

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

+ WP (C) Nos. 4078/2007

% Judgment delivered on: 01.04.2009

M/s CHD Developers Ltd. Petitioner
Through: Mr. Manpreet Kaur, Advocate
Mr. Harsh Aggarwal, Advocate

versus

Sh. Rajinder Prasad Respondent
Through: Mr. Rajinder Prasad, Advocate
for R-1
Mr. J.K. Chaudhary, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. (Oral)

1 . By way of this petition filed under article 226 of the Constitution of India the petitioner seeks to challenge the impugned award dated 14.11.2005 passed by the Labour Court in I.D. No. 329/2003.

2 . Brief facts relevant for deciding the present petition are as under:-

As per the petitioner/management, the respondent/workman was appointed on 1.7.2001 on probation initially for a period of one year vide an appointment letter of the even day. As per the respondent/workman he was appointed on 1.7.2000 but appointment letter was issued on 1.7.2001 and his last drawn wages were Rs.4100/-. As per the petitioner the services rendered by the respondent were not satisfactory and consequently his period of probation was not extended. The respondent was thus terminated from his service vide letter dated 29.6.2002. As per the respondent he availed leave from 19.6.2002 to 25.6.2002 and during this period he fell sick and treatment continued upto 11.7.2003 and when he reported for duty on 12.7.2002 he was orally refused duty and his services were terminated by the management. The respondent raised an Industrial Dispute which was later on referred to the Labour Court. The Labour Court held that the management failed to prove that the workman was working on probation; it was further held that the respondent could not join his duty as he fell sick. It was also held by the Tribunal that in the interest of

industrial peace and harmony the workman should be paid a lump sum compensation of Rs.50,000/- instead of reinstatement and back wages. Aggrieved with the said award the management has preferred this petition.

3 . Counsel for the petitioner submits that the respondent was appointed on probation for a period of one year w.e.f. 1.7.2001 and appointment letter issued in his favour was duly proved on record by the petitioner management as Ex. MW 1/1. The contention of the counsel for the petitioner is that the services of the respondent workman were terminated before the completion of his probation period through letter dated 29.6.2002 and therefore the termination of the respondent cannot be termed as illegal or unjustified. Counsel further submits that services of the respondent were not found up to the mark and therefore the petitioner was well within its rights to take a decision not to extend the probation period or to dispense with the services of the respondent during the probation period of one year. Counsel further submits that the respondent refused to accept the said letter dated 29.6.2002. Counsel for the petitioner also submits that the said facts were duly proved on record by the petitioner through the evidence of

their Manager whose testimony remained unchallenged and unrebutted by the respondent/workmen during cross-examination.

4 . Refuting the said submissions of the counsel for the petitioner, counsel for the respondent submits that the respondent in fact was employed as cook since 1.7.2000 and that he had gone on leave from 19.6.2002 to 25.6.2002 during which time he fell sick and his medical treatment continued up to 11.7.2002 whereafter he returned for duty on 12.7.2002 but was turned out of the office illegally. Counsel thus contends that the appointment letter dated 1.7.2001 was a device used by the petitioner management to throw the respondent out of his service. The contention of the counsel for the respondent is that the employment of the respondent/workman w.e.f. 1.7.2000 gets strengthened from the document Ex. WW1/5 which shows the contribution made by the petitioner in relation to his share with the Employees' State Insurance Corporation w.e.f. 1.4.2001. Counsel thus urges that the labour court has fully gone into all these facts and this court while exercising power of judicial review under Article 226 of the Constitution of India will not reappreciate the finding of facts as arrived at by the Tribunal.

5 . I have heard counsel for the parties and gone through the record.

6. The Labour Court in para 8 of the impugned judgment has dealt with the said submission of the petitioner and came to the conclusion that the appointment letter dated 1.7.2001 was obtained by the petitioner management for its benefit after obtaining the signature of the respondent/workman while in fact the respondent was already in service much earlier to the date of issuance of the said appointment letter. The labour court found that in the certificate issued by the petitioner which was proved on record as Ex. WW1/5 shows the contribution of the workman towards his share in the returns filed with the Employees' State Insurance Corporation w.e.f. 1.4.2001. The counsel for the petitioner has not advanced any argument to point out as to how the said finding of the Tribunal is perverse or illegal. Be that as it may, it is a settled legal position that the Labour Courts are final courts as far as the finding of facts are concerned and unless such findings are based on no material or so perverse or irrational this court while exercising the power of judicial review under Article 226 of the Constitution of India in its supervisory jurisdiction will not reassess or rejudge the

finding of facts. In this regard the Hon'ble Apex Court in **Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union - (2000) 4 SCC 245**; the relevant para of the said judgment is as under:-

17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned Single Judge and in ordering restoration of the award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned Single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken, the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below.

7 . In view of the foregoing discussion, I do not find there is any merit in the present petition. The same is hereby dismissed.

April 01, 2009
pkv

KAILASH GAMBHIR, J.