

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

+ **W.P.(C) No.1124/2008**

% **Date of decision : 12.02.2008**

Excel Industries Ltd Petitioner
Through: Mr.J.Buther, Advocate.

Versus

Sh.O.P.Mishra 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. (Oral)

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1. The petitioner/management has impugned the award dated 18th August, 2007 directing reinstatement of respondent workman with continuity of service along with back wages of Rs.2500/- per month and other legal benefits.

2. The respondent workman had filed a claim pursuant to a reference by the appropriate Government. The respondent contended that he was working as an Assistant Accountant with petitioner since 22nd January, 1992 and his last drawn salary was Rs.2500/- per month. He alleged that he had applied for the post of Assistant

Accountant in January, 1992 and he was called for an interview by letter dated 9th January, 1992 and he was interviewed on 21st January, 1992 and was appointed on 22nd January, 1992.

3. The respondent workman contended that though he demanded the appointment letter but the petitioner avoided to give the same. He had raised the demands for other facilities like ESI, PF, bonus, leave encashment etc but the demands of the respondent workman were not complied with. The respondent workman alleged that at times he was made to work for 12 hours daily, however, no over time was given to him and he continued working like this till 31st August, 1997 when without assigning any cause and reason his services were terminated.

4. The petitioner contested the claim of the respondent contending that the respondent is not a workman as defined under Section 2(c) of the Industrial Disputes Act and he was never employed in the company and there was no employer-employee relationship. The rate of salary as was claimed by the respondent workman was also denied. It was asserted by the petitioner management that the respondent was hired on contract basis and he was providing the service of visiting the banks for depositing cheques and documents of the company and for this service he was paid a consolidated sum of Rs.2000/- per month initially which was later on increased to Rs.2500/- per month. It was contended that the respondent was

working and rendering service only for 1-2 hours in the whole day.

5. The respondent/workman proved his interview letter dated 9th January, 1992, a certificate dated 25th August, 1994, an authorization which was issued to the respondent workman for cancellation of a DD and for obtaining a pay order and other documents. On behalf of the petitioner management only the statement of Manager, Accounts & Administration, Sh.Jitender Kumar was recorded who only proved a reply dated 10th December, 1997 to the demand notice of the respondent workman and the postal receipt and denied the allegations made by the workman.

6. Before the Labour Court despite as many as 12 opportunities granted, the authorized representative of the petitioner did not appear nor anyone appeared on behalf of respondent workman. Since no one appeared to argue the matter the Industrial Tribunal has decided the matter on the basis of pleas and evidence available on the record.

7. The learned counsel for the petitioner has very emphatically contended that there is no relationship of employer and employee as the respondent workman was appointed on contract basis and as per the contract of service respondent workman was providing service of visiting the banks for depositing the cheques and delivering the documents.

8. The Labor Court has drawn an adverse inference against the petitioner as the petitioner did not produce the contract of service whereby the respondent workman was allegedly engaged on contract basis to carry out the work of only visiting the banks for depositing cheques and documents of the company.

9. The Labour Court has also relied on the statement of the respondent workman who had proved the copy of the interview letter dated 9th January, 1992 as exhibit WW.1/1 and a certificate dated 25th August, 1994 issued to the respondent stipulating that he is working with the petitioner for last two years and a letter dated 6th December, 1996 authorizing the respondent to get a DD issued in favor of petitioner cancelled and to get a pay order issued.

10. The learned counsel for the petitioner contends that these documents have not been proved. The statement of the respondent workman reflects that the evidence was led in respect of these documents which have not been categorically denied by the petitioner in the cross examination of the respondent workman. Instead of saying that the letter dated 9th January, 1992 was not issued a suggestion was put to the respondent workman in the cross examination that Sh.S.C.Kaushik who had signed the letter dated 9th January, 1992 had no power to sign such letter. If the plea of the petitioner is that Shri.S.C.Kaushik was not authorized to sign the

interview letter on behalf of the petitioner, it was for the petitioner to show as to how he was not authorized and if he was not authorized then who was authorized on behalf of the petitioner company. No reliable evidence has been led by the petitioner to substantiate his plea that Shri S.C.Kaushik was not authorized to sign the interview letter and the certificate issued to the workman.

