

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

+ **WP(C) No.2265/2008**

% **Date of decision : 24.03.2008**

Sh.Pradeep Kumar Petitioner
Through: Mr.A.K.Jain, Advocate.

Versus

Chaman Prakash & 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 management has impugned the award dated 26th July, 2007 holding that the services of the workman were terminated illegally and unjustifiably and awarding an amount of Rs.85,000/- to the workman/respondent in lieu of reinstatement and back wages.

2. The respondent/workman had filed a claim pursuant to the reference made by the appropriate Governments in the following terms:-

“Whether the services of Sh.Chaman Prakash s/o.Hira Lal 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 workman contended that he was working as a cutting machine man since May, 2000 and his last drawn salary was Rs.2750/- per month. He asserted that he was not given legal benefits according to his entitlement and when he demanded the same, the management terminated his service on 14th April, 2001 without following due process of law. It was also asserted that his salary for February, 2001 to 14th April, 2001 was not paid fully and he was just given a sum of Rs.2000/-. The respondent workman also contended that he has remained unemployed since the termination of his service on 14th April, 2001.

4. The claim was contested by the petitioner contending that the respondent was never employed by the petitioner as the petitioner management did not exist in May, 2000 and the petitioner firm was started in February, 2001 as the petitioner Pradeep, proprietor of the firm was earlier an employee of Punjab National Bank and he took voluntary retirement on 24th December, 2000. It was alleged by the petitioner that his brother Sh.Kuldeep Kumar was using the space where the petitioner firm was started subsequently and Sh.Kuldeep Kumar remained in possession till the end of 2000.

5. The respondent and another co worker Sh.Suresh Kumar were examined before the Labor Court. Sh.Suresh Kumar, co worker categorically deposed that the respondent joined the service in first or second week of May, 2000 and he himself had been working since Jan, 2000.

6. The Labour Court had held considering the evidence and the documents produced by the parties that the respondent was employed by the petitioner. The Labour Court considered the fact that the statement of the respondent and the co worker that they had been employed since 2000 was not challenged at all in the cross examination by the petitioner/management.

7. The Labour Court has held the relationship between the employer and employee also on account of contradictory pleas taken by the petitioner. In the written statement the plea of the petitioner was that there is no relationship of employer and employee between him and the respondent. However, he admitted in the cross examination that in the reply filed by him under his signatures to the Deputy Labour Commissioner, his stand was that the respondent was not his regular employee, but used to come as part timer with other part time employee namely, Arun Kumar. The petitioner also admitted that the respondent used to be paid Rs.2750/- per month as salary and he was working as a helper and also that he worked till 12th April, 2001. The petitioner also contradicted himself in his cross examination and he contended that Arun Kumar who was described as a part time employee was admitted to be a regular employee. However, Arun Kumar when he appeared as a witness deposed that he was not the employee of the petitioner but of another firm M/s Metro Packaging from 1998 to 2001 which firm was owned by the brother of the petitioner. The reliance was also placed on a reply exhibit WW.1/7 which was, however, denied by the petitioner.

8. Relying on pleadings and evidence and the facts established, the Labor Court inferred that the reply exhibit WW 1/7 was by the petitioner which stipulated that the respondent had been working with him for six months on a monthly salary of Rs.2750/- as helper machine man and he had not been reporting on duties since 14th April, 2001. With all these evidence it was inferred by the Labour Court that the respondent was an employee of the petitioner.

9. The petitioner had contended that he was in employment with the Punjab National Bank and he took voluntary retirement in December, 2000 and, therefore, the petitioner was not carrying on any work where the respondent could be employed. The plea of the petitioner was rejected on the ground that voluntary retirement by the petitioner in December, 2000 does not prove conclusively the business being not carried on by the petitioner prior to January, 2001. On the basis of the voluntary retirement of the petitioner in December, 2000 it could not be inferred that he was not carrying on business when he was working with the PNB. The reliance was also placed on the statement given by the witnesses of the petitioner management, MW4 who admitted in his cross examination that he was getting the work done from the petitioner even 7 to 8 years back and no bill was issued to him. The statement of MW4 was recorded

in 2005 which reflects that the petitioner was undertaking printing work even in 1997-98. The Labour Court also relied on the fact that Pradeep Kumar, proprietor of the petitioner/management and Sh. Kuldeep Kumar are real brothers and no evidence has been produced by the petitioner to show that his brother was carrying on business separately under the name and style of M/s Metro Packaging. Rather it has been admitted that earlier business was carried on by the brother from the same premises. On the preponderance of probability from the evidence led by the parties and the documents proved, the inference drawn that the respondent was an employee of the petitioner does not have any such manifest error which will entail interference by this Court under Article 226 of the Constitution of India.

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. 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 findings and inferences of the Labor Court are based on evidence and documents on record and there does not appear to be any manifest errors in them. 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. The findings and inferences of the Labor Court 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 the inferences drawn by the Labor Court with its own inferences. 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.

11. In the circumstances there are no grounds made out by the learned counsel for the petitioner showing any perversity or manifest error in the award dated 26th July, 2007 holding that the respondent was an employee of the petitioner and his services were illegally terminated and consequently, granting an amount of Rs.85,000/- as compensation to the respondent in lieu of reinstatement and his back wages etc.

12. The writ petition in the facts and circumstances is without any merit and is liable to be dismissed. The Writ petition is therefore, dismissed. All the pending applications are also disposed of.

March 24th, 2008.
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ANIL KUMAR, J.