

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION(C) NO.526/2011

Date of Decision : 28th January, 2011

RAHIMUDDIN & ORS. Petitioners
Through Mr. M. A. Khan, Advocate.

versus

GOSSINI FASHIONS LTD. Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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

SUDERSHAN KUMAR MISRA, J. (Oral)

CM No. 1119/2011 (Exemption)

Exemption, as prayed for, is allowed, subject to all just exceptions.

This application stands disposed of.

WP(C) No.526/2011

1. The instant writ petition has been preferred against the impugned award dated 26th February, 2010, wherein the Labour

Court held that the petitioners are not entitled to any relief since they failed to establish the relationship of master and servant with the respondent management.

2. It is the case of the petitioners/workmen that they were working as tailors with the respondent till their services were terminated on 18th April, 2000. They allege, inter alia, that the respondent neither issued appointment letters nor did it maintain any record of their service.

3. The case of the respondent through out has been that there is no relationship of employer and employee between the parties and, as such, there is no question of granting legal facilities to them or of any illegal termination of the petitioners' service by the respondent. Counsel for the respondent also submitted that the name of the company in the order of reference was described as M/s GIP Leather (India) Limited whereas the correct name of the company was M/s AN GIP Leather (India) Limited. He further contended that the petitioners were, in fact, the employees of M/s Star Fashions, through whom the respondent was getting the work of stitching done. Even the machines on which the petitioners worked were not the property of the respondent. The respondent was only providing raw material to M/s Star Fashions to stitch the garments. Thus, the said M/s Star Fashions was getting the work of stitching done

through its own workers, on its own machines, in its own premises and the respondent was only paying the money on the bills raised by it.

4. The petitioners also applied to the Labour Court seeking direction to the respondent to produce some documents and records, including the attendance register. In reply, the respondent alleged that since the petitioner workmen were not its employees, and were actually the employees of its contractor, M/s Star Fashions, therefore it is not liable to produce the documents. The Labour Court, however, allowed the application and directed the respondent to produce the records sought by the workmen.

5. Ultimately, the Labour Court concluded that not a single document was filed by any of the workmen to prove the relationship of employer and employee. Further, the service records produced by the management did not show the name of any of the workmen. The workmen relied on the cross examination of Mr. T. Ravindran, Assistant Manager (personnel) of the management, wherein he stated that whatever production work was being carried out by the workmen employed under the contractors was finally checked and approved by the production staff of the management and that they even had a right to reject the work. However, the Labour Court construed this as merely indicating that the end product was finally

checked and approved by the management through its own staff and nothing more. There is also no evidence that the premises in which the manufacturing was carried out belonged to the management or that it is the management who was providing the tools to the workmen for the purposes of manufacturing of garments. Hence, the element of supervision and control essential for establishing a relationship of employer and employee was missing. Consequently, the Labour Court held that since the workmen failed to prove any relationship with the management, there can be no question of any illegal termination by the management and they are, therefore, not entitled to any relief.

6. Before this Court, counsel for the petitioners submitted that in order to defeat the legal rights of the petitioners, and to avoid its liabilities, the respondent had adopted a modus operandi of frequently changing the name of the establishment, and maintaining a different name on record and in the books of the establishment, aimed at confusing and misleading the petitioners. The respondent was initially named as M/s Goetze India Ltd., which was later changed to GIP Leather (India) Ltd. and then to AN GIP Leather (India) Ltd. and presently it is M/s Gossini Fashions Ltd.

7. Counsel further states that the plea of the respondent that the petitioners were the employees of its contractor, M/s Star

Fashions, is false and fabricated. He submits that the respondent had, in fact, moved applications dated 21st February, 2002 and 17th October, 2002 to implead the said M/s Star Fashions as a necessary party to the dispute, which was allowed. However, notices issued to M/s Star Fashions were returned back with the remarks that it was not in existence at the given address. Even the notice issued to Mr. Ajay Rathore, alleged to be the proprietor of M/s Star Fashions, was received back with the remarks that no such firm was available at the given address. Finally, the Labour Court ordered that M/s Star Fashions be dropped from the array of parties. Counsel further states that the respondent had itself admitted that the petitioners were working for it through the said contractor, M/s Star Fashions, and since it failed to prove the existence of the above said contractor, it is clear that there was no one between the petitioners and the respondent and that they were under the direct control and supervision of the respondent.

8. He also submits that the Labour Court erred in law in as much as it failed to appreciate the fact that the respondent was providing the raw material and machines on which the petitioners did the work and the respondent had the right to reject the end product if it did not conform to its instructions and direct the petitioners to restitch the product.

9. Counsel for the petitioners further states that in a similar matter, which was referred by a separate reference, the same Labour Court concluded that the workmen's services were illegally terminated by the management and granted compensation of Rs. 50,000 each in lieu of reinstatement. He, therefore, contends that even though the facts and circumstances in both the cases are same and the matter relates to the same group of workmen, the Labour Court granted relief in one case and denied the same in another.

