

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

+ **Writ Petition (Civil) No.775/2009**

Date of Decision : 09.04.2009

J.B.EXPORTS LTD.

.....Petitioner
Through : Mr.Piyush Sharma,
Advocate.

Versus

AKHILESH KUMAR

..... Respondent
Through : Nemo.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J. (Oral)

1. The petitioner in the present writ petition has challenged the award dated 12th March, 2008 passed by the learned Labour Court-I in ID No.927/2001 in case titled Sh.Akhilesh Kumar Vs. M/s J.B.Exports Ltd.

2. By virtue of the aforesaid award, the learned Labour Court has answered the reference made to it that the services of Sh.Akhilesh Kumar have been terminated illegally and unjustifiably, however, instead of directing the reinstatement and payment of back wages, the learned Labour Court granted one time compensation of Rs.80,000/- to Sh.Akhilesh Kumar. It was directed that the petitioner/Management shall pay the aforesaid

amount of Rs.80,000/- within two months from the date of publication of the award failing which the respondent /workman shall be entitled to interest on the aforesaid amount @ 8% per annum from the date of publication till the actual realization of the amount.

3. The petitioner feeling aggrieved by the aforesaid impugned award has challenged the same by filing the present writ petition.

4. In the present writ petition, the petitioner has challenged the award on the ground that the respondent /workman has not completed 240 days of service and he has not discharged the onus of proving that not only he has the requisite number of days of service but also established the relationship of the employer and employee between the parties. It was stated in the writ petition that the respondent /workman was temporary employed for a fixed period from 13.11.2000 to 12.12.2000 and this small period of engagement of the respondent /workman did not entail the compliance with the provisions of the Labour Laws.

5. I have gone through the record carefully.

6. One of the grounds of challenge in the writ petition to the impugned award is that the learned Labour Court has grossly erred by not compelling the respondent /workman to discharge the onus of proving that he has worked with the petitioner/Management for 240 days which would only bring him within the definition of the word 'workman' given under Section 2(S) of the Industrial Disputes Act, 1947 so as to entail

compliance of Section 25(F) of the Act. It was contended that the learned Labour Court has only placed reliance on the statement of the respondent /workman in giving such a finding. Learned counsel earlier had cited two judgments titled ***Rannip Nagar Palika Vs. Babuji Gabhaji Thakore & Ors.*** (2007) 13 SCC 343 and ***Surendranagar District Panchayat Vs. Dahyabhai Amarsinh*** (2005) 8 SCC 750 in support of his point. In both these judgments, the Apex Court has held that burden of proof lies on the workman to establish that there exists a relationship of the employee and employer between the parties and the fact that the workman has continuously put in 240 days of service with the employer before he can said to be a workman. For this purpose, the respondent /workman may prove the receipts of salary or wages, record of his appointment or engagement for the year or even by examination of his co-worker.

7. I have gone through the judgments cited on behalf of the petitioner.

8. There is no dispute that before the respondent/workman is given any benefit of the Labour Laws or before holding that the termination of services of a given employee was in violation of the Industrial Disputes Act, the respondent/workman must discharge the onus which is squarely on him to establish that he has worked for 240 days or that there exists a relationship of employee and employer between the parties. This positive finding must be recorded as a finding of fact by the learned Labour Court after examining and analyzing the evidence produced by the respective sides. However, it

is not always possible to adduce the documentary evidence in the form of documents like letter of appointment, co-worker, register maintained by the employer in all the cases. There can be no straight jacket formula involved in establishing that relationship. It is a question of appreciation of evidence which the learned Labour Court is expected to perform after analyzing the evidence.

9. Coming back to the facts of the present case are that the learned Labour Court has given a categorical finding on the basis of the affidavit and the document adduced by the workman Ex.WW1/1 to Ex.WW1/7 that the respondent /workman has worked from 1997 till 2000 with the petitioner /management. He has also proved vouchers, challan/bills which are Ex.WW1/8 to Ex.WW1/14. With regard to the first set of documents, the learned Labour Court has also observed that the management has not cross examined the witness. On the aforesaid proof having been provided, the onus had shifted on to the management to establish that the respondent /workman was not their employee or that he had not served them for 240 days as was claimed by them. The petitioner /Management miserably failed to do this. Accordingly, on the basis of the respective evidence, the learned Labour Court came to a finding that there exists a relationship of an employee and employer between the parties. Since there is a categorical finding that the respondent /workman had been employed with the petitioner /Management from 1997 to 2000, obviously he has served for more than 240 days in a calendar year which is one of the pre-requisites. The learned Labour Court has also held that there has been violation of non-compliance of Section 25(F) of the Industrial Disputes Act. I, accordingly, find the judgments relied upon by the

petitioner/Management are of no help to the petitioner. Therefore, there is a clear cut finding that there exists a relationship of the employer and employee between the parties and there is no illegality, infirmity and violation of any rule or regulation by the Labour Court in arriving at such a finding.

10. With regard to the quantum of compensation, the learned Labour Court has given a sum of Rs.80,000/- as one time compensation to the respondent /workman instead of directing reinstatement and payment of back wages. This aspect of the matter has not been challenged by the petitioner that the quantum of compensation is on the higher side nor as the respondent /workman challenged the same. Therefore, I uphold the quantum of compensation fixed by the learned Labour Court also in favour of the respondent /workman and against the petitioner /management.

11. For the reasons mentioned above, I am of the considered opinion that there is no merit in the present writ petition and the same is accordingly, dismissed in limine.

File be consigned to the Record Room.

V.K. SHALI, J.

APRIL 9, 2009
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