

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

+ **WP(C) No.705/2008**

% **Date of decision : 02.04.2008**

M/s.Gurdayal Singh & Sons Petitioners
Through: Mr.Rajat Aneja, Advocate.

Versus

Govt.of NCT of Delhi & Ors Respondents
Through: Nemo.

CORAM :-

HON'BLE MR. JUSTICE ANIL KUMAR

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

ANIL KUMAR, J.

1. The petitioner has impugned the award dated 19th September, 2006 passed by the Labour Court reinstating the respondent worker with continuity of service and consequential benefit and 60% of back wages from the date of his termination on 7th October, 2002.

2. On the dispute being raised by the respondent workman the appropriate Government had made the following reference:-

“Whether the services of Shri Brij Lal s/o.Shri Ram Adhar 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 workman filed a claim contending inter-alia that he had been working as a fitter since 1982 and on account of legal demands made by him, the workman was transferred from Delhi unit to Rajasthan on 3rd October, 2002. The transfer was opposed by the workman on the ground that it is contrary to the terms and conditions and because the workman was settled in Delhi with his children and, therefore, he requested the management/petitioner to withdraw the transfer letter which according to the workman was withdrawn and he was allowed to perform his duties. However, on 7th October, 2002 during lunch hours Sh. Bhupender Singh, owner and Sh.Arvind, Accountant abused the workman with filthy language and misbehaved with him and also obtained his signatures on various blank vouchers and forcibly kicked him out.

4. The claim was contested by the petitioner on the ground that the real issue is whether the services of the respondent had been transferred legally or illegally. It was also alleged that for raising a valid dispute espousal is required in the matter whereas there is no espousal and the reference is not proper. The petitioner contended that on 4th September, 2002 notice was given to all workmen that their services will

be transferred to Shahjanpur factory. Though two other workers joined the factory at Shahjanpur, the respondent first made an excuse of having met with an accident and, thereafter refused to join the duties. Even during the conciliation proceedings he was asked to join his duty to the transferred place, however, he filed a false claim to extract money from the petitioner. It was pleaded that his services were not terminated but he was transferred. It was also pleaded that the factory of the petitioner at Delhi is lying closed.

5. After hearing the contention of the parties the Labour Court on the issue of espousal held that since there is a demand notice through the union and a statement of claim was filed before the Assistant Labour Commissioner for conciliation and when the conciliation failed, the matter has been referred to the Labour Court, therefore, the reference is not illegal. No argument has been advanced by the learned counsel for the petitioner regarding this issue.

6. Regarding the transfer of the petitioner to the Shahjanpur factory it was held that the respondent workman categorically deposed in his statement after taking the plea in the claim petition that the transfer order to the factory at Shahjanpur was withdrawn and the respondent had been allowed to work at Delhi. This testimony of the workman had not controverted by the petitioner by cross examining the workman on

this plea nor the petitioner has deposed refuting the plea that the transfer order had not been withdrawn orally. Perusal of the affidavit dated 29th March, 2006 shows that no such deposition was made on behalf of petitioner that the transfer order was not withdrawn in respect of petitioner. What is deposed is that along with the respondent two other persons namely Ramadhar and Amarnath were directed to join duty at Shahjanpur where they had joined the duties and no employee had objected to the transfer. The Labour Court also considered the document exhibit WW1/M1 and M2 and on account of non controverting the testimony of the workman, regarding withdrawal of the transfer order held that the respondent was not transferred to Shahjanpur. The learned counsel for the petitioner has emphatically contended that the transfer order was pursuant to transfer of factory to Shahjanpur. It was contended that a reference was issued by Delhi Government and the reference was to be made for transfer but mistakenly that was issued for termination of service. The deposition as in the affidavit dated 29th March, 2006 was not put to the workman which is apparent from the perusal of the cross examination of the workman recorded on 20th February, 2006. The management witness Sh.Arvind Kumar also admitted that no condition was mentioned in the appointment letter that the workman could be transferred at any time.

7. In the circumstances on consideration of pleas and contentions and the deposition of the parties, the inferences drawn by the Labor

Court are probable and feasible and in exercise of jurisdiction under Article 226 of the Constitution of India, this Court is not to substitute its own inference with the inferences drawn by the Labor Court. The learned counsel for the petitioner is unable to show as to why the said inference be not drawn when the petitioner himself has not controverted the deposition of the respondent workman that the transfer order was withdrawn by the petitioner and he was allowed to work thereafter and on 7th October, 2002 he was abused and beaten by Sh. Bhupender Singh and Sh.Arvind Kumar and kicked out from the premises of the management.

8. The Labor Court has distinguished the case relied on by the petitioner namely D.B.Mathur Vs. Cement Corporation of India & Ors, 2006 LLR 240 and has reinstated the workman on the ground that while terminating the services of the respondent, the petitioners did not comply with Section 25-F of the I.D Act and ordered reinstatement with continuity of service and consequential benefit and also granted 60% of the back wages. The Labour Court noticed that even suggestion was not given to the respondent workman that he was unemployed nor any evidence was led that the workman was gainfully employed somewhere.

9. The findings and inferences of the Labor Court are based on evidence and documents on record and there does not appear to be any

manifest errors in them. This court in exercise of its jurisdiction under article 226 of Constitution of India is not to substitute its own inferences with the inferences drawn by the Labor Court. In (2006) 2 SCC 373 , at page 378 *Govt. of A.P. v. Mohd. Nasrullah Khan the Supreme court had held:*

11. By now it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority.

10. Thus it is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the High Court is not to interfere with factual findings of the lower courts and should restrain itself from re-appreciating evidence while exercising powers of judicial review. Writ court is not to interfere with the orders of an inferior tribunal or subordinate court unless the order suffers from an error of jurisdiction or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. The objective of judicial review is that a person receives a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. Judicial review is not an appeal from a decision but a review of the

manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.

11. In the facts and circumstances the award dated 19th September, 2006 does not suffer from any apparent or manifest error so as to entail interference by this Court under Article 226 of the Constitution of India. The writ petition is without any merit and is, therefore, dismissed.

April 2nd, 2008
‘k’

ANIL KUMAR, J.