

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

+ **Writ Petition (Civil) No. 12585/2006**

Date of Decision : 06.5.2009

CENTRAL COTTAGE INDUSTRIES CORPORATION OF INDIA LTD.

..... Petitioner

Through : Mr. Sri Vikas Singh,
Sr.Adv. with Mr.Amit Kumar
and Mr.Ritesh and Mr.Somesh
C.Jha, Advocates.

Versus

KAMLESH PRASAD & ORS.

..... Respondents

Through : Mr.Vikas Kumar,
Advocate for respondent Nos.1
to 31.

**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. The petitioner by the present writ petition has challenged the award dated 05.12.2005 passed by the Industrial Tribunal in ID No.71/2002 in case titled The Management of M/s Central Cottage Industries Corp. of India Ltd. Vs. Its Workmen Sh.Vikas Kumar numbering around 53.

2. By virtue of the aforesaid award, the learned Tribunal had held that the termination of services of 31 workmen w.e.f. 25.5.2001 was illegal and unjustified and it had directed their

reinstatement with payment of full back wages and continuity of services with all consequential benefits. The petitioner was further directed to regulate the services of these 31 workmen from their respective year of appointments within three months from the date of publication of the award.

3. Briefly stated the facts leading to the filing of the present writ petition are that a reference was made by the NCT of Delhi on 22.11.2002 in the following terms:-

“i. Whether the services of S.Sh. Kamlesh Prasad and 53 others as shown in Annexure –‘A’ have been terminated illegally and/or unjustifiably by the management, and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/Govt. Notifications and to what other relief are they entitled and what directions are necessary in this respect?

ii. Whether S/Sh. Kamlesh Prasad and 53 others as shown in Annexure-‘A’ are entitled to be regularized and absorbed in the service of the M/s. Central Cottage Industries Corporation of India Ltd., if so, what directions are necessary in this respect?”

4. On the basis of the aforesaid reference, notices were issued, statement of claim was filed by the respondent /workmen giving the names and details of 54 workmen who were stated to be the employees of the petitioner no.1. It was alleged that although the services of 35 other workmen were regularized by the petitioner however, the services of the respondents/workmen were not regularized. On the contrary, it was alleged that their services were dispensed with on 25.5.2001 without complying with the provisions of the Industrial Disputes Act, despite the

fact that most of the workmen had rendered the services with the petitioner between 14 to 20 years while as some of them had rendered services of 2 to 10 years.

5. The petitioner no.1 filed its written statement to the statement of claim denying the averments of the respondent /workmen specifying that they were their employees. It was stated that the respondent /workmen were the employees of M/s Advance Security Services and Management (Pvt.) Ltd./ respondent no.32 in the present writ petition who used to supply the man power for the purpose of carrying out day to day work at the various places of the petitioner no.1. These workmen who were deployed by respondent no.32 were obviously claiming to be the employees of the said respondents though they were working at the work place of the petitioner.

6. It was further averred by the petitioner in the writ petition that the petitioner had never terminated the services of the workmen as a matter of fact they had only terminated the agreement with the respondent no.32 on 25.5.2001 as a consequence of which none of the respondent/workmen employed by the respondent no.32 was permitted to work at its work place which has been wrongly treated to be termination by the respondent/workmen.

7. So far as the respondent no.32 is concerned, it has also filed its separate writ petition and stated that the respondent /workmen were actually the employees of the petitioner and they

were not their employees. After completion of the pleadings, following four issues were framed:-

- “ 1) Whether there is relationship of employee and employer between the workmen and the management no.1? If not, its effect.
- 2) Whether the dispute is barred by estoppel, as stated in Preliminary Objection no.5 in the written statement of management no.1? If so, its effect.
- 3) Whether the workmen are directed employees of management no.1 as stated in written statement of management no.2? If so, its effect.
- 4) As per the terms of reference.”

8. The parties adduced their respective evidence and thereafter the learned Tribunal discussed the evidence in the light of the issues framed by it. The most important issue on which the entire case rests was issued no.1 namely:

“1)Whether there is relationship of employee and employer between the workmen and the management no.1? If not, its effect.”

