

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

+ **W.P(C) No.1838/2008**

% **Date of decision: 17.03.2008**

M/s.Kalamkari Design Ltd Petitioner
Through: Mr.Ashim Vachher, Advocate.

Versus

Sh.Hareram Paswan 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.

1. The petitioner management has challenged the award dated 21st September, 2007 of Labour Court awarding an amount of Rs.75,000/- as compensation to the workman in lieu of reinstatement and back wages.

2. The Government of NCT of Delhi by order No.F.24(3660)/01/Lab./703-7 dated 14.01.2002 had made the following reference to the Labour Court:-

“Whether the services of Sh.Hare Ram Paswan s/o.Sh.Shiv Bachan Paswan have been terminated illegally and/or unjustifiably by the management, and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect?”

3. The respondent workman had claimed before the Labour Court that he was engaged by the management on 15th July, 1990 and his last drawn wages were Rs.2700/- per month. He contended that he was not granted legal benefits and when he returned after leave on 8th October, 2002, the petitioner without any chargesheet, notice etc. terminated his services from 8th October, 1999. He also alleged that he was not paid the earned wages for the month of August and September, 1999.

4. The claim of the respondent workman was contested on the ground that the Labour Court at Delhi did not have jurisdiction as the management had shifted to Udyog Vihar, Gurgaon in the year 2002. It was alleged that the respondent was irregular in joining duties as he went on leave from 15th February, 1999 to 25th February, 1999 but he did not join thereafter. It is alleged that he again proceeded on leave on

3rd August, 1999 when 10 days leave was granted, however, no intimation was received from him till September, 1999.

5. The petitioner alleged that letters dated 7th September, 1999, 25th September, 1999 and 23rd October, 1999 were sent to the respondent asking him to join the duty and ultimately his name was struck off from the roll of the company with effect from 4th November, 1999 and in the circumstances, it is contended that the respondent/workman voluntarily abandoned his job. The petitioner also relied on the letter dated 25th November, 1999 sent to the Principal Secretary, Delhi Legal Services Authority showing the willingness of the management to take the workman on duty.

6. The Labour Court on the basis of the pleadings and evidence on record held that the management had terminated the job of the respondent on 4th November, 1999. It was admitted that no chargesheet or show cause notice was given to the respondent workman. The plea of the management/petitioner that the respondent was asked to join the services before Delhi Legal Services Authority was rejected on the ground that the management has failed to show anything that the services of the respondent workman could be transferred to Gurgaon or

that the respondent workman had consented to his transfer to Gurgaon from New Delhi.

7. The plea of the petitioner management that the respondent has abandoned the job and the petitioner was entitled to strike off the name of the respondent from the roll was rejected on the ground that no consent was taken from the respondent for his transfer nor there was anything to show that the services could be transferred to Gurgaon and that the account of the workman was not settled at the time of termination of his services on 4th November, 1999. The Labour Court took an adverse inference against the petitioner on account of non production of record of wages for the period claimed by the respondent.

8. This cannot be disputed that none of the letters dated 7th September, 1999, 25th September, 1999 and 23rd October, 1999 were served on the respondent. The address on the envelopes sent by the petitioner was correct, however, they were returned and in the circumstances it cannot be inferred that the respondent did not join the services despite notice to the respondent to come and join the services. The petitioner has not made any allegation that the respondent did not accept the notice and avoided to receive the notice so as not to join the services. If the notices were not served and were returned by the postal

authorities and the address of the respondent was correct, it was for the petitioner to serve the respondent with the notices directing him to join the services. Before terminating his services, the dues of the respondent had to be tendered by the petitioner. In the circumstances the plea of the petitioner that the respondent did not join the services despite due intimation to the respondent/workman cannot be accepted nor it can be inferred that the services of the respondent were terminated validly in the facts and circumstances.

