

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

+ **Writ Petition (Civil) No.12054/2006**

Date of Decision : 13.04.2009

M/S BRUK ELECTRICALS PVT.LTD. Petitioner
Through : Nemo.

Versus

NCT DELHI & ORS. Respondents
Through : Mr. Awadhesh Kumar,
Advocate for respondents
2,3,4,5,6 & 7/workmen.

**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? | YES |
| 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. Nobody is present despite the matter having been called up twice earlier. Previous order sheets show that for the last number of dates, the matter has been adjourned on the request of the learned counsel for the petitioner to enable him to arrive at a negotiated settlement and even the respondent had given an offer to the petitioner that in case an amount of Rs.41,000/- is paid to each of the workmen towards full and final settlement of their claim. They shall feel satisfied but however, on instructions, the learned counsel for the petitioner had made a statement on 20.3.2009 that the proposal is not acceptable to the petitioner. Thereafter, the matter was adjourned to 1st April, 2009 on which date a request for adjournment was made and the matter was kept for today. Today again, despite the fact that it is

already 3.30 p.m. and the matter has been called out twice, nobody has appeared for the petitioner.

2. I have heard the learned counsel for the respondent /workmen and perused the record including the impugned award.

3. The petitioner has challenged the award dated 15.5.2006 passed by the learned Labour Court-XII, Karkardooma Court, Delhi by virtue of which ID No.587/2004/1999 titled Sh.Madho Singh & Ors. Vs. M/s Bruk Electricals was decided.

4. By the impugned award, the learned Labour Court had answered the reference made to it by the appropriate Government, which reads as under”

“Whether the services of Sh. Madho Singh, Raju Paswan, Ramdin, Satya Narain Paswan, Ravinder Kumar and Khushal Singh Papola are absenting from their duties their services have been terminated illegally and/or unjustifiably by the management and if so, to what relief are, they entitled, and what directions are necessary in this respect?”

5. On the basis of the aforesaid reference, the learned Labour Court had framed the following four issues on the basis of the pleadings of the parties, which are as under:-

- “(i) Whether there was no relationship of employer and employee between the parties? OPM
- (ii) Whether the workmen were employed by the management through contractor M/S Deluxe Seat Manufacturing and if so to what effect? OPM
- (iii) As per the terms of reference. OPW
- (iv) Relief.”

6. The parties to the industrial dispute had adduced their respective evidence and the learned Labour Court had decided issues No. 1 and 2 together and come to a finding of fact that all these

respondents /workmen including Sh.Ramdin (since deceased) were able to establish the relationship of the employee and employer between the respondents /workmen of the petitioner. For this purpose, the learned Labour Court had placed reliance on the statements brought on record which shows that the petitioner was deducting the provident fund and paying ESIC contribution of all these workmen on behalf of the contractor M/S Deluxe Seat Manufacturing. The learned Labour Court had given a definite finding that the respondents/ workmen were prima facie able to established that they were the workmen within the definition of Section 2(S) of the Industrial Disputes Act, 1947 and the onus of proof regarding non-existence of the relationship accordingly, shifted on to the petitioner /Management which failed to reasonably discharge the same. The learned Labour Court on the basis of the aforesaid finding decided issues No.1 and 2 in favour of the workmen and held the reference in favour of the respondents/workmen that their services were illegally and unjustifiably terminated by the Management without complying with the provisions of Industrial Disputes Act regarding payment of retrenchment compensation.

7. So far as issue No.4 is concerned, instead of directing reinstatement and payment of back wages to the respondent/workmen, the learned Labour Court gave a sum of Rs.35,000/- to each of all the six respondents/workmen. It was observed in the judgment that in case the aforesaid payment is not made within two months from the date of publication of the award, it shall carry an interest @ 9% per annum.

8. The petitioner's grievance in the writ petition essentially pertains to the question of appreciation of evidence brought by the respective

sides before the Labour Court on the basis of which the learned Labour Court has come to a finding that there exists a relationship of employee and employer between the parties. In exercise of power of judicial review, the Writ Court cannot sit as a Court of appeal and re-appreciate the evidence so as to arrive at a finding of its own and then substitute the said finding in place of finding arrived at by the learned Labour Court. The whole exercise of power of judicial review is to see that as to how the decision has been arrived at and not the quality of decision. The principles of natural justice have not been violated in the present case. There is no allegation of violation of any rule or regulation and therefore, I feel that this Court cannot interfere with the finding of fact arrived at by the learned Labour Court regarding the existence of relationship of an employee and employer between the parties.

9. So far as the payment of quantum of compensation in lieu of reinstatement and the payment of back wages are concerned, although the aforesaid amount of Rs.35,000/- seems to be on the lower side but since the respondents/workman have not come in a writ against the impugned award, this Court has no jurisdiction to increase the same in the writ filed by the petitioner. Regarding the payment of interest since there was a stay operating from 2nd August, 2006 till date, therefore, it will not be proper to grant the interest also for this period. This Court, accordingly, upholds the quantum of compensation of Rs.35,000/- which has been awarded by the learned Labour Court to each of the workmen and it shall be paid within four weeks from today. So far as the respondents/workman Sh.Ramdin is concerned, since he has expired and his legal heirs have been brought on record, the aforesaid compensation shall be paid to his legal heirs. The

aforesaid compensation of Rs.35,000/- shall be paid to all the respondents /workmen within four weeks from today failing which it shall carry an interest @7% p.a. from today till the date of realization.

10. In view of the aforesaid observations, I find no infirmity, perversity, illegality or violation of principles of natural justice by the impugned award while passing the order. Accordingly, the present writ petition is without any merit and the same is dismissed.

V.K. SHALI, J.

APRIL 13, 2009

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