

* **HIGH COURT OF DELHI : NEW DELHI**

+ **W.P. (C) No. 3778 of 2007**

Sh. Raj Nath Yadav & Ors. Petitioners
Through: Mr. A.K. Pandey, Adv.

Versus

Gupta Engineering Works Respondent
Through: Nemo.

% Judgment pronounced on: 01.11.2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

MANMOHAN SINGH, J.

1. The present writ petition has been filed by six petitioners namely Raj Nath Yadav, Bharat Kumar, Mohd. Zalil Alam, Acchey Lal @ Dinesh Jha, Zalender Prasad and Abdul Salam under Articles 226 of the Constitution of India praying for writ/direction to quash the impugned order dated 07.12.2006 passed by the learned Labour Court in I.D No. 1345/1997 and direct the respondent to reinstate the petitioners with full back wages.

2. The facts of the case are that the petitioners were appointed by the respondent No.1 for the posts of Turner. Even though most of them worked with respondent No.1 for more than 5 years, they were never

issued any Appointment Letter or Identity Card and were being paid in cash. Therefore the petitioners do not have any documentary proof to show their appointment or receiving of the salary except for the letters and money orders received by them on the address of the respondent as the respondent had permitted them to use their postal address. As per the case of the petitioners, they were terminated from the services by the respondent on 21.12.1996 without giving them any notice.

3. The petitioners lodged a complaint before the Labour Commissioner through their Employee Union but, despite the interference by the Labour Department nothing was done by the respondent to redress the grievance of the petitioners.

4. The petitioners then filed a claim petition before Conciliation Officer, Karampura, New Delhi praying for reinstatement of the petitioners with all the benefits.

5. The Labour Inspector visited the premises of the management-respondent No.1 to make an enquiry and after the enquiry was over he filed its report before the Labour Commissioner.

6. In his report the Labour Inspector had clearly stated that the Management-respondent No.1 had illegally terminated the services of the petitioners and on the basis of this report the conciliation officer referred the matter to the Learned Labour Court.

7. The learned Labour Court passed the award dated 07.12.2006 with the finding on the issued that the petitioners had failed to prove their case and therefore, they were not entitled to any relief as claimed.

8. In fact before the Labour Court the industrial dispute was raised by the present petitioners as well as other three workmen namely Niwas Chand, Virender Kumar Gupta and Lal Chand Singh regarding the termination of their services by the respondent along with the present six petitioners.

9. In the statement of claim, the case of the petitioners and the other three workmen was the same as stated in paras 1 and 2 of the judgment. The respondent in the written statement specifically denied the case of 9 workmen as made in the statement of claim. It was stated in the written statement that there was no relationship of the employer and employees meaning thereby management and workmen. The question of termination, therefore, does not arise. The specific statement was made in the written statement that the workmen were never worked with the respondent. Therefore, the question of industrial dispute does not arise.

10. The following issues were framed on 16.2.2001 before the Labour Court:

- “1. Whether there exists no relationship of employer and employee between the parties?
2. As per terms of reference.
3. Relief.”

11. Admittedly, as per settled the onus of proof that the workmen were employed with the management lies upon the workmen.

12. In order to prove their case, the workman Shri Raj Nath Yadav examined himself as WW1 and filed his affidavit as Ex. WW1/A, Shri Jalandhar Prasad examined himself as WW2 and filed his affidavit as Ex. WW2/A, Shri Mohd. Jameel Alam examined himself as WW3 and

filed his affidavit as Ex. WW3/A, Shri Bharat Kumar examined himself as WW4 and filed his affidavit as Ex. WW4/A, Shri Acchey Lal @ Dinesh Jha examined himself as WW5 and filed his affidavit as Ex. WW5/A and Shri Abdul Salam examined himself as WW6 and filed his affidavit Ex. WW1/6.

13. In evidence their case is the same as stated in the statement of claim. Similarly the respondent has examined two witnesses namely Ashok Kumar Gupta and Anil Gupta. Both the witnesses supported the case of the respondent. Workman Virender who is not a party in the present proceedings admittedly did not file the statement of claim. Similarly Lal Chand Singh and Niwas Chand, who are not party in the present proceedings, did not lead any evidence.

14. In view of the settled law, the workmen had to produce the best piece of evidence for coming to the conclusion one way or the other about their employment. The evidence may not be clinching but also direct evidence to show some nexus between the employee and employer. In the absence thereof, the contention of the workmen cannot be accepted. The High Court in the judgment report in 130 (2006) DLT 160 has held as under:

“Labour Law – Engagement and appointment in service can be established directly by existence and production of appointment letter, written agreement or by circumstantial evidence of incidental and ancillary records, in nature of attendance register, salary registers, leave record, deposit of PF contribution, ESI etc.”

15. It is pertinent to mention that in the present case WW1 Raj

Niwas Yadav has admitted in his cross examination that he could not produce any document to show that he was working with the management as turner. The workman Shri Jalandhar Prasad has admitted in his cross examination that he did not have any document to show that he joined the management in 1992 or 1993. He has admitted that he did not have any document to show that he was paid salary by the management. The workman Mohd. Jameel Ahmed has also stated in his cross examination that he did not have any document to show that he joined the management in the month of June 1987. The workman Bharat Kumar has also stated in his cross examination that he did not have any document to show that he joined the management in December 1994. The workman Acchey Lal @ Dinesh Jha has stated in his cross examination that he did not have any documentary proof to show that he was employed with the management for 7 years. The workman Abdul Salam has stated in his cross examination that he did not have any document to show that he was working as a turner with the management.

16. After having considered the evidence on record and having regard to the facts and circumstances of the present case, I am of the considered view that the petitioners have failed to produce any cogent/direct evidence in support of their case. In fact in the present case, the petitioners have not produced any valid evidence nor summoned the documents from the respondent in the nature of attendance register/salary register/leave record or deposit of provident fund and ESI.

17. Therefore, it is not possible to come to the conclusion that the

petitioners are worth employee with the respondent. After considering the evidence and documents placed on record, this court came to the conclusion that the order passed by the Labour Court is a reasoned order. Thus, this court is not inclined to interfere with the award passed by the Labour Court on 7.12.2006.

18. The present writ petition filed by the petitioners appears to be false and frivolous and the same is dismissed. No costs.

MANMOHAN SINGH, J.

NOVEMBER 01, 2010

Jk/dp