10. A perusal of all the above facts shows that the only evidence the petitioners have managed to produce is an admission by the respondent that the petitioners were employed by a contractor with whom the respondent had an agreement. The petitioners state that the Tribunal should have held that in case the contractor was not traceable, the petitioners should be treated as direct employees of the management. In support of their proposition, the petitioners have relied on the case of **Silver Jubilee Tailoring House and Ors. v. Chief Inspector of Shops and Establishments and Anr. (1974) 3 SCC 498**. Paragraph 33 of the aforesaid judgment states:

"That the workers work on the machines supplied by the proprietor of the shop is an important consideration in determining the nature of the relationship. If the employer provides the equipment,

this is some indication that the contract is a contract of service, whereas if the other party provides the equipment, this is some evidence that he is an independent contractor.
"

11. A perusal of this paragraph discloses that it has no relevance to the proposition raised. Further, in the aforesaid case, the premises and the shop in which the work was carried on belonged to the proprietor of the shop and the machines installed in the shop also belonged to him. On the other hand, in the instant case there is no evidence that the premises where the petitioners worked belonged to the respondent or that it was the respondent who provided the tools to the workmen for the purpose of manufacturing the garments.

12. The second point raised by counsel for the petitioners is that since the management had a right to accept or reject the 'end product', it was sufficient to hold that the petitioners were the employees of the management. I do not agree. The mere right of acceptance or rejection of the 'end product' does not, and cannot, *ipso facto* place the parties in a master and servant relationship. It was put to the petitioners that the acceptance or rejection of the 'end product' is very often available even to the person who is intending to purchase the product from the management. If the petitioners'

proposition is held to be correct, then it would mean that the petitioners can claim to be the employees of that purchaser of the 'end product' as well. Right to accept or reject an 'end product' can also be reserved in case of an independent buyer, where also the producer manufactures the product on its own, and the buyer looks at it and accepts or rejects it. For example, whenever a suit is ordered by a gentleman from his tailor. Therefore, this fact cannot be taken as an indication of a master and servant relationship.

13. Another plea taken by the counsel for the petitioner is that, on the same ground, i.e. of the management reserving the right of accepting or rejecting the 'end product', in another case pertaining to the same management, the Labour Court concluded that this is sufficient to establish the relationship of master and servant. This plea cannot be accepted as the Labour Court is not a Court of Record and its decisions do not form precedent. It is upto the aggrieved party to challenge the same if it is erroneous in law or facts or some miscarriage of justice has been occasioned.

14. According to counsel for the petitioner, in its cross examination, the respondent had admitted that the petitioners were their employees. To support this contention, he relies on the cross examination of Mr. T. Ravindran, Assistant Manager (personnel) of the respondent. Counsel has referred to the statement of the said

witness to the effect that he did not have any direct connection with the production activity of the company. The said witness further stated that, " whatever production was being carried by the workman employed under the contractor were finally checked and approved by our own production staff", and that the management, "also used to give work on piece rate basis". To my mind, this does not constitute an admission with respect to the relationship of master and servant. Not only that, it appears that it was also the petitioners' own case that production personnel from the company used to go to the fabricators/contractors/piece rate workers to verify that the goods were being conformed to the standards prescribed by the overseas buyers. Therefore, I am afraid there is nothing in the said cross examination that would amount to an admission of the relationship of employer and employee between the respondent and the petitioners.

15. The Supreme Court in **Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N.,(2004) 3 SCC 514,** held that:

"question whether the relationship between the parties is one of 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."

16. In the instant case, the petitioners failed to produce the relevant documents such as appointment letter, PF, etc. in support of their contention that they were employees of the respondent. The petitioners contented that they were unable to produce the documents since the same was not provided by the respondent although they are the employees of the respondent. The service record produced by the respondent also does not show the name of any of the workmen. It was further contended that since the respondent failed to prove the existence of the said contractor, M/s Star Fashions, or its proprietor, there was no need for the petitioners to produce any direct documentary evidence such as appointment letters, identity cards, deduction of PF, etc. to prove their relationship with the respondent. It was urged that under the circumstances, it may be presumed that the respondent had neither maintained a proper employment record of the petitioners, nor issued them any documentary proof, with the mala fide intention of depriving the petitioners of their lawful employment rights and benefits. I do not agree. In **N.C. John v. Secy., Thodupuzha Taluk Shop and Commercial Establishment Workers' Union (1973) 1 LLJ 366 Ker**, the Kerala High Court held that the Tribunal was wrong in drawing an inference against the petitioner for not producing his books of accounts, which, according to the Tribunal,

would have shown that these persons were his employees. It further held that the burden of proof is on the workmen to establish the employer-employee relationship, and in attempting to discharge that burden, the books of account and other records of the petitioner may be called, and then if the management refuses to produce them, an inference may be drawn against it to the effect that if the said documents were produced, they would have borne out the claimants case. Here, it was the petitioners own case that they were not shown as employees in the respondent's records. The respondent admitted this fact. There was thus no need to produce the records to prove this fact. The other, relevant fact, which was in issue was, whether the respondent had deliberately omitted the name of the petitioners from those records. That could only have been proved by some independent evidence by the petitioners. They have failed to do so.

17. In view of the above facts, it is clear that the petitioners failed to discharge the burden and prove that they were, in fact, the employees of the respondent. Under the circumstances, I do not consider the conclusions reached by the Labour Court manifestly perverse. Nor do I not find any infirmity in the impugned Award, necessitating the interference by this Court in the exercise of its writ jurisdiction under Article 226 of the Constitution of India.

18. The writ petition is, therefore, dismissed.

SUDERSHAN KUMAR MISRA, J.

January 28, 2011