

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

+ **W.P.(C) No. 18716/2005**

% Judgment delivered on: 26.02.2010

Ram Ashrey Petitioner
Through: Mohd. Nayeemuddin,
Advocate

versus

M/s Delite Plastic Industries Respondent
Through: Mr. M.L. Mahajan and
Mr. Gaurav Mahajan,
Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J. Oral:

*

1. By this petition filed under Article 226 of the Constitution of the India, the petitioner workman seeks to challenge the impugned award dated 24.02.2004 passed by the Ld. Labour Court in I.D. No. 312/1996 whereby the reference was answered against the petitioner.

2. Brief facts as set out by the petitioner relevant for

deciding the present petition are that the petitioner was appointed as a machine man in 1979 and was issued an ESI card after consistent persuasion. He obtained leave on 5.06.1995 till 4.7.1995, but due to ill health of his mother, returned only on 24.7.1995 and reported for duty when he was told to return after 10 days. Thereafter, when he again reported for duty on 10.9.1995, he was told that his services have been terminated after which the petitioner workman on 11.9.1995 lodged a complaint with the Asst. Labour Commissioner; SHO, P.S Ashok Vihar; and to Dy. Commissioner of police. Consequently, on 30.10.1995, the petitioner sent a demand notice to the respondent management and an industrial dispute bearing ID No. 312/1996 was raised. The Labour Court passed an order dated 24.2.2004 vide which it concluded that the workman had settled his dispute with the management and that the services of the petitioner were not terminated and he was not entitled to any relief. Feeling aggrieved with the same the petitioner has preferred the present petition.

3. Counsel for the petitioner submits that the Ld. Labour

Court failed to appreciate that no settlement was arrived at between the petitioner workman and the management and the petitioner had never received any payment through the bearer cheque alleged to have been issued by the respondent to settle the claims of the petitioner. Counsel for the petitioner further submits that the Ld. Labour Court also failed to appreciate that if such a settlement had taken place between the parties, then the parties were under an obligation to submit a memorandum of settlement before the office of the Labour Commissioner in compliance with Rule 58 (4) of the I.D. Act within Central Rules, 1957 and since no such settlement was filed by the parties before the said authority, therefore the Labour Court committed a grave error in believing the respondent management on its plea of settlement. Counsel further submits that the Labour Court also failed to appreciate that the management witness Mr. Ram Saran Ram MW2, in whose presence the alleged settlement took place, in his evidence clearly deposed that he was not able to recognize the petitioner but still his testimony was believed by the Ld. Labour Court. Counsel further submits that the petitioner in his statement of claim had clearly stated that the respondent management had procured his

signatures on blank papers, blank proformas and on papers containing revenue stamps on vouchers, etc. therefore it was quite manifest that the respondent had taken the advantage of the signatures of the petitioner in fabricating the documents so as to show receipt of full and final payment by the petitioner through the bearer cheque.

4. Refuting the said submissions of the counsel for the petitioner, counsel for the respondent, submits that the petitioner cannot wriggle out from the said settlement as he was paid an amount of Rs.11,000/- towards balance amount of his wages, bonus, service gratuity, notice fee , etc on his resigning from the job and the said payment was made through bearer cheque dated 10.09.1995 that too in the presence of Mr. Ram Saran Ram, General Secretary of Engineering Mazdoor Union and in view of the said full and final settlement, the claim raised by the petitioner was false and he is liable for committing perjury with the court. Counsel thus submits that the Ld. Labour Court after carefully scrutinizing the evidence led by the parties came to the conclusion that the management has succeeded in proving that the workman had received a sum of Rs.11,000/- towards full and final settlement

of his claims and this court in exercise of jurisdiction under Article 226 of the Constitution of India would not reappreciate the said finding of the facts when no perversity or illegality can be found in the same.

