

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

+ **W.P.(C.) No. 9833-34/2006**

% Date of Decision: 05TH NOVEMBER, 2009

M/S C.K. INDUSTRIES & ANOTHER PETITIONERS

Through: Mr. J.S. Bhasin, Advocate.

VERSUS

\$ SH. RAM BIHARI RESPONDENT

Through: Mr. B.K. Pandey, Advocate.

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

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

S.N.AGGARWAL, J (ORAL)

The management of M/s C.K. Industries and M/s C.K. Circuit functioning from premises bearing No. B-45, Jhilmil Industrial Area, G.T. Road, Shahdara, Delhi-95, in this writ petition, seeks to challenge an industrial award dated 10.03.2005 in I.D. No. 961/2001 directing reinstatement of the respondent workman with 50% back wages and continuity of service.

2. Briefly stated the facts of the case relevant for the disposal of the present writ petition are that the respondent workman along with his co-worker Sh. Rama Nand had raised an industrial dispute for termination of their services by the management of the petitioners. This dispute raised by them was referred by the appropriate Government in the Government of NCT of Delhi to the Labour Court for adjudication vide notification No. F. 24(909)/2001-Lab./14481-85 dated 26.06.2001. The terms of

reference were as under:

“Whether the services of S/Sh. Rama Nand and Ram Bihari have been terminated illegally and/or unjustifiably by the management, and if so, to what relief is he entitled and what directions are necessary in this respect?”

3. The respondent along with his co-worker had filed a joint statement of claim before the Labour Court. In their joint statement of claim they have pleaded that both the managements, i.e. M/s C.K. Industries and M/s C.K. Circuit belong to the same family of father and son. The respondent along with his co-worker were made to work for both these establishments. The respondent was engaged by the petitioners as Screen Printer w.e.f. 01.01.1998 and he worked with the petitioners till 03.12.2000. The respondent's co-worker Rama Nand claimed to have been appointed as a Karigar in May 1998 and had worked with the petitioners till 23.12.2000. Both the workmen alleged that their services were illegally terminated by the management of the petitioners and, therefore, they claimed for their reinstatement with back wages. However, the management of the petitioners settled the dispute with the respondent's co-worker Sh. Rama Nand while reference was pending before the Labour Court and this is borne out from an order dated 04.01.2005 in the file of the Lower Court. The respondent in order to prove his claim filed his evidence by way of affidavit in which he claimed that he was appointed by the petitioners as Screen Printer w.e.f. 01.01.1998 and was illegally terminated from their service w.e.f. 04.12.2000. This testimony of the respondent workman remained totally un rebutted because the management of the petitioners chose not to cross-examine the workman despite opportunity given to it.

4. Mr. J.S. Bhasin, learned counsel appearing on behalf of the petitioners, has argued that the Court below vide its order dated

19.11.2004 had wrongly denied opportunity to the management of the petitioners to cross-examine the workman and had also wrongly closed the evidence of the management on that day.

5. Mr. Bhasin, learned counsel appearing on behalf of the petitioners, has relied upon two judgments, one of this Court in **Bhagwan Das and Others Vs. University of Delhi and Others, 2005-I-LLJ Delhi 265** and the second judgment of the Hon'ble Supreme Court in **Madhyamik Shiksha Parishad, U.P. Vs. Anil Kumar Mishra and Others, (2005) 5 SCC 122** and on the strength of these two judgments, he has argued that the benefit of continuity of service could not have been given by the Court below to the respondent workman even if it is presumed that he had worked for 240 days in the year preceding the date of his termination.

6. I have given my anxious consideration to the above arguments advanced on behalf of the petitioners. I have also carefully gone through the file of the Lower Court to appreciate the contentions urged on behalf of the parties.

7. It is borne out from the proceedings in the file of the Lower Court that the management of the petitioners was represented in the proceedings before the Labour court by its authorised representative. On 18.09.2004, the authorised representative of the petitioners informed the Court that the management of the petitioners was indifferent and not coming forward to defend the case. On that day, the authorised representative of the management wanted to withdraw his authority but the Court below instead of accepting the said request of the authorised representative of the management, adjourned the proceedings for the next date, i.e., 19.11.2004 advising the authorised representative to inform the management about the next date and about his intention to withdraw from the case.

8. On the next date, i.e., 19.11.2004, the authorised representative of the management filed a copy of the letter written by him to the management and requested for his withdrawal from the case. In view of the letter written by the authorised representative to the management, he was discharged from the case. The respondent workman had filed his evidence in chief by affidavit, copy of which was given to the authorised representative for the management on 18.11.2003. A reference in this regard can be made to the proceedings of 18.11.2003 in the file of the Lower Court. On 19.11.2004, the respondent workman was present before the Court for his cross-examination but since he was not cross-examined on behalf of the management on that day, the Court rightly closed the opportunity of the management to cross-examine him.

9. Thereafter the case was adjourned for different dates for arguments. It may be noted that on one of the adjourned dates of hearing i.e. 04.01.2005, Mr. Kunal Malhotra son of proprietor of the management appeared before the Labour Court to make a statement that the management has settled the dispute with the petitioners' co-worker Sh. Rama Nand. The Court had recorded the statement of Mr. Kunal Malhotra on 04.01.2005. From this it is clear that the management was well aware about the pendency of reference before the Labour Court qua dispute pertaining to the respondent. Despite that the management chose not to participate in the proceedings before the Labour Court after 04.01.2005 and this led the Labour Court to pass the impugned award in favour of the respondent workman directing his reinstatement with 50% back wages and continuity of service.

10 Mr. J.S. Bhasin learned counsel appearing on behalf of the petitioners has argued that the respondent workman has not proved the relationship of employer and employee between the parties by producing

any documentary evidence in this regard. I am sorry, I am not able to accept this contention urged on behalf of the petitioners. The respondent workman had produced his evidence by affidavit way back on 18.11.2003 and the management was fully aware about the stand taken by the respondent workman in affidavit filed in his evidence. Despite that, the management chose not to cross-examine the respondent workman or produce its own evidence in support of its defence. Under the circumstances, the court below was left with no option but to proceed to act upon the unrebutted testimony of the respondent workman. The judgment in Bhagwan Das's case (Supra) and Madhyamik Shiksha Parishad's case (Supra) relied upon by the counsel for the petitioners are not applicable to the facts and circumstances of the present case. In the present case, the respondent workman was employed with a private establishment. His appointment was not as a daily wager. His services were found to have been terminated illegally by the management of the petitioners. Therefore, I do not find any perversity in the impugned award directing his reinstatement with 50% back wages and continuity of service. The Labour Court itself has reduced the back wages to 50% and this Court would not like to interfere in the said award relating to back wages.

11. In view of the foregoing, I do not find any illegality or perversity in the impugned award that may call for an interference by this Court in exercise of writ jurisdiction under Article 226 of the Constitution. This writ petition therefore fails and is hereby dismissed. The amount of Rs.35,000/- stated to have been deposited by the petitioners pursuant to Court order dated 17.07.2006 be released by the Registry in favour of the respondent workman with liberty to him to recover the balance amount as per law.

LCR be sent back.

NOVEMBER 05, 2009,
'bsr/a'

S.N.AGGARWAL, J