

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C.) No. 3197-3201/2006 & CMs No.2727/2006,**
10213/2006, 13470/2006 & 4471-72/2009

% **Date of Decision: 20th August, 2009**

Management of Kumar Bros Co. & Ors.
..... PETITIONERS
! Through: Mr. D.R. Bhatia, Advocate.

VERSUS

\$ Shri Jai Prakash Mistry
.....RESPONDENT
^ Through: Mr. Rama Shankar, Advocate.

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper 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**

S.N.AGGARWAL, J (ORAL)

The petitioners in this writ petition seek to challenge an award dated 05.10.2005 passed by the Industrial Adjudicator directing reinstatement of the respondent with 50% back wages.

2 Briefly stated the facts of the case relevant for the disposal of this writ petition are that the respondent was allegedly appointed with petitioner No. 5 as an Electrician w.e.f. 01.06.1990 and his services were later on transferred by the petitioner No. 5 to petitioner No. 1. The respondent was allegedly terminated by the management of petitioner No. 1 w.e.f. 03.04.2000. Aggrieved by his termination, he had raised an industrial dispute which was referred by the appropriate Government for adjudication to the Labour Court.

3 The claim of the respondent for his reinstatement and back wages was contested by the petitioners inter-alia on the ground that there was no relationship of employer and employee between the parties. The plea of the petitioners was that since there was no relationship of employer and employee between the parties, the question of terminating the services of the respondent by them did not arise.

4 At this stage, it may be noted that petitioner No. 1 firm with whom the respondent was allegedly working is in the business of manufacturing of ready-made garments for export purposes and in the course of its business, it also used to get fabrication of garments done from other fabricators. The petitioners had set up a case before the Labour Court that as they were in the business of ready-made garments, they did not require the services of a regular electrician and the respondent who happened to be an Electrician used to be engaged by them on casual basis as and when his services were required by them.

5 The core question before the Labour Court was to determine whether there was any relationship of employer and employee between the parties. The counsel for the parties have read out the entire impugned award before me line by line word by word.

6 The respondent who claims to be an employee of the petitioners and allege his illegal termination has filed only three documents before the Labour Court to prove his alleged employment with the petitioners. These documents are Ex. WW-1/9 to Ex. WW-1/11 and the copies of these three documents are at pages 56, 57 & 60 of the paper book. Except these three documents, the respondent has not placed any other documentary evidence before the Labour Court to establish his plea that he was ever appointed as an Electrician by the petitioners as claimed by him. I have gone through all these three documents Ex. WW-1/9 to

Ex.WW-1/11 but on going through the same, I am of the view that they, by no means, establish the relationship of employer and employee between the parties. The two documents, copies of which are at pages 56 & 57 of the paper book, are documents of repairs of Gen Set which the petitioners had in their establishments. It is true that in these two documents of repair which are of dated 15.10.1994 & 08.09.1995, the Engineer who had come to repair the Gen Set of the petitioners has mentioned the name of the respondent as the person to whom the Engineer had contacted at the time of repair of the Gen Set. The document at page 60 of the paper book is a bill dated 11.10.1991 by which petitioner No. 5 had supplied certain electrical tools to the respondent. This document also cannot be used to say that there was a relationship of employer and employee between the parties. The respondent has not filed his appointment letter, PF deduction proof or any ESI card to prove his alleged employment with the petitioners. It is an admitted fact on record that the establishments of the petitioners were covered by the PF and ESI Acts and the relevant extracts from the register of PF & ESI maintained by the petitioners were produced by them before the Labour Court. The PF & ESI record maintained by the petitioners admittedly did not include the name of the respondent in the list of employees of petitioner No. 1 & petitioner No. 5 establishments.

7 A reading of the impugned award would show that the Labour Court has proceeded on wrong premise and found fault with the plea of the management as if burden of proof was on the petitioners to prove that the respondent was their employee or not. There are any number of judgments on the point that in case where relationship of employer and employee is denied by the management, then onus of proof to prove that the workman had worked with the management for 240 days in a year

preceding the date of his termination is always upon the workman. Reliance is placed upon a recent judgment of the Supreme Court on this aspect in ***State of Haryana Vs. Ramesh Kumar (2008) 11 SCC 435***.

8 On going through the entire award and the material on record, I have no hesitation in saying that the findings contained in the impugned award suffer from perversity and cannot be sustained in law. In the considered opinion of this Court, there is no satisfactory evidence on record to show that the respondent was ever appointed either by the management of petitioner No. 1 or petitioner No. 5.

9 For the foregoing reasons, the impugned award is hereby set aside. This writ petition is allowed. The parties are left to bear their own costs.

The award amount deposited by the petitioners pursuant to interim order of the Court dated 03.03.2006 be returned to be petitioners forthwith.

AUGUST 20, 2009
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S.N.AGGARWAL, J