5. I have heard counsel for the parties at considerable length and perused the records.

6. There cannot be any doubt that while exercising power under Article 226 of the Constitution of India it is only in exceptional circumstances, the court would reappreciate the findings of fact on being fully satisfied that there is a perversity or infirmity in such findings given by the courts below. As per the case set up by the petitioner workman he claimed his employment with the respondent since 1979 and the services were illegally terminated on 10.09.1995 i.e. after he had put in about 26 years of services. The petitioner also pleaded in his statement of claim that the respondent management had procured his signatures on several blank papers such as vouchers, printed proformas but without making any payment to the petitioner. The petitioner also lodged complaint with various authorities including the office of Assistant Labour Commissioner and DCP on 11.09.1995 about the

purported illegal acts of the respondent to procure signatures of the petitioner on various papers. The petitioner also sent a demand notice on 13.10.1995 and then filed a statement of claim before the conciliation officer and on failure of the conciliation proceedings the statement of claim was filed before the Labour Court.

7. In the written statement filed by the management the appointment of the petitioner workman was stated to be w.e.f. 3.9.1987 on the post of a helper. The respondent workman further stated that the petitioner was paid an amount of Rs.11,000/- towards full and final settlement of all his claims vide cheque No. 488792 dated 10.09.1995 drawn on UCO Bank. Respondent also took a stand that the petitioner workman started absenting himself unauthorizedly from 06.06.1995 and when on 10.9.1995 he approached the respondent to settle his dues then the said payment of Rs.11,000/- was made by the respondent management to the petitioner through a bearer cheque when also a voucher was signed by the petitioner on the revenue stamp affixed therein, the reverse of which was also signed by the General Secretary of one Union. Certainly, any court would readily believe these

documents as sufficient proof of making payment, more particularly, when the payment is made through a bearer cheque. The reliability on such documents would get further strength when such a settlement is witnessed by the General Secretary of the Union. This is what has exactly happened in the present case. The Ld. Labour Court got carried away to believe the said voucher which was alleged to have been signed by the petitioner and also the fact of payment being made by the respondent through a bearer cheque. The Labour Court also gave undue weightage to the testimony of the General Secretary of the Union who in his deposition proved that the said settlement was arrived at in his presence.

8. The Industrial Disputes Act is a beneficial piece of social legislation and one cannot lose sight of the fact that the Act has to be interpreted to see that the workman being a weaker party does not become a victim at the hands of the stronger and mightier management. The respondent has not denied the fact that the petitioner was in their employment although pleaded from a later date w.e.f. 3.9.1987. MW 1 Mr. Rajnish, a partner of the respondent management in his cross-examination clearly admitted

that ESI Card of the petitioner workman was issued in the year 1987. Once having admitted the employment of the petitioner, may be, w.e.f. 1987, it would clearly mean that the petitioner remained in service from 1987 till 1995 i.e. for a period of eight years. Even if this period of eight years employment is taken into consideration, there can be no doubt, that there must have existed some compelling reasons for the petitioner to have resigned from his employment. It is not in dispute that the petitioner did not submit any resignation letter and in the absence of the same still his dues were settled that too for a meagre amount of Rs.11000/- and as per the voucher proved on record Ex. MW 1/2 the said dues were towards his wages, bonus, gratuity, notice fee, etc. When the counsel for the respondent was questioned about the break up of the said amount then no satisfactory answer came from the side of the respondent except that he stated that such a break up can be given by the respondent if this court so desires. Admittedly, no such break up of the said amount was given by the respondent before the Labour Court as on what basis the said amount of Rs.11,000/- has been paid by the respondent management to the petitioner.

9. Counsel for the respondent was also questioned as to why the need arose to make the payment through a bearer cheque when the said payment could have been made in cash also, that too when an office bearer of the Union was present who could have witnessed such a payment but no satisfactory response came from the side of the counsel for the respondent. It is thus manifest that this entire exercise was carried out by the respondent management to set up a strong case of making the Labour Court believe about the genuineness of the settlement. The Ld. Labour Court got so much carried away with the said settlement and the payment made through the bearer cheque and the voucher that it overlooked the fact that the said office bearer i.e. Mr. Ram Saran Ram in his examination-in-chief showed his inability to even recognize the petitioner. It is quite strange that a person who claimed himself to be the General Secretary of the Union and in whose presence the said payment was made would express his inability to recognize the workman and this is despite the fact that in his cross-examination he stated that he knew the workman very well. This apparent falsity on the part of MW2 Ram Saran Ram itself exposes the ploy enacted by the management in fabricating

