

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : February 04th , 2008

W.P.(C) No.879/2008

Royal File Products Petitioner
! Through: Mr.S.P. Gautam, Advocate.

Versus

\$ Ram Sakal & Others. Respondents
^ Through : Mr.Nawal Kishore Jha, Advocate.

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. (Oral)

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1. The petitioner has impugned the award dated 21st March, 2007 directing the petitioner management to pay a compensation of Rs.50,000/- in lieu of the reinstatement of the respondent No.1 considering the last drawn wages and other factors.

2. The reference made to the Court was whether the respondent No.1 had abandoned his services or whether his services were terminated illegally or unjustifiably by the management, and, if so, to what relief the respondent No.1 is entitled and what directions were

necessary in that respect”

3. Respondent No.1 was working as a Godown Keeper with effect from 10th November, 1973 at a salary of Rs.3,200/- per month. According to the respondent No.1, he was not issued any appointment letter and he was denied legal entitlements like the provident funds, ESI, bonus, etc. and he was paid less than the minimum wages as applicable in the case of respondent No.1. According to the respondent No.1, he was not paid wages for the month of October to December, 1999 and on his demanding the same, he was beaten up and his services was terminated on 17th January, 2000. The respondent No.1 is alleged to have made a complaint to the Police regarding the incident and thereafter a demand notice was sent by the petitioner.

4. The petitioner contended in their written statement before the Labor Court that the services of the respondent No.1 had not been terminated rather they tried to search him but could not locate him as he had abandoned the work.

5. After considering the pleas and contentions of the parties and the evidence led by the parties, the Labor Court relied on the facts that the workman was beaten up and turned out on 17th January,

2000 Though he made a complaint but no case could be registered as the alleged offence was non-cognizable and his goods were recovered with the police help. This fact that goods of the respondent had been recovered with the police help could not be refuted by the petitioner/management. The petitioner had also pleaded that the workman/respondent had stolen/mis-appropriated some files, however, this allegation was not substantiated by the petitioner.

6. The petitioner has heavily relied on the fact that the services of the respondent No.1 were never terminated and he continued on the rolls till the claim was filed by the respondent No.1. However, the Labor Court had taken an adverse inference on account of non-production of attendance register to substantiate the plea taken by the petitioner/management that the respondent No.1 continued on the rolls of the petitioner.

7. The management/petitioner has also taken contradictory stand inasmuch as it has been contended that his services were not terminated and at the same time a justification has been given for his physical ouster on the ground that he had committed a theft. No inquiry had been conducted on account of alleged mis-conduct of theft. If, the workman had mis-conducted on account of theft, the petitioner/management should have made a complaint to the police

which was, however, also not done and taking these facts into consideration, it has been inferred by the Labor Court that the respondent/workman had not abandoned his services. It has been held that rather the services were terminated without complying with the requirement of Section 25 F of the Industrial Disputes Act, 1947.

8. The Labor Court has also considered the plea of the petitioner that the workman/respondent was asked to join the duties, however, reliance has been placed on the fact that while demanding the workman to join the duty, he was asked to give an explanation for theft. If the case of the respondent/workman is that he never committed theft, seeking an explanation for theft as a pre-condition to join the services, is not an offer to join the services by the respondent/workman so as to absolve the petitioner management of its liability.

9. Considering all these evidence, a cogent inference has been drawn by the Labor Court and considering the facts and circumstances, only a sum of Rs.50,000/- has been awarded in lieu of reinstatement.

10. While exercising its powers of judicial review under Article 226 of the Constitution of India, this Court ought not re-appreciate the

evidence. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the 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. Reliance for this proposition can be placed on the judgment of the Supreme Court, *Government of A.P. and Ors. v. Mohd. Nasrullah Khan* reported as (2006) 2 SCC 373. Reliance may also be placed on the following judgments rendered by the Supreme Court and this Court concerning the scope of judicial review by a writ court: *Harbans Lal v. Jagmohan Saran* (1985) 4 SCC 333; *B.C. Chaturvedi v. Union of India* (1995) 6 SCC 749; *Indian Overseas Bank v. I.O.B. staff Canteen Workers' Union* AIR 2000 SC 1508 ; *Municipal Corporation of Delhi v. Asha Ram and Anr.* 117 (2005) DLT 63 and *Filmistan Exhibitors Ltd. v. N.C.T. Secy. Labour and Ors.* 131 (2006) DLT. In all the above judgments, it has been held that a writ court should refrain from interfering with the orders of an inferior tribunal or subordinate court unless it 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.

11. 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. The Apex Court in (1995) 6 SCC 749 B.C.Chaturvedi Vs Union of India at page 759 in para 12 had held as under:

“ 12 . 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. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or **whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion.** But that finding must be based on some evidence. **Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding.** When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. **The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.** The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. **If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”**

13. On the basis of pleadings and the evidence, the Court has inferred that the respondent No.1 was not offered to join the duties. An allegation of theft was made against the respondent No.1 which was denied and in respect of which no enquiry was conducted. The offer to join the duties was conditional in as much as the respondent No.1 was asked to explain the theft alleged to have been committed by him which, in fact, was never committed by him. No police report was made by the petitioner against the alleged theft. Considering all the facts noticed and considered by the Court, the inferences drawn by the Court cannot be termed perverse or suffering from any manifest error. If that be so this Court is not to substitute its findings with the findings of the Court. In any case, this Court also endorses the findings of the Labor Court in the facts and circumstances of the case.

14. In the circumstances, there is no perversity or manifest error in the award of the Labor Court so as to entail interference by this court in exercise of jurisdiction under Article 226 of the Constitution of India. The writ petition is, therefore, without any merit and it is dismissed.

February 04th , 2008
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ANIL KUMAR, J.