

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

+ **W.P.(C) No. 6872/2007**

% Judgment delivered on: 25.02.2010

Shri Puneet Kalra (workman) Petitioner
Through: Mr. M.L. Khattar,
Advocate
versus

The Labour Court No.VII, Delhi & Ors. Respondents
Through: Mr. Anil Kumar Hajelay,
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:

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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 Ld. Labour Court No.VII, Delhi whereby the reference was answered against the petitioner workman.

2. Brief facts relevant for deciding the present petition are that the petitioner was appointed as a Senior Accounts Assistant by the respondent no.2 management on 6.11.1993 and was terminated on 30.12.1998. Thereafter an industrial dispute was raised by the petitioner bearing ID No. 48/2000 whereby Labour Court vide award dated 3.5.2007 held that the workman himself absented from duty and abandoned his employment and is not entitled to any relief. Feeling aggrieved by the said award, the petitioner has preferred the present petition.

3. Counsel for the petitioner submits that in the written statement filed by the respondent Management they had taken a stand that an appointment letter was issued to the petitioner but no copy of such appointment letter was placed on record by the respondent management. The contention of the counsel for the petitioner is that had the said letter been produced by the respondent, it certainly would have shown that the appointment of the petitioner was made from the office at Delhi. The other contention of the counsel for the petitioner is that the work from the petitioner was being taken by other sister concerns of the respondent company, namely, Goodwill Overseas Pvt. Ltd. and M/s

Harig India Limited where directors/partners were the same as that of the respondent No.2 and therefore also the jurisdiction to try the said Industrial Dispute vests with the Delhi Courts. Counsel further submits that notice of demand was sent by the petitioner vide demand notice dated 1.8.1999 addressed to the respondent No.2 at their head office at New Delhi but no reply thereto was sent by the respondent No.2 and for that also the Ld. Labour Court should have drawn adverse inference against the respondent No.2. Counsel further submits that the attendance register produced by the respondent management was not signed by the petitioner and the same was only signed by the Supervisor at the end of the sheet. Counsel also submits that the relevant attendance register from the Delhi office was not deliberately produced by respondent No.2 and had the same been produced, it would have certainly shown the attendance being marked by the petitioner in Delhi office.

4. Refuting the said submissions of counsel for the petitioner, Mr. Anil Kumar Hajelay, counsel for the respondent submits that it was the case of the petitioner that the appointment letter was issued and therefore it was for the petitioner to have produced the appointment letter. Counsel further submits that the

management witness MW 1 Satveer Giri was not cross-examined by the petitioner workman on the point of non-filing of the said copy of the appointment letter by the respondent management. Counsel further submits that the petitioner workman in his cross-examination, in fact, admitted that no appointment letter was issued to him by the management. He also clearly deposed in his cross-examination that he was not in possession of any documentary proof to show his employment in Delhi Office of the respondent management. He further admitted that no termination letter had been issued to him by the management and so far the letter of confirmation which was issued to the petitioner workman is concerned, he duly admitted this fact that he had received the said letter from Ghaziabad and the said confirmation letter was proved on record Ex. WW 1/1. Counsel further submits that the application, as submitted by the petitioner himself, to seek employment with the respondent was duly proved on record as Ex. MW 1/1 and perusal of the same would clearly show that the same was addressed to the respondent No.2 at their office at Sahibabad, District Ghaziabad. Increment letters to the petitioner were also issued from the Ghaziabad Office of the respondent No.2 and the

same were proved on record as MW 1/1 to MW 1 /4. Counsel further submits that the PF and ESI facilities were extended to the petitioner from the concerned offices of EPF of U.P. and the attendance record of the Ghaziabad Office was proved before the Labour Court as Ex. MW 1/8 and Companies Register as MW 1/9 and leave account record as MW 1/10. Counsel further submits that the petitioner failed to discredit the said documentary evidence proved on record by the respondent.

