

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

+ **W.P(C) No.19223/2006**

% **Date of decision: 19.03.2008**

Shri Raj Kumar Petitioner
Through: Mr.Awadhesh Kumar, Advocate.

Versus

M/s.G.L.G. Supreme Masala
(Guljari Lal & Sons) Respondent
Through: Nemo.

CORAM :-

HON'BLE MR. JUSTICE ANIL KUMAR

- | | |
|--|-----|
| 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 20th August, 2005 dismissing the claim of the petitioner that he was terminated illegally and unjustifiably on the ground that the petitioner failed to prove that he had worked with the management for more than 240 days of continuous service.

2. The petitioner had raised an industrial dispute against the respondent that his services were terminated illegally and pursuant to industrial dispute being raised by the petitioner, the appropriate government made a reference under Section 10(1)(c) and 12(5) of the Industrial Disputes Act, 1947 by order dated 30th September, 2003. The following reference was made:

“Whether the services of Sh.Raj Kumar S/o Illam Chand 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 alleged that he was in the services of the management since 1982 as a “Foreman” and his last drawn salary was Rs.4,600/- per month and he was illegally terminated by the management on 16th July, 2002.

4. No one appeared on behalf of respondent/management and consequently the respondent was proceeded ex parte.

5. The Labour Court held that though the petitioner filed his evidence on affidavit and also exhibited documents Ex.WW1/1 to Ex.WW1/7, however, none of the documents filed by the workman showed that the petitioner worked for more than 240 days in a year.

6. The learned Labour Court relying on the judgment of the Supreme Court in *The Range Forest Officer v. S T Hardimani*, (2002) 3 SCC 25, held that the onus was on the petitioner to prove that he worked for more than 240 days in one calendar year preceding his termination and, therefore, it could not be inferred that the services of the petitioner were terminated illegally and, therefore, dismissed the reference, however, the petitioner was granted a sum of Rs.15,000/- as cost of litigation.

7. The petitioner has impugned the award dated 20th August, 2005 and even in the writ petition, the respondent/management had not appeared despite service and was proceeded ex parte on 14th November, 2007. The learned counsel for the petitioner has contended that after terminating the services illegally on 16th July, 2002, and after the award dated 20th August, 2005, the workman has since been again employed by the respondent. Learned counsel for the petitioner, in the circumstances, prayed for the back wages only.

8. From a perusal of the evidence of the petitioner and the documents, copies of which have been produced by the petitioner, it appears that none of the documents produced by the petitioner show that the petitioner has worked for more than 240 days in a calendar year preceding his termination. On the basis of a letter dated 25th

August, 1999 by the management to the Employee State Corporation and the identity card of the petitioner, it cannot be inferred that the petitioner had worked for more than 240 days in a calendar year preceding the date of his termination so as to infer that the alleged termination is in violation of Section 25 F of Industrial Disputes Act, 1947. The Apex Court in *Range Forest Officer v. S.T. Hadimani*, (2002) 3 SCC 25, at page 25 had held as under :

“.....In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside.

9. If the claim of the petitioner was that he worked for 240 days in a year preceding his termination, it was for the petitioner to lead adequate evidence and an affidavit only in support of this contentions will not be sufficient. Learned counsel for the petitioner is unable to show any evidence on the basis of which it can be inferred that the petitioner worked for more than 240 days in a calendar year preceding date of termination of the petitioner.

10. The findings and inferences of the Labor Court are based on lack of evidence on the part of the petitioner 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 as drawn on the basis of material on record. 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. 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 to 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.

12. The finding of the Labor Court that the petitioner has failed to show that he worked for 240 days in the year preceding his termination does not have any manifest error as the Learned counsel is unable to show any evidence on the basis of which it can be inferred that the petitioner worked for 240 days in the year preceding his termination. In the circumstances, there is no manifest error or an error apparent in the award dated 20th August, 2005 so as to exercise jurisdiction under Article 226 of the Constitution of India against the award dated 20th August, 2005 impugned by the petitioner. The writ petition in the facts and circumstances is without any merit and is, therefore, dismissed.

March 19th , 2008.
'Dev'

ANIL KUMAR, J.