management no. 2 has failed to bring any

record of attendance of the workman between 21.03.2017 till 27.03.2017 to show that the workman This is a digitally signed order.

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32. Retrenchment is defined in the Act to mean termination of the service of a workman by the employer for any reason whatsoever, otherwise than as punishment for any misconduct and further subject to the four exceptions enumerated in clauses (a), (b), (bb) and (c)" of section 2(oo) of the Act. Retrenchment being termination of service for no fault on the part of the workman is likely to visit the concerned worker(s) and his/their families with disastrous consequences.

Retrenchment is an important and serious issue in industrial law since its wanton and improper use can become a major source of industrial unrest and disharmony. The issue of retrenchment is, therefore, not left uncontrolled but is regulated in great detail by the law.

33. The Industrial Disputes Act lays down not only certain inflexible preconditions that must be satisfied before an employer can resort to retrenchment but also a detailed procedure following which retrenchment can be carried out. Section 9A provides that no employer proposing to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule shall effect such change without giving twenty one days' notice in the prescribed manner of the nature of change proposed to be effected. Item No.ll This is a digitally

signed order.

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34. Then, we come to Chapters VA and VB of the Act which were inserted with effect from 24-10-1953 and 5-3-1976 respectively. Chapter VA contains sections 25A to 25H dealing with lay-off and retrenchment. Section 25A excludes the application of sections 25C to 25E to certain industrial establishments, including those covered by the provisions of Chapter VB. Section 25B gives the definition of continuous service. 35. Section 25F lays down the conditions precedent to retrenchment of workmen and requires the employer to give notice to the appropriate government/prescribed authority apart from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the workman(en) concerned. Section 2SFF provides for compensation to workmen in case of transfer of undertakings. Section 25FFF provides for compensation to workmen in case of closing down of undertakings.

36. Section 25G lays down the procedure for retrenchment and provides that retrenchment should follow the principle of last come, first go. Section 25H deals with re-employment of retrenched workers. Section 25J has the non-obstante clause and lays down that the provisions of chapter VA would have effect notwithstanding anything inconsistent therewith contained in any other law, including standing orders made under the Industrial Employment (Standing Orders) Act, 1946".

14. It is thus seen that the labour court has properly appreciated the material available on record and has found that the services of the respondent-workman have been terminated w.e.f. 21.03.2017 without complying with mandatory provision under Section 25A of Industrial Disputes Act, 1947.

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15. It is to be noted that on the basis of the statement of claim submitted by the management itself, the respondent-workman was appointed on 11.04.2014 and had worked till 21.03.2017. The labour court, therefore, instead of reinstatement has directed for monetary compensation for a sum of Rs.2,00,000/- alongwith the cost of Rs.30,000/- under Section 11(7) of the Industrial Disputes Act, 1947.

16. It is noted that the Labour Court has passed the impugned award only after perusing the evidences of both the parties and has duly appreciated the facts and circumstances of the case.

17. On perusal of the averments made and the documents referred above by the parties, this court finds that the order of the Labour Court is well- reasoned and there is no ambiguity or jurisdictional error in it. Therefore, this court does not find any cogent reason to interfere with the order of the Labour Court.

18. It is well settled that the scope of interference under Article 227 of the Constitution of India is only limited to correct the jurisdictional error of the inferior courts or tribunals. The Hon'ble Supreme Court in the case of Iswarlal Mohanlal Thakkar vs Paschim Gujarat Vij Company Ltd. & Anr.1, while discussing the scope of the High Court under Article 227 of the Constitution of India in interfering with the orders passed by the tribunals and courts inferior to it, has held as under: -

> "15. We find the judgment and award of the Labour Court well-reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power under Article 227 of the Constitution of India to annul the findings of the Labour Court in its award as it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or reappreciate evidence and record (2014) 6 SCC 434 This is a digitally signed order.

 its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well-reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere with the same as the award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice."

[Emphasis supplied]

19. The above position of law has been reiterated by the Hon'ble Supreme Court in the case of Rengali Hydro Electric Project v. Giridhari Sahu2, wherein, the court after relying upon a catena of judgements has held as under:-

"20. An erroneous decision in respect of a matter which falls within the authority of the Tribunal would not entitle a writ applicant for a writ of certiorari. However, if the decision relates to anything collateral to the merit, an erroneous decision upon which, would affect its jurisdiction, a writ of certiorari would lie."

[Emphasis supplied]

20. In view of the aforesaid, this court is not inclined to entertain the instant petition. The same is accordingly dismissed alongwith pending applications.

PURUSHAINDRA KUMAR KAURAV, J SEPTEMBER 25, 2023 p'ma/RS (2019) 10 SCC 695 This is a digitally signed order.