5. I have heard learned counsel for the parties.

6. The petitioner workman raised an industrial dispute against his alleged illegal termination from service, which was referred for adjudication by the Secretary Labour, Government of NCT of Delhi. In the statement of claim filed by the petitioner he claimed his appointment with the respondent management on the post of Senior Accounts Assistant w.e.f. 16.11.1983 on which post he was confirmed vide letter of confirmation dated 22.5.1995. The petitioner also claimed that the respondent management started utilizing his services with its sister concerns including M/s Goodwill Overseas Pvt. Ltd. at Karol Bagh, Chattarpur and even at Noida and for most of the time he served the respondent management while

being posted in Delhi. The workman also stated that he was enjoying the facilities of ESI besides subscribing to the provident fund, but his services were arbitrarily terminated by the respondent management w.e.f. 30.12.1998 as the management did not permit him to resume his duties. The respondent management contested the claim of the petitioner and in the written statement filed by them preliminary objection was raised to challenge territorial jurisdiction of the labour Court on the ground that the petitioner was in the employment of the management at Sahibabad (Uttar Pradesh). While extending offer to the petitioner to join back his duties, the respondent management blamed the petitioner for absenting himself from duty w.e.f. 30.12.1998. Based on the pleadings of the parties the learned Labour Court framed the following issues:-

- I. Whether the claimant has abandoned the job on his own?
 - II. Whether this court has any territorial jurisdiction to decide the present reference.
 - III. As per terms of reference.
- 7 . In support of his pleadings the petitioner examined himself as WW1 while the management examined their employee

Satveer Giri holding the post of Asstt. Officer (Admn.) as MW1. On the issue of jurisdiction the learned labour Court had found that the Court has no territorial jurisdiction to deal with the matter and the issue was accordingly decided in favour of the respondent management and against the workman. Amazingly after deciding the issue of jurisdiction in favour of the management the learned Labour Court went on to decide the other issues concerning the merits of the case. Here, before this Court, both the counsels were directed to address the arguments on the issue of jurisdiction and it is only when this Court feels satisfied to accept the contention of the petitioner on the maintainability of the reference before the learned Labour Court at Delhi then only the findings given by the learned Labour Court on the other issues would be dealt with. Since this Court is not persuaded to find any infirmity or perversity in the order passed by the learned Labour Court on issue No. 2, therefore, findings given by the learned Labour Court on issues No. 1 and 3 on the merits of the case and answer given to the reference would become nullity in the eyes of law due to the lack of jurisdiction of the said Court.

8. So far the issue of jurisdiction is concerned, Mr. M.L. Khattar, counsel for the petitioner laid much emphasis on the appointment letter alleged to have been issued by the respondent, but was withheld from the Court under the apprehension that production of the same would belie the stand of the respondent to claim appointment of the petitioner from Sahibabad office. No doubt the respondent management in their written statement have stated that the petitioner workman was issued appointment letter and this stand was taken in reply to the assertion of the petitioner wherein he clearly stated that no appointment letter was issued to him and he was confirmed on the post of Senior Accounts Assistant w.e.f. 1.5.1995 vide letter of confirmation bearing dated 25.5.1995. With the said contradictory stand taken by both the parties the learned Labour Court placed reliance on the confirmation letter dated 22.05.1995 which was issued by the respondent from their office at Sahibabad and was received by the petitioner at the same place. The execution of the said confirmation letter has duly been admitted by the petitioner in his statement of claim and, therefore, the authenticity of the said letter is not in doubt. The learned Labour Court also placed reliance on the application submitted by

