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HIGH COURT OF DELHI : NEW DELHI

W.P (C) No. 6266/2007 & CM No.11728/2007

Judgment pronounced on: 22.09.2010

BHARTIYA INTERNATIONAL LTD. Petitioner
Through: Mr. Inderjit Singh, Adv.

Versus

AMAR SINGH & ANR. Respondents
Through: Mr. Rama Shankar, Adv. for R-1.
Ms. Parul Sharma, proxy counsel for
Mr. V.K. Tandon, Adv. for R-2.

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 the petitioner (company incorporated under Companies Act, 1956) under Articles 226 and 227 of the Constitution of India praying for quashing/or to set aside the impugned award dated 10.04.2007.

2. Brief facts which are relevant for the purpose of deciding the present writ petition are that the respondent No.1 raised an industrial dispute by alleging that he was working with the petitioner since May 1995 as a Sample Tailor and on 09.06.1997 his services were terminated by the petitioner without any notice or compensation. The allegation of the workman respondent was that he was not given any legal facilities by the petitioner and on demanding the same, the petitioner got annoyed and withheld his earned wages for the period from 01.06.1997 to 08.06.1997 and

also terminated him on 9.6.1997.

3. The petitioner contested the case of the workman before the trial court and contended that the claim of the respondent was totally false and frivolous as he never worked with the petitioner in any capacity whatsoever. As per the petitioner the respondent No.1 could not produce any document or any other evidence to prove that he was in employment of the petitioner. On the other hand the petitioner produced the attendance register from April 1995 to July 1997, wages register and bills etc. to show that respondent No.1 was never employed by it.

4. The parties led their respective evidence, the learned trial court passed the impugned award dated 10.4.2007 in favour of respondent No.1 holding that the termination of the respondent No.1 was illegal, unjustified and is in violation of the provision of Section 25 F of the Industrial Disputes Act, 1947. However, the Labour Court came to the conclusion that it was not a fit case for reinstatement and back wages and the respondent was awarded a lumpsum compensation of Rs.40,000/- instead of reinstatement and back wages.

5. The petitioner has challenged the impugned award, inter alia, on the following main grounds:

- (i) The impugned award is inconsistent and contrary to the law laid down by the Hon'ble Supreme Court in the case of ***R.M. Yellati Vs. Assistant Executive Engineer; 2006 SCC (1) 106*** wherein it was held:

“However, applying general principles and on reading the afore stated judgments, we find that this court has repeatedly taken the view that the

burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary, in cases of termination of service.....” Para 12

(ii) The respondent No.1/workman totally failed to prove that he was ever employed by the petitioner in the absence of any cogent and admissible evidence.

(iii) Labour Court itself acknowledged in the impugned award that the name of the respondent/workman does not figure in the said document i.e. attendance register and payment of wages register.

6. It is not a disputed fact that the petitioner produced before the Ld. Labour Court attendance register from April, 1995 to July, 1997 and wages register from April, 1995 to October, 1996 and in the said documents the name of the respondent/workman was not mentioned. The petitioner also produced bills raised by the fabricator (M/s Kapoor Bros) and copies of T.D.S. certificates issued to it to show that the respondent No.1 was never employed by it.

7. The Labour Court in its award has given its findings to the following effect:

“I have perused the documents and the name of the claimant is not mentioned in the said documents. It has been argued on behalf of the management that the onus to prove the employer-employee relationship is upon the workman and he failed to place on record any document to show that he was employed with the management.....”

8. At the same time, the Labour Court by ignoring the relevant documents has held in the award that the respondent

No.1 was employed by the petitioner because during cross examination of the respondent, a suggestion was put to him that it is wrong to say that he worked with the management on piece rate basis. The Labour Court opined that the said suggestion clearly suggests that the management has admitted that the respondent No.1 has worked with the management, but the only stand of the management.

9. According to the petitioner the above conclusion drawn by the Labour court is incorrect and wrong for more than one reason. Firstly, it amounts to shifting the burden of proof on the management. Secondly, the suggestion has been incorrectly recorded and interpreted by the Labour Court. The suggestion of the authorized representative of the petitioner/management was that the workman worked with the Fabricator on piece rate basis. Thirdly, besides the petitioner producing attendance and wages register establishing that petitioner was not employed by the respondent No.1, a management witness (MW-1) during his cross examination stated that "it is incorrect to say that the payments were being made to Shri Amar Singh on vouchers." And "it is wrong to suggest I am running a manufacturing factory in the premises. Rather it is an office, the respondent No.1 was not employed by the petitioner company in any capacity.

