

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : January 7th, 2008

WP(C) No.9/2008

Rajendras (India) Ltd. PETITIONER
! Through: Mr.Rajesh Aggarwal, Advocate

Versus

\$ Sageer Ahmed 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. (Oral)

1. This matter was listed on 4th January, 2008 when after some arguments it was observed that there are no grounds to interfere with the order of the Labour Court where after the counsel for the petitioner sought transfer of the case on the ground that another case being CS(OS) No.283/2004 was transferred before some other Bench. It was observed that there are no grounds to list the matter before any other Bench especially once this court had partially given its mind that there are no ground to interfere with the order. The Counsel for the petitioner, thereafter, had sought adjournment and the matter

was adjourned for today.

2. Today again the counsel for the petitioner has sought that the matter be transferred to some other bench which is declined in the present facts and circumstances and the matter is taken up for hearing.

3. The petitioner has impugned the award dated 22nd August, 2007 awarding an amount of Rs.5 lakh to the workman in lieu of reinstatement, continuity of service and all other legal benefits.

4. On the application of the respondent reference was made under the Industrial Disputes Act so as to determine whether the services of the respondent had been terminated illegally and/or unjustifiably by the petitioner, and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/Government notifications and as to what other relief the respondent is entitled.

5. Respondent had contended that he was appointed as a Driver and he had been working for four years and his last drawn salary was Rs.6,600/- per month. He contended that he continuously worked without any break. The respondent's plea was that he was not provided any legal benefits, such as, leave book, attendance card,

appointment letter, identity card, ESI, annual increments, earned leave, casual leave, weekly holidays, festival holidays, bonus, over time etc. despite the demands made to the petitioner and he was not paid the salary even for the month of November 2001. According to the respondent, the management had been changing the name of the firm after every one year such as, M/s.Rajendra Estates Management company, M/s.Indus Valley Information Systems Pvt. Ltd. etc. The respondent contended that he worked from 14th February, 1998 to 31st March, 1999 with the petitioner under the name and style of M/s.Rajendra Singh management Company and thereafter from 1st April, 1999 to 30th November, 1999 with the petitioner under the name of M/s.Indus Valley Information Systems Pvt. Ltd. According to him, no transfer letters were ever issued to him. The respondent alleged that he was beaten up on 23rd November, 2001 and he was made to sign some blank papers and on 24th November, 2001 he was not allowed to join duties and his service was terminated.

6. The petitioner refuted the claim of the respondent contending inter alia that he is not a workman as defined under Section 2(s) of the Industrial Disputes Act and the respondent failed to report for duty upon his transfer to Kanpur office of the company. According to the petitioner, he was appointed as a Supervisor in Rajendra Group of Companies and he was issued appointment letter for the same. It was also alleged that though he was appointed as a Supervisor, he used to

drive vehicles of the company for his personal use or some urgent work of the company as he knew driving well.

7. On the basis of the pleadings of the parties, issues were framed – whether claimant is a workman within the meaning of Section 2(s) of the Industrial Act and whether claimant himself abandoned his job by not reporting for duty to his place of transfer at Kanpur?

8. The Labour Court after detailed consideration of the evidence on record and deposition of the claimant/ respondent and the petitioner held that the respondent is a workman. The Labour court relied on the cross-examination of management's witness, Shri Ravinder Singh, admitting that the respondent had no powers to sanction leave or to give appointment letters to anybody and also relied on various documents including documents which were exhibited as Ex.WW1/18 and WW1/16-20. It has been noted that the burden to prove that the respondent is not covered within the category of workman, was on the petitioner. To prove that the respondent was not workman, the petitioner management relied on the copy of the appointment letter which has been dis-believed by the Court. While dis-believing the appointment letter, the Labor court relied on the fact that the designation of the respondent was not mentioned nor the name of the company was given and it appeared that part of the appointment letter had been filled later on.

Mr. Ravinder Singh, sole witness, was examined on behalf of the management who is merely a Record Keeper, though there is a Board of Directors in the management of the company, however, only the evidence of a Record Keeper was adduced on behalf of the petitioner. The record keeper of the petitioner did not have any authorization letter nor he could produce any resolution passed by the Board of management for giving evidence on behalf of the petitioner and, therefore, it was held that the competence of the witness even to depose on behalf of the petitioner was not established. The documents, Ex.WW1/17 to WW1/20 and WW1/18 and other documents have been considered in detail and on the basis of the same, it has been inferred that the respondent used to drive the vehicles and also used to get them repaired and he was not a Supervisor. The Labour Court considered the evidence that the respondent had no power to sanction leave or to give appointment to any one and though he was employed in Rajendra Group of Companies comprising of many companies but he was not given appointment in any specific company. Reliance was placed on the ratio of Ananda Bazar Patrika (P) Ltd. Vs. The Workmen, (1970) 3 SCC 248 and S.K. Maini Vs. M/s. Carona Sahu Co. Ltd., (1994) 3 SCC 510 to infer whether the respondent is a workman or not. The inference of the Labour court is also that the appointment letter was got signed from the respondent no.2, before it was filled up by the management and, therefore, in absence of any authentic document or any evidence

of a responsible person on behalf of the petitioner, no inference could be drawn that the respondent was appointed on a supervisory post and he is not a workman. It has also been noted that in the cross-examination of the workman/respondent not a single question had been put to him regarding the actual duties performed by him. Based on all this evidence and reason, the inference was drawn that the respondent is a workman.