the petitioner seeking his appointment with respondent management and the said application clearly mentioned the address of the respondent management at Ghaziabad. The said application was proved on record by the respondent management as Exhibit MW 1/1. The nomination form Exhibit MW 1/6 was also filled by the petitioner workman from the Ghaziabad office and the ESI form was proved on record as Exhibit MW 1/7 also relates to the local office at Ghaziabad. The attendance record was also placed on record by the respondent management, which further shows and strengthens the case of the respondent that the petitioner was marking his attendance at the office of the respondent at Sahibabad. The petitioner workman on the other hand failed to produce on record any cogent or convincing evidence to prove his employment with the respondent or its sister concerns at Delhi. He, in his cross-examination clearly conceded that he was not in possession of any documentary proof to show his employment in Delhi. Even in the affidavit filed by the petitioner, he clearly stated that no appointment letter was issued to him while he admitted the confirmation letter dated 22nd May, 1995, which was proved by him as Exhibit WW 1/1. The petitioner also did not

summon any records from the said sister concerns of the respondent to show his place of posting with them at Delhi or to prove payment of Rs. 200/- per month as extra remuneration from the said concerns. It will be thus seen that on one hand the petitioner failed to place on record any documentary or other evidence to prove his posting or employment with the respondent or its sister concern at Delhi while on the other hand the respondent management through various documents sufficiently proved to establish the employment of the petitioner at their office at Sahibabad and there is no room to disbelieve the correctness of the documentary evidence placed on record by the management. It is a settled law that for raising an industrial dispute the situs of the employment of the petitioner would be relevant feature to determine the place of jurisdiction and it will be of advantage to refer to the judgment of the Apex Court in the case of ***Bikash Bhushan Ghosh vs. Novartis India Ltd. (2007)5 SCC 591*** where principles for determining the jurisdiction under the industrial law were re-emphasised. The relevant para of the said judgment is referred as under:-

"We may notice that in Paritosh Kumar Pal v. State of Bihar a Full Bench of the Patna High Court held: (Lab IC p. 1258, para 13)

"13. Now an incisive analysis of the aforesaid authoritative enunciation of law would indicate that three clear-cut principles or tests for determining jurisdiction emerge, therefrom. For clarity these may be first separately enumerated as under:

(i) Where does the order of the termination of services operate?

(ii) Is there some nexus between the industrial dispute arising from termination of the services of the workman and the territory of the State?

(iii) That the well-known test of jurisdiction of a civil court including the residence of the parties and the subject-matter of the dispute substantially arising therein would be applicable."

Referring to the provisions of the Code of Civil Procedure, it was held that the situs of the employment of the workman would be a relevant factor for determining the jurisdiction of the court concerned."

9 . The understanding of the term "cause of action" would acquire importance in the circumstances of the case at hand. It would be relevant to refer to the judgment of the Apex Court in ***Om Prakash Srivastava vs. Union of India (2006)6 SCC 207*** where it interpreted the said term in the following words:

"12. The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense 'cause of action' means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would

be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in 'cause of action'. (See Rajasthan High Court Advocates' Assn. v. Union of India.)

13. The expression 'cause of action' has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. (See Gurdit Singh v. Munsha Singh.)

14. The expression 'cause of action' is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person (see Black's Law Dictionary). In Stroud's Judicial Dictionary a 'cause of action' is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In Words and Phrases (4th Edn.) the meaning attributed to the phrase 'cause of action' in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See Navinchandra N. Majithia v. State of Maharashtra.)

10. Hence, in the light of the above settled legal position and in view of the documentary evidence placed and proved on record by the respondent management it is quite manifest that the petitioner was appointed with the respondent at their factory at Sahibabad (U.P.), and therefore, I do not find any illegality or

perversity in the impugned Award deciding issue No. 2 in favour of the respondent management and against the petitioner. The order of the learned Labour Court on issue No. 2 is accordingly upheld. Once the learned Labour Court held that it has no territorial jurisdiction to decide the reference, then it should not have ventured to decide the other issues on the merits of the case. Hence, so far the findings of the learned Labour Court on issues No. 1 and 3 are concerned, the same are set aside.

11. With the above directions, the present petition is disposed of

February 25, 2010
pkv

KAILASH GAMBHIR,J