

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

+ **WP(C) No.1579/2008**

% Date of decision : February 27th, 2008

Arvind Kumar Petitioner
Through: Mr. Sanjay Ghose , Advocate.

Versus

Campari Export Pvt. Ltd. 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)

1. The petitioner has challenged the award dated 20th November, 2007 declining the claim of the petitioner for reinstatement and back wages.

2. The Secretary (Labour), Government of NCT had made the following reference on 22nd May, 1998 :-

“Whether the services of Sh.Arvind Kumar 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 petitioner has contended that he was engaged as a Sample Man/Flat Operator since 1995 and he was getting the salary of Rs.3,050/- p.m. It was asserted that he was not given any appointment letter and was not provided ESI and PF facilities. Petitioner had become a member of the union of workers leading to management becoming inimical towards the petitioner. His grievance was that he was terminated from service on 20th August, 1997 without notice and without any reason and he has not been paid his earned wages for the month of August, 1997 and has also not been paid overtime wages for the month of July, 1997 and his retrenchment is in violation of Section 25-F of the Industrial Disputes Act, 1947.

4. The claim of the petitioner was contested on the ground that there is no establishment by the name of the management i.e. Campari Exports and there is no relationship of employee and employer between the parties. It was contended that respondent is the sole proprietorship concern engaged in the business of exports.

5. Before the Labour Court, pleadings were filed and evidence was led and on the basis of the same an award has been given which is challenged by the petitioner. The Labor Court considered the fact that workman did not produce any cogent evidence to establish that there is a relationship of employer and employee between the respondent and the petitioner. The workman had produced the gate passes, however, the

same were not duly approved. The Labour Court considered the same and inferred that on the basis of the gate passes, it could not be established that there was relationship of employer and employee. Reliance was placed by the Labor Court on Surendranagar District Panchayat Vs.Dahyabhai Amarsingh, 2005 LLR 1222 and Range Forest Officer Vs.S.T. Hadimani, 2002 FJR 397 to infer that onus to prove the relationship was squarely on the petitioner, however, he has not been able to show or produce any document to establish the relationship of employer and employee. The management has produced the PF file and ESI register from 1993 to 2000 and the name of the Petitioner/workman does not appear there. Though the management did not produce the attendance register, however, neither any plea was taken by the petitioner that the name of the petitioner appears in the attendance register but not in the ESI register between 1993 to 2000 nor any such suggestion was given to the witness of the management. On the preponderance of probability the inference drawn on the basis of the fact that the petitioner failed to produce any cogent evidence to establish the relationship of employer and employee, however, the respondent/management produced the ESI register from 1993 to 2000 which does not have the name of the petitioner, a probable inference has been drawn that there is no relationship of employer and employee between the parties.

6. On the basis of the pleadings and evidence of the parties, no such ground has been shown which will show that the inference drawn by the Labor Court is perverse or there is a manifest error. Learned counsel for the petitioner has contended that the respondent/management had first stated that the record of the attendance shall be produced, however, later on it was stated that the record has been destroyed as it was not mandatory to preserve the record. Learned counsel for the petitioner is unable to show any provision under which the management was liable to preserve the record of the attendance. In any case, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India is not required to draw another inference and substitute the probable inference of the Labour Court drawn on the basis of evidence with its inference.

7. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court should 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. 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. 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.

8. The petitioner has failed to show and perversity or manifest error in the award of the Labor Court impugned by the petitioner nor the award was given in denial of principle of natural justice. In the facts and circumstances, there are no grounds to interfere with the award dated 20th November, 2007.

9. The Writ Petition is, therefore, without any merit and is, accordingly, dismissed.

February 27th, 2008.
'Ravindra'

ANIL KUMAR, J.