

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

+ **Writ Petition (Civil) No.1804/2008**

% Date of Decision : March 05, 2008

Raj Pal Singh (Deceased)
Through his LRs

.....Petitioner

Through : Mr. Rama Shankar,
Advocate

Versus

M/s. Ayodhya Textile Mills & Anr.

....Respondents

Through : Nemo

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

SUDERSHAN KUMAR MISRA, J : (Oral)

1. The petitioner is aggrieved of an award dated 4.5.2006 passed in ID No.5/06/1989 by the Labour Court No.XII, Karkardooma Courts, Delhi. It is the petitioner's case that the decision of the Labour Court to the effect that the workman had failed to prove the fact that he had worked continuously for a period of 240 days in 12 calender months is perverse and has occasioned a failure of justice of a nature warranting interference in the exercise of writ jurisdiction under Article 226 of the Constitution of India by this Court.

2. A reference was made by the Secretary (Labour), Govt. of National Capital Territory for adjudication of a Labour dispute in exercise of power conferred by Section 10(1)(c), 10(1)(d) and 12(5) of the Industrial Disputes Act, 1947 read with the relevant notifications on the subject in the following terms;

“Whether the services of Sh. Rajpal Singh 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?”.

Consequent upon notice being issued by the Labour Court, the management contested the claim by the workman and filed its written statement. There, inter alia, the management took a preliminary objection to the effect that the petitioner/ workman was engaged from time to time for short durations whenever required, and that the workman was engaged for a period of three months in the last instance upto 31st July, 1988, after which the services of the workman came to an end automatically. In other words, the management has categorically denied that the workman had completed 240 days of service in a year as required under Section 25-F of the Industrial Disputes Act. Counsel for the petitioner has stressed on the fact that in disputes raised by another group of workmen concerning the same management; by another award; which was rendered in ID No.277/1993, the Labour Court had concluded that the management had terminated the services of two other employees, namely Bali Ram and Bhagwan, illegally and unjustifiably and they have been held entitled to the relief

of full back wages and other benefits. He states that the case of the petitioner in the instant matter is identical, and that the Labour Court ought to have treated the petitioner on the same footing. He states that the written statement filed in both the cases are similar. There also, the management had alleged that it used to engage those workmen for short periods whenever required. Consequently, if, in one case, the Labour Court had returned a finding that those workmen who happened to be co-workers of the petitioners, were entitled to full back wages, the petitioner should also have been granted the same relief. To my mind, the argument of the learned counsel for the petitioner is too simplistic and cannot stand scrutiny. It is up to a party to raise whatever defence it thinks is appropriate in a given circumstances of a case. It might also raise a similar or identical defence in two different cases. What really matters is whether that party is then able to prove its defence in any of the cases. The facts and circumstances of each case; including the terms and nature of appointment, being unique, it is entirely possible that in one case, the defence taken by the management may be borne out by the evidence that comes on the record whereas in another case, it may fail to prove its defence. If that happens, it is but natural that the outcome of the two cases would be different.

3. Here also, a perusal of the other award in ID No.277/1993 which was rendered by the Labour Court No.III, Karkardooma Courts, Delhi, shows that specific evidence has come before the

Court by way of cross examination of the management witness to establish that the workmen in that case had actually worked for 237½ days and 230 days respectively. It was also found that in addition to these days, the number of days that ought to have been added to this figure in terms of Section 25-B of the Industrial Disputes Act for deciding as to whether the period of 240 days mentioned in Section 25-F of the Industrial Disputes Act has been satisfied, were not included. In those circumstances, it was held that the statements of the management witness which show that the two workmen, Mr. Bali Ram and Sh. Bhagwan had worked for 2½ days and 10 days less, respectively, than the figure of 240 days, were not factually correct. In that case, the Labour Court obviously felt that once the requirement of Section 25-B of the Industrial Disputes Act was complied with and leave on account of sickness, weekly holidays, festival leave, leave with wages, national holidays and days of lock out and lay off, if any, are added to these figures, the figure of 240 days as required under Section 25-F would be satisfied. It was for this reason that the learned Labour Court had concluded that, “the evidence on record is established that both these workmen had worked for a period of more than 240 days in a year with the management.”

4. Averments of the management to the contrary were therefore rejected. Coming to the case at hand, I find that after the reference was received by the Labour Court, the specific issue to the effect, “whether the workman had worked for a

continuous period of 240 days in 12 calendar months?” was framed by the Labour Court. A perusal of the treatment of this issue by the award of the Labour Court shows that here also, the Labour Court has applied itself to all the facts and circumstances that have emerged at the trial. However, the Labour Court has found that the burden to prove that he had worked for 240 days of service in one calendar year is on the workman and it was for the workman to initially discharge this burden. The learned Labour Court also took note of all the decision cited on behalf of the management and in particular the decision in the case of ***Sports Authority of India Vs. Sports Authority of India Kamgar Union & Ors. 2005 LLR 541, Delhi*** as well as ***Jairaj N. Shetty Vs. Union of India 2005 LLR 1095, Bombay***. There, the learned Court has noted that it is primarily for the reason that the onus shifts at different stages upon different parties and that to begin with, the party who claims the existence of a certain set of facts must first discharge the onus placed upon him. This must be done by that party by leading evidence to that effect. Once that is done, the right to rebuttal is open to the party contesting the existence of those facts. This is a normal rule of evidence, general principles of which are applicable to proceedings before the Labour Court also.

5. An examination of the facts pleaded in this case, and in particular, paragraph 22 of the impugned judgment, shows that the workman had placed on record copies of his attendance cards. However, a perusal of these cards for the period

spanning more than 10 years, i.e. from 1978 to 1988, does not demonstrate that the workman had completed 240 days of service in any particular year. This fact is not disputed by counsel for the petitioner. I find that the learned Labour Court has also noted that the petitioner has not been able to explain the reasons for non-production of attendance cards for the remaining period of service which might have shown that the workman had worked for 240 days in each calendar year. In other words, the facts placed on record by the workman do not reach the magic figure of 240 days even if Sundays and other holidays are included in it as per the mandate of Section 25B, as also of various decisions on the subject. In addition, the workman had also specifically stated in his cross examination that he does not remember how many days he had worked in each year with the management. It was for these reasons that the Labour Court concluded that the workman had failed to discharge the onus placed upon him and consequently, the ratio of the decisions relied upon by counsel for the workman were of no assistance. It was in these circumstances that the Labour Court concluded that the workman was not entitled to any relief. In my view, rightly so, as stated by Maxim ***‘Ei incumbit probatio, qui dicit, non qui negat’*** – The proof lies upon him who affirms, not upon him who denies. Under the circumstances, I do not find any perversity or infirmity in the impugned award of a nature that would have occasioned failure of justice warranting of interference under Article 226 of the

Constitution of India.

6. Consequently, the writ petition is dismissed.

Sudershan Kumar Misra, J

March 05, 2008
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