

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

+ **W.P.(C) NO. 8252/2009**
Date of Decision: 17.04.2009

%

Shri Chander Sain & Ors. Petitioners

Through : Mr. K.K. Tyagi, Advocate

Versus

M/s J.B. Garments Respondent

Through : Nemo

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

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

V. K. SHALI, J. (Oral)

*

1. The petitioners in the instant writ petition have assailed the award dated 17th October, 2008 passed by the learned Labour Court No.-IX in ID No. 310/2003 in the case titled Sh. Chander Sain & Ors. Vs. M/s J.B. Garments.

2. By virtue of the aforesaid award, the learned Labour Court had come to the finding that the petitioners/workmen have miserably failed to establish relationship of employer and employees between the parties and accordingly, the reference of the appropriate government whether the services of workman as per Annexure 'A' have been terminated by the management illegally and/or unjustifiably and if so, to what relief

are they entitled and what directions are necessary in this respect was answered in negative.

3. That briefly stated the case of the petitioners is that the petition had involved 13 workmen on whom a reference was sought from the appropriate government as to whether their services were terminated on 17th February, 2002 as the petitioners/workmen had demanded various facilities from the respondent/management. The respondent/management contested the statement of claim of the petitioners and on the basis of the pleadings of the parties, the following three issues were framed:

- (i) Whether there is no relationship of employer and employees between the parties.
- (ii) As per terms of reference.
- (iii) Relief.

4. With regard to the issue No.1, the parties adduced their respective evidence. The learned Labour Court after analyzing the evidence came to a finding that the petitioners were not able to establish the relationship of employer and employee between the parties. This was so held by the learned Labour Court on account of the fact that petitioners had not produced any documentary evidence in the shape of wage slip, appointment letter, etc. in order to establish their relationship of employer and employee. On the contrary, the workmen in their cross-examination had admitted that they did not have any proof with regard to their employment with the management. The documents which were proved by the workmen were complaints

Exhibits WW1/1, WW1/2 WW1/3, WW1/4 and WW1/5. These complaints were made by the petitioners/workmen to the DCP (East)/Police Authorities regarding the harassment meted out to them by the respondent/management.

5. The learned Labour Court on the basis of the judgment of the Hon'ble Supreme Court in the case titled ***Workmen of Neelgiri Co-operative Marketing Society Ltd. Vs. State of Tamil Nadu and Ors*** **2004 LLR 351 SC** held that it was primarily the responsibility of the workmen to establish the relationship of employer and employee between the parties and no adverse inference could be drawn against them on account of non-production of any document by the management.

6. It has been contended by the learned counsel for the petitioners/workmen that this finding of the learned Labour Court is totally perverse inasmuch as the learned Labour Court has not referred to the report of the Conciliation Officer wherein Mr. Santosh Kumar, a representative of the management has accepted that all the petitioners are their employees and therefore, on the basis of this, the relationship of the parties is established. It was also contended by the learned counsel for the petitioners that undoubtedly it has come in the evidence that the petitioners/workmen were piece-rated workers and as per the definition of the 'employee' in the Delhi Shops and Establishment Act, 1954, the word 'employee' would also include any person who is doing permanent, periodical, contact, piece-rated or commission basis work.

Section 7 sub-section (2) of Delhi Shops and Establishment Act, 1954 defines an employee as under:

“Employee means a person wholly or principally employed whether directly or otherwise and whether for wages (payable or permanent, periodically, contract, piece rate or commission basis) or other consideration about the business of an Establishment and includes as an apprentice and any person employed in a factory but not governed by factories Act. And for the purpose of any matter regulated by this Act also includes a person discharge or dismissed whose claims have not been settled in accordance with this Act.”

7. Reliance is also sought to be placed by the learned counsel for the petitioner on the case titled ***Silver Jubilee Tailoring House & Ors Vs. Chief Inspector of Shops and Establishments*** 1973 (FLR) SC 350.

8. I have gone through the authorities cited as well as the definition of word ‘employee’. There is no dispute about the fact that primarily the onus is on the petitioners/workmen to establish that there exists a relationship of employer and employees between the parties. No presumption on this score can be drawn. The said relationship of employer and employees can be established by the petitioners only by a positive evidence like letter of appointment, wage slip or contribution which is made from the salary/wage of the workmen to ESI to the Provident Fund Commissioner. In the instant case, none of such documents or proofs has been produced by the petitioners. The petitioners have not examined any co-workers who would have testified in their favour.

9. On the contrary, all the workmen, who have testified on affidavits and have been cross examined, they had admitted in their cross

examination that they were not in a position to produce any document to establish the relationship of employer and employees between the parties. The documents which have been adduced by the petitioners are the complaints purported to have been made by the petitioners to the police authorities. These complaints which are made by the petitioners to the police authorities can hardly be said to be documents to establish the relationship of employer and employees between the parties. They are in the nature of self-serving documents. These documents at best can only show the contemporaneous conduct of a party in law in the given facts and circumstances of a case and these documents can hardly be of any assistance to the petitioners to discharge that initial onus to establish the relationship of employer and employees between the parties which lies squarely on the petitioners. Since the initial onus to establish the relationship of employer and employees between the parties has not been discharged by the petitioners, consequently the said onus never got shifted on to the respondent/management to establish the fact that there existed no relationship of employer and employees between the parties. Reliance in this regard is being placed on the following judgments of the Hon'ble Supreme Court :

Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of Tamil Nadu 2004(2) SCALE 311 and ***Kanpur Electricity Supply Co. Ltd. Vs. Shamim Mirza*** 2008(4) SCALE 604.

10. The learned Labour Court has also rightly analysed the evidence and come to a finding of fact that the petitioners/workmen have failed

to establish the relationship of employer and employees between the parties. This High Court cannot sit as a Court of Appeal over the finding of the Labour Court and come to a different finding on the basis of the analysis of the evidence. There is no infirmity in the award passed by the learned Labour Court.

10. The submission of the learned counsel for the petitioners that an 'employee' as given in the Delhi Shops and Establishment Act, 1954 can be said to be the piece-rated worker and accordingly even though the petitioners were piece-rated worker, they are employees of the respondent/management, does not seem to be apt or legally sound. There may be different enactments giving the definition of the word 'employer' and 'employee'. The definition of one particular enactment cannot be transplanted into another enactment. The workman has been specifically defined Under Section 2 sub section 7 of Delhi Shops and Establishment Act, 1954 and cannot be incorporated into the industrial disputes so as to governing the definition of the workman in the Industrial Disputes Act to hold that the petitioners although were piece-rated workers whereas within the definition of Under Section 2 sub section 7 of Delhi Shops and Establishment Act, 1954, they are employees within the definition of Delhi Shops and Establishment Act, 1954.

11. Therefore, this argument also does not have any merit. The judgment as has been cited by the learned counsel for the petitioners is also not applicable to the facts of the present case.

12. For the foregoing reasons, I am of the considered opinion that there is no illegality and violation of any regulation which warrant any inference with the award passed by the Labour.

13. The writ petition is without any merit and accordingly the same is dismissed.

APRIL 17, 2009
KP

V.K. SHALI, J.