

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

+ **W.P(C) No.1640/2008**

% **Date of decision: 12.03.2008**

Roop Chand Petitioner
Through: Mr.S.K. Dayal, Advocate.

Versus

The Chief General Manager (V.S.N.L.) Respondent
Through: Nemo.

CORAM :-

HON'BLE MR. JUSTICE ANIL KUMAR

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| 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 25th July, 2007 dismissing his claim for regularization and declining his claim for payment of wages as per the wages payable to regular employees.

2. The Ministry of Labour by its letter No.L-40011/27/2001 (IR (DU) Central Government dated 07/23.01.2002 had made the following reference:

“Whether the action of the General Manager, Videsh Sanchar Nigam Limited, Greater Kailash, Part-I, New Delhi-110048 in verbally stopping from duty w.e.f. 31.10.1999 to Shri Roop Chand, Lift Operator, instead of regularizing his services and not paying him wages as per their regular employee, is justified? If no, to what relief the workman is entitled to.”

3. The petitioner claimed that he had been employed by the respondent as a Lift Operator and his last drawn salary was Rs.2,200/- per month which was less than the minimum wages as per the labor laws. The petitioner contended that during the course of his employment he was not provided all the legal benefits and since the petitioner demanded the legal benefits, the management got annoyed and on 31st October, 1999, the services of the petitioner were terminated without assigning any reason and without paying the earned salary of the months of August, September and October 1999.

4. The claim of the petitioner was contested by the respondent contending that the petitioner was never employed as a Lift Operator since 8th July, 1998 as has been alleged by the petitioner. It was contended that the petitioner had been carrying out some specific work of repairs of lifts etc. in October 1998 to December 1998 and thereafter during the period 15th April, 1999 to 15th June, 1999 and the petitioner was paid the amount in cash for the works done by him. The petitioner

had executed the receipts in the name of Roop Singh as well as Roop Chand. Regarding the gate passes produced by the petitioner, it was contended that M/s.OTIS Limited, supplier of lifts, was providing maintenance and the petitioner frequently visited along with the Technician of M/s. OTIS Limited. The gate passes issued to the petitioner to carry out the material were in fact issued to M/s. OTIS Limited who were doing the maintenance work. In these circumstances, it was asserted that the petitioner was never employed by the respondent on daily wages nor the petitioner had carried out work for more than 240 days.

5. The Central Government Industrial Tribunal cum Labour Court – II dismissed the claim on the ground that the petitioner has not been able to prove that he worked for 240 days so as to attract the provision of Section 25 F of the Industrial Disputes Act, 1947.

6. The learned counsel for the petitioner has relied on the cash bills dated 2nd November, 1998 under which the petitioner was paid an amount of Rs.2,100/- for running and cleaning the lift. Similar is the receipt for the month of November 1998 and December 1998. From the receipts produced by the petitioner, it is apparent that the petitioner was not engaged as a daily wager as a Lift Operator as the amounts

have been paid to the petitioner mainly for the repair of the lift. In any case, from the documents produced by the petitioner, it cannot be inferred that the petitioner had worked for more than 240 days in a year. The petitioner is unable to refute the averment of the respondent that he worked during the period of October 1998, December 1998 and from 15th April, 1999 to 15th June, 1999 only. In the circumstances, the inference drawn by the Central Government Industrial Tribunal cum Labour Court – II that the petitioner has not been able to show that he had worked for 240 days cannot be termed to be perverse or suffering from any manifest error. There are no grounds to interfere with the findings of the Central Government Industrial Tribunal cum Labour Court – II, in the circumstances, in exercise of jurisdiction under Article 226 of the Constitution of India.

7. The findings and inferences of the Tribunal 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.

8. 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 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 their 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.

9. The documents produced by the petitioner do not show that he worked for more than 240 days and the receipt produced by the petitioner also show that the amounts paid to him were mainly for repairs and in the circumstances, the inference of the Tribunal that the petitioner was not engaged on daily wages cannot be faulted in the facts and circumstances to be interfered in exercise of jurisdiction under Article 226 of the Constitution of India. The writ petition in the facts and circumstances, therefore, is without any merit and it is dismissed.

March 12, 2008
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ANIL KUMAR, J.