9. While exercising its powers of judicial review under Article [226](#) of the Constitution of India this Court ought 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 should not interfere with factual findings of the lower courts and should 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 of 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.

10. The finding of the Court below that the respondent is not a workman has been arrived at after due consideration of evidence on record and lacunas on the part of the petitioner. On the basis of pleas of the parties and the evidence, the inference that the respondent is not a workman, is not possible. In any case this Court, in exercise of its extraordinary jurisdiction, cannot interfere with the findings of facts of the court below only on the ground that two views are possible, and cannot substitute its own views with the views of the labour court. In the present case, after appreciating the evidence on the record and perusing the documents produced by the parties, the Court has held that the respondent is a workman. The finding that the respondent is a workman as contemplated under Section 2(s) of the Industrial Disputes Act does not suffer from any perversity or any other such manifest error which will entail interference by this Court under the Article 226 of the Constitution of India.

11. Regarding the contention of the petitioner that respondent workman had himself abandoned the job by not reporting for duty upon his transfer to Kanpur Office which was vehemently denied by the workman and considering all the documents produced by the management upto MW1/12, which do not show that the respondent remained absent from duty, it has been inferred that the respondent has not abandoned the work. While drawing this inference against the petitioner, the adverse inference was also taken against the petitioner company as the basic piece of evidence, i.e., attendance register in possession of the management which could throw light on the controversy had been withheld. Learned counsel for the petitioner has emphatically relied on various letters dated 9th February, 2002; 16th March, 2002 and 28th March, 2002 to contend that respondent was given the offer to attend the duties but he refused to do so. Perusal of the copies of these letters produced by the petitioner reflects that they are all conditional letters where respondent was asked to resume services or to pay amount equivalent to three months salary and to render balance of imprest account and thereafter, the respondent was asked to report for duty at Kanpur Office though he was not issued any transfer letter. There is no specific communication to the respondent to attend the duties at his place of work. All the demands to resume the duties are conditional which could not be accepted by the respondent.

12. Learned counsel for the petitioner has also contended that the respondent had been given an offer before the Conciliation Officer as well as in the present petition to attend the duties. The reliance has been placed on the undated written agreement, a copy of which has been filed along with the petition at page 160, stipulating that the petitioner has always shown its readiness and willingness and offered the claimant to join the duties if he wishes so. Even in the said offer, it has not been clarified whether the respondent had to join the duties at the Kanpur Office, where he was never transferred or at his old work place from where he was not allowed to work and whether the conditions which were claimed for joining the duties in various letters had to be complied by the respondent before joining the duties or not. Reliance has also been placed on para 20 stipulating that the petitioner has always been ready and willing to make the respondent work for the petitioner's company which is equally vague. In the circumstances, the findings of the Labor Court that the workman had not abandoned his job does not suffer from any such perversity or manifest error which will entail interference by this Court under the Article 226 of the Constitution of India.

13. The Labour Court has not granted reinstatement to the workman but has granted a sum of Rs.5.00 lakh only in lieu of reinstatement, continuity of service and all other legal benefits and the same does not suffer from any illegality or perversity. Learned

counsel for the petitioner is unable to point out any perversity or manifest error or violation of principle of natural justice so as to entail interference by this court and it is not for the High Court to re-appreciate the findings of facts and substitute the view of the Labor Court with its own view in the present facts and circumstances.

14. Learned counsel for the petitioner had relied on Allahabad Jal Sansthan vs. Daya Shankar Rai and Another, (2005) 5 SCC 124 which is rather against the plea advanced by the petitioner himself. In Allahabad Jal Sansthan (*supra*), the Court was pleased to grant 50% of the back wages to the workman in the interest of justice though the workman had not raised any plea or adduced any evidence to the effect that he remained unemployed throughout. In contra distinction in the present facts the workman has categorically contended that he has remained unemployed which fact has not been refuted by the petitioner as there is no cross-examination of the workman on this aspect nor any evidence has been led that the workman has been gainfully employed. The reliance was also placed by the petitioner's counsel on Kendriya Vidyalaya Sangathan and Another vs. S.C.Sharma, (2005) 2 SCC 363 to contend that the onus was on the workman to prove that he remained unemployed. Perusal of the pleas and the evidence adduced by the workman, reflects that a specific plea has been raised by the respondent/workman that he remained unemployed and he has also deposed about the same which facts has

not been refuted in the cross-examination of the workman by the petitioner. Consequently it is inevitable to infer that the workman discharged his burden and thereafter the onus was on the petitioner management which it failed to discharge. In the circumstances, the workman who has been without any employment since 2001 and who has been awarded only Rs.5.00 lakh in lieu of reinstatement and continuity of services and other legal benefits, cannot be construed to be excessive or perverse so as to be interfered with by this Court.

15. There are no grounds to interfere with the order of the Labor Court in the facts and circumstances and the writ petition is without any merit and it is dismissed.

January 7, 2008
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ANIL KUMAR, J.