

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

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WP(C) No.18557-58/2004

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Date of decision: 22nd February, 2010

BABU RAM & ORS

..... Petitioners

Through: Ms. Anupama C Narang , Advocate

Versus

SECRETARY (LABOUR) & ORS

..... Respondents

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioners seek writ of certiorari qua the award dated 20th October, 2003 of the Labour Court, though answering the reference in favour of the petitioners and holding the termination of services of both the petitioners by the respondent No.2/management to be illegal and unjustifiable but still holding the petitioners not entitled to the relief of reinstatement in service or back wages for the reason of the respondent No.2/ management having established on record that it had been closed since March / April, 1992. The award thus holds the petitioners entitled only to the retrenchment compensation as per rules for serving the respondent No.2/management for 15 years.

2. Notice of this writ petition sent to the respondent No.2/management was received back with the report of having “left the address” or “premises found locked”; ultimately they were permitted to be served by publication and have been so served and proceeded against *ex parte*.

3. The counsel for the petitioners has challenged the finding of the Labour Court of the respondent No.2/management having closed the business. Attention is invited to the written statement dated 23rd January, 1996 filed to the statement of claim before the Labour Court and to the affidavit by way of evidence of the witness of the respondent No.2/management and his cross examination. Though in the written statement a plea is taken that the respondent No.2/management is not existing and had already closed its business in 1992 and Shri Jai Kishan sole proprietor of M/s Mittal Slates Supply Co. (Respondent No.2) in his affidavit by way of evidence reiterated the said plea but in cross examination stated that the management firm had not been functioning for the last ten years “at the address given”. The counsel further contends that the respondent No.2/management had in fact before the Labour Court attempted to wash its hands off the liability towards the petitioners/workmen altogether by contending that they were not even the employees of the respondent No.2/management and were employees of the contractor and which plea has been disbelieved.

4. Ordinarily, the finding of illegal termination being in favour of the petitioners/workmen, as held in ***Rajinder Kumar Kindra Vs Delhi***

Administration AIR 1984 SC 1805, *Management of Aurofood Pvt. Ltd. Vs. S. Rajulu* 2008 II LLJ 1061 SC and *Novartis India Ltd. Vs. State of West Bengal* (2009) 3 SCC 124, the relief of back wages and compensation in lieu of reinstatement ought to follow. Thus, what remains to be determined is whether in view of the plea of the respondent No.2/management of closure of business, the petitioners/workmen can be deprived of such consequential relief.

5. The general rule is that the onus of proof is on a party taking the plea. Reference may be made to *U.P. State Electricity Board Vs. Aziz Ahmad* (2009) 2 SCC 606 reiterating the principle that the burden of proof is on a person who alleges the facts.

6. In the present case, the plea of closure was taken by the respondent No.2/management. The onus to prove the said plea would be on the respondent No.2/management. The positive evidence to prove the closure would also be available with the respondent No.2/management only rather than with the petitioners/workmen.

7. The Supreme Court in *Shankar Chakravarty Vs. Britannia Biscuit Co. Ltd.* AIR 1979 SC 1652 after considering the duties and functions of the Industrial Tribunal or the Labour Court held that any party appearing before it must make a claim or demur the claim of the other side and when there is a burden upon it to prove or establish the fact so as to invite a decision in its favour, it has to lead evidence; the quasi judicial tribunal is not required to

advise the party either about its rights or what it should do or omit to do. It was held that the test for determining the onus would be, who would fail if no evidence is led. This Court also in *UCO Bank Vs. Presiding Officer* 81 (1999) DLT 696 has held that the burden of proof does not lie on the party which denies it but on the party which asserts the existence of a certain state of things.

8. I also find that for relief being denied to the petitioners/workmen, on the plea of closure of business, within the meaning of Section 25F of the Act the respondent No.2/management was required to satisfy that it had given one months notice in writing to the petitioner/workman indicating the reasons and that the petitioner / workman had been paid at the time of retrenchment compensation as provided in Clause (b). The Supreme Court has held compliance with the said two conditions to be mandatory (reference in this regard may be made to *Pramod Jha Vs. State of Bihar* AIR 2003 SC 1872). Even though the third condition of service of notice of closure on the appropriate government has been held to be directory but the management which desires to take benefit of such plea of closure ought to prove service of such notice and which alone can relieve the management of the rigours of the other provisions of law. All the said evidence could have been led by the respondent No.2/management only and not by the petitioner/workman.

9. No such evidence has been led by the respondent No.2/management in the present case and in the absence of the same, the finding of the tribunal of the respondent No.2/management having closed the business and the

petitioners/workmen being entitled to retrenchment compensation alone is found to be untenable, unjust and not on the basis of any material on record.

10. However, since the whereabouts of the respondent No.2/management appear to be unknown, the relief which can be granted to the petitioners/workmen has to be compensatory only. The question is how much.

11. The award records that each of the petitioners had been working with the respondent No.2/management for 15 years and were getting Rs.1300/- and Rs. 1200/- per month respectively. Considering that their services were terminated in March, 1992 and the award was made in October, 2003 i.e. after more than ten years, the award for back wages alone, if so granted, would have been for over Rs.1,50,000/- in favour of each of the petitioners. However, the factum of the petitioners having not worked for the respondent No.2/management also has to be factored in. Considering all the facts, I deem the award towards back wages and compensation in lieu of reinstatement of Rs.1,50,000/- in favour of each of the petitioners to be just, fair and appropriate.

12. The petition therefore succeeds. The award dated 20th October, 2003 in so far as holding the petitioners to be entitled to the relief of retrenchment compensation only is corrected. Each of the petitioners are held entitled to a sum of Rs. 1,50,000/- from the respondent No.2/management towards back wages and compensation in lieu of reinstatement. The said amount be paid

within a period of 30 days from today failing which it will incur future interest @ 9 per cent per annum.

13. The petition is disposed of. The petitioners are also entitled to costs of these proceedings assessed at Rs.20,000/- from the respondent No.2/management.

**RAJIV SAHAI ENDLAW
(JUDGE)**

22nd February, 2010
Gsr/M