

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : January 8th, 2008

WP(C) No.105/2008

Shri Inder Singh PETITIONER
! Through: Ms. Deepti Kathpalia, Advocate

Versus

\$ Sub Divisional Officer & Another 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. (Oral)

1. The petitioner has impugned the order dated 15th May, 2007 dismissing the claim of the petitioner for reinstatement with full back wages and all other consequent benefits.

2. The petitioner contended that he was employed with Sub Divisional Officer (Telephone), Bhartiya Sanchar Nigam Limited, Narwana, Jind (Haryana), since 1991-1992 as regular welder and he has regularly worked up to 28th February, 2002 and his last drawn

wages were Rs.1500/- per month.

3. The petitioner further contended that he was not given any legal facilities and when he demanded the same, he was illegally terminated from the services of respondent on 1st March, 2002 without any information or compensation and notice. The petitioner contended that even pay has not been paid to him. According to him, he visited the office of respondent on various occasions for joining his duties but the respondent mis-behaved with the petitioner and refused to take him on duty.

4. It was further contended by the petitioner that he is unemployed since his illegal termination and he has no source of income to maintain himself and his family members and in the circumstances the applicant prayed for his reinstatement and back wages with 18% interest.

5. The management contested the petition contending that the petitioner was never appointed by the respondent No.1 and therefore there could not be termination by the respondent No.1. The respondent No.1 specifically relied on the fact that no documents were filed by the petitioner to show that he was ever employed by the respondent No.1.

6. The Tribunal has considered the pleas and evidence of the parties and the documents produced. The Tribunal concluded that though the petitioner contended that he worked for 12 years from 1991-1992 upto 28th February, 2002, however, he has not produced any document to show that he was employed by respondent No.1. Though the petitioner had alleged that he worked under two persons, but those persons, Mr.Dhillan and Mr.Tara Chand appeared as witnesses of the respondent and denied that the petitioner ever worked as an employee of the respondents under them.

7. The Tribunal also noted that the alleged identity card produced by the petitioner had interpolations and cuttings and it also did not bear the seal of respondent No.1. Therefore, on the basis of cogent reasons held that the petitioner was not the employee of the respondents and it could not be inferred otherwise. The Tribunal also relied on the statement of the workman/petitioner that he was given employment by Shri Jai Prakash, Hon'ble Member of Parliament of the area.

8. The petitioner/applicant seems to have demanded some documents from the respondent, however, without giving any specific particulars of the documents. The respondents were not expected to

produce all the documents and records for the petitioner to go through them and find any alleged document. In the circumstances, Tribunal inferred that no evidence to show that the petitioner was gainfully employed with respondent No.1 and consequently there could not be wrongful termination and in the circumstances the petitioner was held to be not entitled for reinstatement and full back wages.

9. Learned counsel for the petitioner has relied on AIR 1977 Calcutta 7, Raipada Pramanik vs. The State of West Bengal; 2000 Lab. I.C. 1495, Indian Overseas Bank vs. I.O.B. Staff Canteen Workers' Union and another and Gopal Krishanji Ketkar vs. Mahomed Haji Latif & Others, (1963) 3 SCR 862 to contend that it was for the respondent to produce the documents. In Raipada Pramanik (supra), the suit for money for the work done was filed and it was established that Sub Divisional Controller, Food and Supplies, had been duly authorized to enter into contract on behalf of Governor by the District Magistrate. It was further held that when any fact is within the knowledge of any person, the burden of proving that fact is upon him. In the present case, the plea of the respondents is that the petitioner was not employed with them whereas the case of the petitioner is that he was employed with the respondent No.1 from 1991-1992 to 2002, in the circumstances, it was for the petitioner to

produce and prove the appropriate documents so that it could be established that he was employed by respondent No.1. If any particular documents were not with the petitioner, he could have asked for the production of same. But he could not ask for production of entire record, so that the petitioner could go through that. The ratio of the judgment relied on by the petitioner, therefore, does not support his plea and contention.

10. In Gopal Krishnaji Ketkar (supra), it was held that if important documentary evidence is withheld, the technical plea of onus of proof cannot prevent adverse inference. Apparently all the precedents relied on by the petitioner are distinguishable. In Bhavnagar University v. Palitana Sugar Mills Pvt Ltd (2003) 2 SC 111 (vide para 59), the Supreme observed:-

" It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

In Ambica Quarry Works v. State of Gujarat and Ors. MANU/SC/0049/1986 the Supreme Court observed:-

"The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

11. In the present case, it was for the petitioner to establish that he was employed with respondent No.1 as the petitioner had contended that he had been in employment of the respondent no.1 since 1991 and therefore, it was for the petitioner to establish that. The respondent no.1 had contended that the petitioner was never employed by them. In the circumstances, it could not be inferred that the respondents had withheld the best evidence from the Tribunal, as the case of the respondents is that the petitioner was never employed by them and, therefore, there could not be termination of the petitioner.

12. In *Indian Overseas Bank (supra)*, it was held that for assessing the relationship of master and servant, no straight jacket formula can be laid down. The Supreme Court rather, in this case, also held that inference drawn by the Tribunal and the finding of facts given are not to be interfered by the High Court under Article 226 of the Constitution of India. 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. 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. 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.

13. In the present case, the finding of the fact arrived at by the Tribunal is that the petitioner was never employed by respondent No.1 as nothing has been produced by the petitioner.

14. In the circumstances, there is no perversity or apparent mistake or violation of principles of natural justice in any manner so as to entail inference by this Court. The writ petition is, therefore, without any merit and it is dismissed.

January 08, 2008
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ANIL KUMAR, J.