

* IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No.5308/2007

Date of decision : 10.3.2010

M/S Agra Tour & Travels.

.....Petitioner.

Through :Mr. K.K. Mishra, Adv.

versus

Govt. of N.C.T. of Delhi & Another.

..... Respondents.

Through : Mr. V.K. Tandon, Adv. for
respondent No.1.

Mr. Rakesh Tiwari, Adv. for
respondent No.2.

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*** 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 seeks quashing of the award

dated 3.5.2007 passed by the Labour Court whereby the reference was answered in favour of the respondent no.2 and against the petitioner.

2. Brief facts relevant for deciding the present case are that the respondent no.2 raised an industrial dispute bearing ID No.84/2006/2004 where his case was that he was working with the petitioner as a driver on a monthly salary of Rs. 4500/- but was not provided with any legal facilities like increments, traveling allowance, house allowance, bonus, etc. and on demand of the same, the management started misbehaving with him and terminated his services on 21.6.2003 without complying with the provisions of section 25 F of the I.D. Act. The labour court vide order dated 3.5.2007 awarded lump sum compensation of Rs. 29,650/- in lieu of reinstatement, continuity of service and back wages. Feeling aggrieved with the same, the petitioner has preferred the present petition.

3. Assailing the said award, counsel for the petitioner submits that the learned Labour Court failed to appreciate that there was no relationship of 'employer and employee' between the

petitioner and the respondent workman and therefore, the Labour Court had no jurisdiction to decide the reference sent for adjudication by the Delhi Government. Counsel for the petitioner further submits that the learned Labour Court failed to appreciate that the petitioner firm is a proprietorship firm engaged in the business of tours and travels and the prime activity of the petitioner firm was to provide vehicle on hire/rent to the customers. Counsel further submits that the respondent workman must have been in the employment of one Shri Hira Lal Pandey whose vehicle bearing No. HR 38 FT 9641 was being hired by the petitioner between the year 2002-2003 as and when the need arose and since due to the collapse of business of Hira Lal Pandey, the respondent workman became jobless and therefore, to get rid of his economic crises trapped the petitioner to claim his employment after challenging his alleged illegal termination. Counsel further submits that the respondent no.2 workman had tried to take undue advantage of the similarity of the surname of the petitioner i.e. Shri R.C. Pandey and that of Shri H.L. Pandey to claim as if both of them are real brothers running the business of tours and travels under the name of M/s. Agra Tours and Travels.

Counsel for the petitioner further submits that the respondent no.2 had tried to misuse the duty slip to portray as if the duty slip issued by the petitioner would prove his employment with the petitioner firm and as a matter of fact such duty slips are merely issued in favour of the driver as and when any vehicle is engaged for the travel of any tourist. Counsel for the petitioner further submits that the onus to prove the relationship of 'employer and employee' was on the respondent workman but the respondent workman failed to prove the said relationship and therefore, the findings of the labour Court holding that there exists a relationship of 'employer and employee' between the parties is perverse, irrational and illegal. Based on the aforesaid submissions, counsel for the petitioner submits that the impugned award deserves to be set aside.

4. Refuting the said submissions of counsel for the petitioner, counsel for the respondent no.2 submits that no fault can be found in the findings given by the learned Labour Court. Counsel further submits that the petitioner Shri R.C. Pandey and Shri Hira Lal Pandey are real brothers and the said fact was proved on record with the help of the registration certificate and

contract carriage permit of the vehicle bearing No. HR 38 FT 9641 wherein father's name of both of them is the same i.e. Shri G.N. Pandey. Counsel for the respondent further submits that the case of the respondent workman is not that he had worked under Shri Hira Lal Pandey but the respondent no.2 was an employee of the petitioner firm and the brother of the petitioner Shri Hira Lal Pandey being a partner of the said firm was also involved in the business activity of the petitioner and the vehicle bearing No. HR 38 FT 9641 owned by Shri Hira Lal Pandey was one of the vehicles being used by the petitioner firm in the business of tours and travels. Counsel for the respondent further submits that the duty slip issued by the petitioner is in fact evidence of the job of the respondent no.2 with the petitioner firm and the authenticity of the same cannot be doubted. Counsel thus submits that no perversity or illegality can be found in the award passed by the learned Labour Court and this Court while exercising jurisdiction under Article 226 of the Constitution of India would not reappreciate the findings of the facts, in the absence of any illegality or perversity in the award.