11. It is not disputed that the respondent workman was appointed by the petitioner. The dispute is whether he was appointed as a contract worker for few hours to carry out specific work of going to the banks only or there is a relationship of employer and employee on account of appointment of the respondent. If the respondent workman was not issued an interview letter on 9th January, 1992, then who had issued this letter has not been disclosed by the petitioner. The petitioner has also withheld the best evidence to show as to who was authorized on behalf of the petitioner company to sign the letters for interview or for appointing any person on contract basis. The witness who has been examined on behalf of petitioner/management is just a Manager, Accounts & Administration. The said witness in his deposition has deposed that Sh.S.C.Kaushik of the petitioner management has misused the letter heads of the company. So long as the petitioner has admitted that the respondent was appointed to carry out some work, it was for the petitioner to produce the contract which was executed between the petitioner and the respondent.

Though an allegation of fraud has been made against Sh.S.C.Kaushik, signatory of the letter produced by the respondent workman, however, no evidence has been led about the fraud alleged to have been committed by Sh.S.C.Kaushik and any action taken by the petitioner against the said person.

12. Perusal of the cross examination of the respondent workman rather reflects that a suggestion was given to the respondent workman that Pradeep who was in the marketing department had asked the respondent workman to work as a peon which suggestion is contrary to the pleas taken by the petitioner company.

13. Considering all the pleas and the entire evidence, the Labor Court has also drawn an adverse inference against the petitioner on account of non production of employees salary record, ESI record etc and consequently on the preponderance of probability has drawn an inference that the petitioner had employed the respondent. In the circumstances the petitioner is unable to show any perversity or manifest error in the award dated 18th August, 2007. The inferences drawn by the Court cannot be termed without any rational.

14. Even if another view or inference is possible in the facts and circumstances and on the basis of the evidence led by the parties, it is not appropriate for this Court to substitute its inferences with the plausible inference drawn by the Labour Court. There has not been

denial of principles of natural justice as opportunities were given to both the parties and they were given opportunity to lead evidence and after considering the pleas and contentions and the evidence, award dated 18th August, 2007 has been passed.

15. While exercising its powers of judicial review under Article [226](#) of the Constitution of India this Court is not to 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 does not interfere with factual findings of the lower courts and 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.

16. The objective of judicial review is to ascertain that a person received 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.”**

17. The learned counsel for the petitioner management has relied on Manager, Reserve Bank of India, Bangalore Vs. S.Mani & Ors, CA Nos.6306-6316/2003 decided on 14th March, 2005 to contend that it was for the workman to prove that he had been an employee. Perusal of the precedent relied on by the petitioner shows that it is distinguishable from the case of the respondent workman. The point in dispute in the said case was whether a judgment of acquittal passed in favor of employees by giving him benefit of doubt per se would be binding upon the employer or not. The Supreme Court had held that the initial burden of proof is on the employee to show that he was employed by the employer and filing of an affidavit is only a statement of the workman which may not be sufficient evidence for any Court or Tribunal to come to the conclusion that there is relationship of employer and employee and the workman has worked for 240 days in the year. In contradistinction to the case relied on by the petitioner, in the case of respondent the evidence has been produced by the workman to show that he was given an interview letter and he was appointed as an Accountant. Though the petitioner has denied such a letter on the ground that there was collusion

between the respondent workman and the signatory of the letter but then who appointed the respondent workman for the alleged contract work for few hours has not been explained nor the contract executed between the petitioner and the respondent has been produced. The ratio of the case relied on by the petitioner is, therefore, apparently distinguishable and not applicable to the case of the respondent workman.

18. The learned counsel for the petitioner has also emphasized on the fact that in the demand letter the reinstatement and back wages has not been claimed by the respondent worker. A reference was made pursuant to the complaint of the respondent workman whether his services had been terminated illegally and/or unjustifiably by the management and if so to what relief the respondent workman is entitled and what directions are necessary in this respect. If the respondent workman had not raised any claim and reference was made de hors the claim of the respondent, the petitioner should have challenged the reference which was not done nor this plea was taken before the Labor Court that the reference is beyond the claim of the respondent. From the claim filed by the petitioner it cannot be inferred that without a demand notice raising the claim, the same will not be maintainable. The learned counsel for the petitioner is also unable to show any provision requiring a notice of demand for reinstatement or back wages before filing the claim pursuant to the

reference made by the appropriate Government. Even on this ground the award dated 18th August, 2007 cannot be set aside.

19. In totality of facts and circumstances there is no manifest error or such perversity which will entitle petitioner for interference by this Court exercising jurisdiction under Article 226 of the Constitution of India against the award dated 18th August, 2007. There are no grounds to interfere in exercise of jurisdiction under Article 226 of the Constitution of India and the writ petition is without any merit and is, therefore, dismissed.

February 12th, 2008
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ANIL KUMAR, J.