10. It is settled law that the evidence has to be read as a whole. According to learned counsel for the petitioner, the respondent was working with its fabricator on piece rate basis and there was no need to mention this fact in the written statement as burden always lies with the workman to prove the relation between them.

11. The burden of proof is always on the complainant to show that he has worked for 240 days in a given year and the claimant has to discharge the burden by producing the cogent evidence. Thus, in the present circumstances, there is a force in the submission of the petitioner and the Labour Court has ignored the vital fact while passing the order.

12. This court is conscious about the fact that in writ jurisdiction normally the discretion exercised by the labour court on the facts of the case be not interfered with however, at the same time it is also a settled law that in order to comply the provision of Section 25 of the Industrial Disputes Act, 1947 the workman claiming protection has to prove that there is an existing relationship between the employer and employee within the meaning of Section 25 S of the Industrial Disputes Act, 1947.

13. The workman also has to work for not less than one year continuously/240 days in a given year as provided under Section 25 B under the employer and if all those conditions are missing then the provision of Section 25 F cannot be attracted. In order to get the relief from the court the workman has to establish that he has a right to continue in service and his services has been terminated without the compliance of the provision of Industrial Dispute Act, 1947.

14. In the present case the petitioner has also produced the evidence by way of affidavit dated 07.11.2000 of Sh. Sunil Malik, MW-1. In paras 3 and 4 of the affidavit, the petitioner has produced the photocopies of the attendance register of the petitioner company from the period April 1995 to July 1995 and January 1997 to July 1997 as well as the Wages Payment Register of the

petitioner from April, 1995 to October, 1996 which are exhibited as MW-1/1 to MW-1/30.

The said record shows that the respondent No.1 was not employed by the petitioner. Further the petitioner has also produced the record of M/s. Kapur Bros., 55/1 Munirka Village, New Delhi, who was a fabricator/contractor for rendering services for fabrication and manufacturing of samples during the said period in question. The petitioner produced some of the bills raised by Kapur Bros. on the petitioner along with the TDS certificate. The same are exhibited as MW-1/31 to 43.

15. Only evidence submitted by the respondent was the document MW-1/W1 and MW-1/W2 that is cover note of insurance policy and copy of the first premium receipt which were rejected by the labour court for not being sufficient to prove the relationship of the employer and employee. No other document or any cogent evidence has been produced by the respondent to prove the relationship of the employer and employee between the parties.

16. The labour court has ignored the statement made by the petitioner in the written statement wherein it is specifically mentioned that the petitioner has not employed the respondent at any point of time secondly, admittedly the labour court has come to the conclusion that there is no evidence on behalf of the respondent to prove the relationship of employer and employee and rather the record produced by the petitioner clearly shows that the name of the respondent is not mentioned in the documents, still the award was passed in favour of the respondent No.1. Thus, it is evident that during the relevant period the respondent was not working with it. The affidavit of Hardeep Singh, proprietor of M/s.

Design Studio fortifies the case of the petitioner who has stated that he was carrying on the business of sampling and manufacturing of leather garments and was getting orders from the petitioner and he had joined M/s. Kapur Bros. in May 1995 as Production Manager. The said firm M/s. Kapur Bros. was in the business of fabrication and sampling of leather garments in a small way and used to get the orders from the petitioner. The said firm had employed about seven to eight tailors for the purpose of manufacturing samples for the petitioner and Amar Singh was one of the Tailor employed by M/s. Kapur Bros.

17. For the aforesaid reasons, it is clear that the claim of the respondent No.1 that he was an employee of the petitioner is incorrect and the respondent No.1 has failed to prove the same.

18. For the aforesaid reasons, the writ petition is allowed and the Award dated 10.04.2007 passed by the Labour Court is set aside. The writ petition is disposed of. No costs.

MANMOHAN SINGH, J.

SEPTEMBER 22, 2010

jk/dp