5. I have heard learned counsel for the parties.

6. An industrial dispute was raised by the respondent no.2 under Section 10 of the I.D. Act, aggrieved with his illegal termination by the petitioner management. Before raising the said dispute, respondent workman through his Union made complaint to the Assistant Labour Commissioner but since he was not reinstated nor his dues were paid by the petitioner management despite intervention of the Labour Commissioner, the respondent workman filed the statement of claim before the Conciliation Officer. On the failure of the conciliation proceedings, the matter was sent for adjudication by the Government of Delhi to the Labour Court. The petitioner in his written statement had disputed the existence of the relationship of 'employer and employee' between the parties and pleaded that such relationship existed between Shri Hira Lal Pandey and the respondent workman and the petitioner firm only used to deploy the said vehicle of Shri Hira Lal Pandey in the year 2002-2003. The case of the respondent workman on the other hand was that Shri Hira Lal Pandey and the petitioner are real brothers and based on the common name of the parentage of Shri Hira Lal Pandey and R.C. Pandey and non production of Hira Lal Pandey by the petitioner

to prove anything to the contrary, the Labour Court came to the conclusion that there existed the relationship of 'employer and employee' between the parties.

7. I do not find any perversity or illegality in the said findings of the Labour Court. It is a settled legal position that the onus to prove the existence of relationship of employer and employee is on the person who sets up such a claim. But when the primary burden is discharged by the claimant, the burden shifts to the party rebutting it, to place cogent and convincing material so as to displace the said claim. It would be useful here to refer to the judgment of the Apex Court in the case of **Bank of Baroda vs. Ghemarbhai Harijbhai Rabari 2005(10) SCC 792** where it reiterated the said principle and held:

"While there is no doubt in law that the burden of proof that a claimant was in the employment of a Management, primarily lies on the workman who claims to be a workman. The degree of such proof so required, would vary from case to case. In the instant case, the workman has established the fact which, of course, has not been denied by the bank, that he did work as a driver of the car belonging to the bank during the relevant period which come to more than 240 days of work. He has produced 3 vouchers which showed that he had been paid certain sums of money towards his wages and the said amount has been debited to the account of the bank. As against this, as found by the fora below, no evidence whatsoever has been adduced by the bank to rebut even this piece of evidence produced by the workman. It remained contented by filing a written statement wherein it denied the

claim of the workman and took up a plea that the employment of such drivers was under a scheme by which they are, in reality, the employee of the Executive concerned and not that of the bank; none was examined to prove the scheme. No evidence was led to establish that the vouchers produced by the workman were either not genuine or did not pertain to the wages paid to the workman. No explanation by way of evidence was produced to show for what purpose the workman's signatures were taken in the Register maintained by the bank. In this factual background, the question of workman further proving his case does not arise because there was no challenge at all to his evidence by way of rebuttal by the bank."

Hence, in the backdrop of the aforesaid, in the facts of the case at hand, the contention of the counsel for the petitioner that Hira Lal Pandey was the owner of the said vehicle bearing No. HR 38 FT 9641 and his vehicle was taken on hire by the petitioner between the period 2002-2003 as and when the need arose, is devoid of any force and substance as the petitioner failed to produce Hira Lal Pandey or produce its own records to counter and rebut the claim of the respondent workman. The respondent workman on the other hand proved on record the duty slip which clearly disclosed the name of the respondent no.2 as the driver and the name of the petitioner firm as employer which document clearly is an evidence of the relationship of the parties as that of employer and employee. The petitioner also could not effectively

rebut the plea of the respondent workman based on the documentary evidence showing the common name of parentage of the petitioner and that of Hira Lal Pandey. The Labour Court further took into consideration the view taken by the Apex Court in ***S.M. Nilajkar & Ors. vs. Telecom Distt. Manager, Karnataka, (2003) 4 SCC 27*** to give benefit to the workman in case of any doubt, keeping in mind the labour laws being beneficial piece of legislations. No error or illegality is found to have been committed by the labour Court and this court is not persuaded to take any contrary view to the same.

8. It is a settled legal position that the labour court are the final arbitrators of findings of facts and it is only in exceptional circumstances, interference under Article 226 and 227 of the Constitution of India is warranted whenever there is perversity or illegality in the impugned order. It would be pertinent here to refer to the judgment of the Apex Court in ***Management of Madurantakam, Co-operative Sugar Mills Ltd. Vs. S.Vishwanathan (2005)3 SCC 193*** where it was held that:

"12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type of

disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article [226](#) or under Article [227](#) of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court."

9. The Labour court has granted a lump sum compensation amount of Rs.30,000/- in lieu of reinstatement of job, continuity of service and back wages and after allowing deduction of sum of Rs.350 towards 50% of the fee paid to the Local Commissioner, has allowed a total sum of Rs. 29,650/- to be payable by the petitioner management with simple interest @ 9% p.a. from the date of the award till the date of the recovery of the said amount. No arguments have been addressed by both the parties to challenge said quantum of compensation granted by

the Labour Court, therefore, the said quantum of compensation is also upheld.

10. Hence, in view of the aforesaid, there is no merit in the present petition and the same is hereby dismissed.

March 10, 2010
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KAILASH GAMBHIR,J