9. The learned counsel for the petitioner has emphatically relied on the fact that the respondent accepted the letter dated 25th November, 1999. Perusal of the copy of the letter dated 25th November, 1999 reveals that this is a letter allegedly written by the petitioner to the Principal Secretary, Delhi Legal Services Authority, Patiala House Courts, New Delhi. The workman is an illiterate person and in the cross examination he had stated that he does not know anything about the said letter. He had denied the suggestion that the management had agreed to take him back by the said letter after he had sought condonation of his fault. Perusal of the deposition of the witness of the management on affidavit also reveals that even this letter dated 25th November, 1999 has not been proved. It cannot be disputed that mere exhibition of a document is not the proof of the document. The

deposition is only that the management had issued the letter to the Principal Secretary, Delhi Legal Services Authority without specifying as to who had signed the letter and how this letter was sent to the Member Secretary, Delhi Legal Services Authority. Merely stating that the management had sent the letter to Delhi Legal Services Authority is not the proof of the said letter dated 25th November, 1999 which was exhibited in the affidavit as MW.1/6.

10. The learned counsel for the petitioner has also relied on (2004) 12 SCC 360, Food Corporation of India Vs. Assam State Cooperative Marketing & Consumer Federation Ltd & Ors to contend that the letters forming part of chain of correspondence and official record which are not objected to by the opposite party should be held to be proved and their contents can be read in evidence. Apparently the judgment relied on by the petitioner is quite distinguishable. In the said case the documents were tendered in evidence without any demur by the defendants and the same came from proper custody and formed part of the official record of the Food Corporation and thus their contents were relied on by the Apex Court. In contradistinction the letter dated 25th November, 1999 is alleged to have been written by the management to the Delhi Legal Services Authority. There is no deposition on behalf of the management as to under whose signatures the said letter was sent

and how the letter was delivered to Delhi Legal Services Authority. The workman who is an illiterate person had denied that letter and had stated that he does not know anything about the said letter dated 25th November, 1999 and had also denied the suggestion that he is aware of the letter dated 25th November, 1999. The petitioner failed to prove the said letter and merely put an exhibit mark. Had the petitioner proved the said letter the same could be relied on. In the facts and circumstances of the case, therefore, it cannot be held that the letter formed the part of the chain of the correspondence and was not denied by the respondent and could be considered. The petitioner in the facts and circumstances is not entitled to rely on the ratio of Food Corporation of India (Supra) of the Supreme Court.

11. Consequently, the reliance on the said letter by the petitioner is of no avail to substantiate the plea that the respondent did not join the services despite intimation to Delhi Legal Services Authority. In the circumstances the findings of the Labour Court that the services of the respondent workman were dispensed with illegally cannot be faulted and there is no such manifest error in the findings of the Labour Court which will entail interference by this Court under Article 226 of the Constitution of India.

12. The findings and inferences of the Tribunal are based on evidence and documents on record and there does not appear to be any manifest errors in them. This court in exercise of its jurisdiction under article 226 of Constitution of India is not to substitute its own inferences with the inferences drawn by the Labor Court. In *(2006) 2 SCC 373* , at page 378 *Govt. of A.P. v. Mohd. Nasrullah Khan* the Supreme court had held:

11. By now it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority.

13. Thus it is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the High 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. Writ court is not to interfere with the orders of an inferior tribunal or subordinate court unless their order 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. In the present facts and circumstances, the learned counsel for the petitioner is unable to point out any such manifest error or denial of principle of natural justice which shall entitle the petitioner for exercise of jurisdiction by this Court under Article 226 of the Constitution of India.

14. The learned counsel for the petitioner had also raised the dispute about the Labour Court at Delhi not having jurisdiction to decide the reference made by the Government of NCT of Delhi on the ground that the management/petitioner had shifted to Udyog Vihar, Gurgaon from New Delhi in 2002. The learned counsel, however, after some argument did not press this ground that the Labour Court did not have jurisdiction to try the reference. In any case the reference was made by the Government of NCT of Delhi and no evidence has been led by the petitioner that the reference could not be made or reference is not valid and on shifting of address of the management the appropriate Government shall not be the Government of NCT of Delhi. No other

ground as been raised by the petitioner assailing the award impugned on behalf of the petitioner.

15. In the facts and circumstances there is no perversity or such error which will entitle the petitioner for interference by this Court under Article 226 of the Constitution of India. The award of the Labour Court cannot be assailed and set aside as has been alleged by the petitioner. The writ petition in the facts and circumstances is without any merit and it is dismissed.

March 17th, 2008
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ANIL KUMAR, J.