

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No. 16519/2006

Judgment pronounced on : 22.01.2010

Sh. Prem Nath Yadav Petitioner

Through: Mr. Manoj Kumar, Advocate

Versus

Sh. Chandra Bose & others Respondents

Through: Mr. Rajiv Mehra, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 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)

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- 1 . By this petition filed under Article 226 of the Constitution of India, the petitioner/workman seeks quashing of the award dated

06.07.2006 passed by the Labour Court in ID No.343/2006 whereby the reference was answered against the petitioner workman.

2. Brief facts relevant for deciding the present petition are that the petitioner workman has been working with the respondent no.3 since 5.5.95. It is alleged by the petitioner that the respondent no.3 had not been providing him with legal facilities such as appointment letter, casual leave, etc. and had obtained his thumb impression on blank vouchers and papers. Thereafter the respondent no.3 terminated the services of the petitioner workman on 2.2.2002 and the petitioner sent a demand notice on 16.2.2002. Receiving no response of the same, the petitioner raised an industrial dispute bearing ID No.343/06 where the reference vide award dated 6.7.06 was answered against the workman. Feeling aggrieved with the said award of the Labour court, the present petition has been preferred.

3. Counsel for the petitioner submitted that the petitioner/workman was a permanent employee of the respondent No.3 Management and services of the petitioner were terminated by the respondent Management without complying with the mandate of Section 25-F of the Industrial Disputes Act. Counsel further submitted

that the Labour Court ignored the documentary evidence placed on record by the petitioner which clearly proved the employment of the petitioner with the respondent Management. Counsel further submitted that the petitioner had also moved an application before the Labour Court to summon various documents from the respondent Management such as Wage Register, balance sheet, ledger and vouchers, cashbook, day book etc. but the management failed to produce the said records and even the Labour Court did not decide the said application of the petitioner causing serious prejudice to the rights of the petitioner. Counsel thus contended that the petitioner placed enough material on record to prove his relationship of a employer and employee with the respondent management but since no records were placed by the respondent management even after the said application was filed by the petitioner, therefore the Labour Court should have drawn adverse inference against the respondent management instead of disbelieving the case of the petitioner who proved on record his employment with the respondent management since 05.05.1995.

4 . Refuting the said submissions of the counsel for the petitioner, counsel for the respondent contended that no illegality or perversity in the impugned award has been pointed out by the petitioner and therefore this court while exercising its jurisdiction under Article 226 of the Constitution of India will not interfere with the findings arrived at by the Labour Court just to reappraise the finding of facts.

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

6. It is a settled legal position that the onus lies on the workman to prove his relationship with the employer as that of employee and employer. The documents placed on record by the petitioner comprising of bills, challans, notices, etc. are not the documents which could prove the relationship of the petitioner with the respondent as that of an employee and employer. It could at the most have proved the fact that the petitioner had received the goods on behalf of the management when the delivery of the goods were made by the suppliers at the shop of the management or because of the address furnished by the petitioner himself, the Dak was received

by the petitioner at the same address. For establishing a relationship of employer and employee something more cogent and convincing is required but no such documentary evidence was placed and proved by the petitioner. It would be pertinent here to refer to the judgment of the Apex Court in ***Workmen of Nilgiri Coop. Marketing Society Ltd. vs. State of Tamil Nadu (2004)3 SCC 514*** where it was held that :-

"47. It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him.

48. In N.C. John v. [Secretary Thodupuzha Taluk Shop and Commercial Establishment Workers' Union and Ors](#) : (1973)ILLJ366Ker , the Kerala High Court held:

"The burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship. "

49. In Swapan das Gupta and Ors. v. The First Labour Court of West Bengal and Ors. 1975 Lab. I.C. 202 it has been held:

"Where a person asserts that he was a workmen of the Company, and it is denied by the Company, it is for him to prove the fact. It is not for the Company to prove that he was not an employee of the Company but of some other person."

50. The question whether the relationship between the parties is one of the employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse."

7. Taking a note of the aforesaid legal position, I do not find any illegality or perversity in the findings of the Labour Court wherein the court observed that these documents do not help the workman to prove the fact that he was working with the Management. So far the contention of the counsel for the petitioner that the petitioner had moved an application to summon the muster roll record, attendance register and other records of the respondent management and that the said application was not decided by the Ld. Labour Court is concerned, I wonder if such an application was moved by the petitioner then why the workman did not press his application or take other remedial measures before the passing of an award. The management in their evidence clearly proved the fact that the petitioner was doing the job of putting strips on bags of various shopkeepers in the area and was not in the sole employment of the respondent. Counsel for the petitioner has failed to point out any infirmity or illegality in the order passed by the Ld. Labour Court.

7. Thus I do not find any merit in the petition and the same is dismissed.

January 22, 2010
pkv

KAILASH GAMBHIR,J