9. Regarding this issue no.1 instead of analyzing and dealing with the evidence adduced by the respective sides, the learned Labour Court dealt with this issue in a very sketchy manner in two paras. In para 10, the brief background of the relationship as given in the pleadings is given and in para 11 the stand of the respondent no.32 has been reproduced stating that the respondent /workmen namely respondents 1 to 31 were actually the employees of the petitioner as they were employed directly. It

was stated by respondent no. 32 that there was no relationship between the employer and the employee and between the respondent nos.1 to 31 one hand and respondent no.32 on the other. In the same para, the learned Tribunal has observed that the Management of respondent no.1 namely the petitioner herein has also not denied that the respondent 1 to 31 are in their employment in the written statement. Thereafter, the learned Tribunal has referred to the unilateral settlement letter dated 30.3.2000 Ex.MW1/8 by virtue of which all 35 persons were regularized between the year 2000 to 2002 apart from the given employment to 4 daily wagers independently in the year 2000/2001. On the basis of this sketchy analysis, the learned Tribunal has attributed an admission by the petitioner and given a finding that there exists a relationship of the employer and the employee between the respondent Nos.1 to 31 and the petitioner and accordingly other issues have been decided in favour of the workmen resulting in passing of the award of reinstatement with continuity of services and payment of full back wages and also a direction for regularization.

10. The petitioner feeling aggrieved by the aforesaid award has filed the present writ petition.

11. I have heard the learned counsel for the parties and perused the record. The contentions of the learned counsel for the petitioner is that the very finding of the learned Tribunal holding that there exists of relationship of employee and employer between respondents 1 to 31 on the one hand and the

petitioner on the other is perverse inasmuch as it is not borne from the record. The learned tribunal has gone erroneously on the assumption that the management of the petitioner no.1 has not denied such a relationship between its respondent/workmen, while as my attention has been drawn not only to the written statement of petitioner no.1 but also to the evidence of the Management apart from cross examination of the one witness of the workman WW1/A to show that there is no admission on the part of the petitioner admitting the relationship of the employer and employee between the petitioner and the respondents 1 to 31. On the contrary, the respondent /workmen in their cross examination have themselves admitted that they are the employees of the respondent no.32 and have only been deployed to the office of the petitioner.

12. Learned counsel for the respondent /workmen has disputed this submission of the counsel for the petitioner but has not been able to substantiate his plea from the record.

13. I have carefully considered the submissions made by the respective sides and gone through the record.

14. There is no dispute that the Apex Court in catena of authorities has laid down that the primarily, the onus of establishing the relationship of the employer and employee is on the workman himself and this has to be established by adducing some positive evidence and not only the evidence made by way of an affidavit. The evidence which the Court has invariably required to be produced is in the shape of a letter of

appointment, wage slip, deduction of ESI contribution and even examination of co-worker working in the same Organization. Reliance in this regard can be placed on ***Ranip Nagar Palika Vs. Babuji Gabhaji Thakorre & Ors.*** (2007) 13 SCC 343 and ***Surendranagar District Panchayat Vs. Dahyabhai Amarsinh*** (2005) 8 SCC 750.

15. In the instant case, the respondent /workmen have claimed themselves to be the employees of the petitioner and not that of the respondent no.32. The reason for setting up of such a claim is that the petitioner happens to be the Government of India Company while as the respondent no.32 is a private entity which is stated to be man power supplier meeting the requirement of outsourcing of various agencies. The respondent Nos.1 to 31 claim is that it has adduced sufficient evidence in order to establish that there is relationship between the respondents 1 to 31 on the one hand and the petitioner on the other. However, this evidence has not been dealt with at all by the learned Tribunal. The learned Tribunal has held the existence of relationship between the petitioner and respondents 1 to 31 on the erroneous assumption of the petitioner admitting or rather not denying that respondents 1 to 31 are not their employees, accordingly, the award dated 5th December, 2005 is set aside and the matter remanded back to the learned Labour Court to be decided afresh with regard to the issue no. 1 as to whether there exists relationship of employer and employee between the petitioner and the respondent. While deciding the said issue the

learned Labour Court shall also consider the question as to whether there exists a relationship of employer and employee between the respondent/workman and the respondent no. 32 also. Thereby meaning that there has to be a finding as to whether the respondents no. 1 to 31 are the employees of the petitioner or the respondent no. 32. Once this issue decided afresh after analyzing the evidence and pleadings then only the question of deciding the other issues would arise. Accordingly, the award dated 05.12.2005 passed by the Industrial Tribunal in ID No.71/2002 is set aside and the matter is remanded back with the direction that the same may be decided as expeditiously as possible and preferably within six months.

16. The parties are directed to appear before the learned Labour Court on 28th May, 2009.

CM No.2219/2009 (u/S 17-B of the ID Act)

I have heard the learned counsel for the parties.

So far as the present application is concerned, no separate order is required as the same has become infructuous on account of main matter having been decided.

V.K. SHALI, J.

MAY 06, 2009

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