

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

+ **WP(C) No.1407/2008**

% **Date of decision : 22.02.2008**

Sh.Pramod Behari Saxena Petitioner
Through: Mr.N.Safaya, Advocate.

Versus

M/s.Boom Exports & Anr Respondents
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 15th November, 2007 holding that there is no relationship of employer and employee between the petitioner and the respondent and consequently there is no question of termination of the petitioner being illegal and so the petitioner is not entitled for any relief.

2. A reference was made to the Labour Court whether the services of Sh.Pramod Behari Saxena @ Sh.Ashok Kumar had been terminated illegally and/or unjustifiably by the management, and if so, to what

relief is he the entitled and what directions are necessary in this respect?

3. The petitioner contended that he was employed by the respondent, M/s Boom Export since September, 1992 as Master/Quality Controller and his last drawn salary was Rs.4000/- per month. He alleged that his services were terminated by the management suddenly in an illegal and unjustified manner without giving him any notice.

4. The petitioner had also contended that on 11th October, 1996 he was deputed to proceed to Ludhiana to fetch the hosiery goods and the truck carrying the goods met with an accident near Rajpura on 12th October, 1996 resulting in serious bodily injuries to the petitioner. It was alleged by the petitioner that no service compensation was paid to him and even his earned wages payment remained due. It was also asserted that even during the service period he was not paid any salary according to his designation.

5. The claim of the petitioner was contested by the respondent contending that there is no relationship of employer and employee and the petitioner was only working as a commission agent for management and for such other companies. It was asserted that the respondent came into existence in June, 1993 and there was no need for person for

the post of quality controller in their trade. It was denied that the petitioner was working since 1992 on a salary of Rs.4000/- per month. Regarding the accident it was admitted that it occurred, however, it was denied that the respondent had deputed him to go to Ludhiana. It was asserted that the petitioner on his own went to Ludhiana in a tempo loaded with goods of respondent and other persons and he was acting as a commission agent on commission basis only. The respondent also pleaded that they had advanced loans on two occasions to the petitioner, firstly on 30th July, 1996 a sum of Rs.50,000/- and secondly on 17th July, 1996 a sum of Rs.45,000/-. Since the petitioner failed to return the amount and thereafter in order to justify non return of this amount, the present claim has been filed. The respondent also contended that a legal notice dated 8th November, 1998 was sent to the petitioner demanding the amount due from him which was never replied.

6. Before the Labour Court petitioner proved the copy of demand notice, copy of postal receipt, copy of complaint, copy of photographs and some other documents. The petitioner examined Sh.Ramesh Jain on his behalf whereas management examined Sh.Kamal Bajaj and also proved other documents.

7. The Labour Court considered all the documents and concluded that no document produced by the petitioner reflects that there is any

relationship of employer and employee between the parties. It was categorically held that from the photographs produced by the petitioner, it cannot be held that there was relationship of employer and employee between the petitioner and the respondent. The oral and documentary evidence was considered in detail by the Labour Court and concluded that even the pleas and contentions raised by the petitioner before the Conciliation Officer and in the claim petition before the Labour Court are contradictory in as much as there is no mention of the accidents mentioned in the claim petition.

8. Relying on the fact that there is not a single document establishing relationship of employer and employee though the petitioner is alleged to have worked for six years and that the petitioner had executed WW.1/M1 which bears the signatures of the petitioner and as it is not the case of the petitioner that the said document has been forged and fabricated where the petitioner has admitted his financial liability towards Sh.Kamal Bajaj, it was held that there is no relationship of employer and employee. Another fact which has been relied on by the Labour Court is that in the cross examination the workman has admitted that on the day he was cross examined he was doing business of supplying goods from various management companies to others. He had also admitted that he is illiterate and does not know what quality control means leading to the inference that the petitioner was not employed as a workman. The witness of the

petitioner was also disbelieved as he did not even know as to exactly what work the petitioner was doing for the management nor any document had been produced by the said witness and he had also failed to produce any document to show that he was also employed with the respondent/management.

9. In the circumstances, taking the preponderance of probability and even considering the fact that the management had also not produced the account books, the inference was drawn that there is no relationship of employer and employee between the petitioner and the respondent. On the basis of the entire evidence the inference drawn by the Labour Court does not suffer from any perversity or manifest error so as to exercise jurisdiction under Article 226 of Constitution of India and to set it aside.

10. 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.

11. 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.”

12. The learned counsel for the petitioner has not been able to make out any such ground which had resulted into denial of any opportunity to the petitioner or violation of principles of natural justice. There is no perversity or manifest error or breach of principles of natural justice so as to entail interference by this Court in exercise of its power under Article 226 of Constitution of India. The writ petition in the facts and circumstances is without any merit and it is dismissed. Parties are, however, left to bear their own cost.

February 22, 2008.
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ANIL KUMAR, J.