the said documents with a view to set up a case of settlement with the petitioner. The action of payment through bearer cheque is again beyond the comprehension of this court as where was the need for the respondent to have issued a bearer cheque and to hand over the same to the petitioner while such a small payment could have been made in cash. No explanation came from the side of the respondent, as to why the need arose for such a payment being made through a cheque instead of cash. The Ld. Labour Court also over looked the cross-examination of MW 1 wherein the petitioner gave many suggestions to dispute the said settlement and the receipt of any payment by the petitioner. The petitioner not only wrote to various authorities including lodging a complaint against the respondent management for obtaining his unauthorized signatures on various papers alongwith the fact that within a month's time the petitioner raised a demand notice, and therefore, it cannot be believed that the petitioner who was in service, even if taken from the year 1987 and not from 1979, would resign from his job that too just after having received a small amount of Rs.11,000/- towards full and final settlement of his dues.

10. This Court is conscious of the fact that the jurisdiction of the High Court under Article 226 of the Constitution is very wide and untrammelled and hence for that reason alone the same has to be exercised with great care and circumspection. Ordinarily, the court would not interfere with the award of the Labour court unless it is found to be perverse or there is an error of law apparent on the face of it or there is some patent illegality in it, but what is perverse and illegal would ultimately depend on the facts of each case. The Apex Court in the case of ***Seema Ghosh vs. TISCO (2006) 7 SCC 722*** held that when the judgment of the Labour Court is perverse and against the facts and records, the High Court is entitled to exercise its jurisdiction under Article 226 and to interfere with the perverse finding and set aside the same. It has been further held in the case of ***Trambak Rubber Industries Ltd. vs. Nashik Workers Union (2003) 6 SCC 416*** where the Apex Court held the interference by the High Court in the Award by the Labour Court was justified on the ground that the Labour court failed to reach reasonable

conclusions that should have been followed from the evidence placed on record. It held that:

"We are of the view that the High Court has not transgressed the limitations inherent in the grant of the writ of certiorari. The High Court had rightly perceived the patent illegality in the impugned award warranting interference in exercise of its writ jurisdiction. The High Court is right in pointing out that the material evidence, especially the admissions of the witness examined on behalf of the management were not considered at all. Moreover, the conclusions reached are wholly perverse and do not reasonably follow from the evidence on record.

.....
There would have been travesty of justice if the High Court declined to interfere with the findings arbitrarily and without reasonable basis reached by the Industrial Court."

This was again reiterated in the case of ***ONGC vs. ONGC Contractual Workers Union (2008) 12 SCC 275*** where the Apex Court held that the High Court would be fully justified in interfering with an award of the Industrial court on account of patent illegality.

11. In view of the legal position discussed above, the gamut of facts of the case at hand shows that the award passed by the Labour Court was contrary to the evidence on record. More so, it did not labour to fathom the depraved tactic adopted by the

respondent management to create a sham of a settlement arrived at by the petitioner and the management. In my considered view, the award challenged the commonsensible notions as it could come to believe that the petitioner after working for eight years would be satiated by an amount of Rs.11,000 and that too towards full and final settlement of his dues. Therefore, the award is perverse and warrants interference by this Court to set the tune right in the direction of achieving the underlying aim of the industrial disputes legislation i.e. social justice.

12. Therefore, in the light of the aforesaid discussion, the findings given by the Ld. Labour Court in my considered view, are clearly perverse and untenable in the eyes of law and therefore the impugned award is accordingly set aside.

13. The respondent management is hereby directed to reinstate the petitioner workman within a period of one month from the date of this order with the grant of 50% of back wages from the date of his termination till the date of his reinstatement.

February 26, 2010

KAILASH GAMBHIR,J