

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 02.09.2011

Judgment delivered on: 19.12.2011

+ **W.P.(C) No. 1214/2010 & CM. NO. 2538/2010 & CM No. 11943/2011**

M/s.M.D.Industries

.....Petitioner

Through: Mr. J.K. Sharma, Advocate.

Vs.

Govt. of NCT of Delhi and Anr.

.....Respondents

Through: Mr. A.S. Rajput, Advocate for
respondent no.2.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

KAILASH GAMBHIR, J.

1. By this petition filed under Articles 226/227 of the Constitution of India, the petitioner seeks setting aside of the award dated 7th January, 2010 passed by the learned Labour Court, Delhi, whereby a lump sum compensation of Rs.2,00,000/- was awarded in favour of the respondent No.2 herein.

2. Brief facts as set out in the claim petition and relevant for deciding the present petition are that the respondent No.2 was working with the petitioner management since 15.03.1994 at a monthly salary of Rs.1,400/- as Helper. It is stated that she was not being given legal facilities i.e. appointment letter, leave, wages as per the provisions of the Minimum Wages Act and that the management was not maintaining service records etc. Hence, on demanding the earned wages for the month of November, 2001 and other dues, the management got annoyed and forced her to tender her resignation, upon which she protested and with utter annoyance, the management terminated her services. Accordingly, the management was served with a demand letter dated 17.07.2002 vide registered A/D and UPC but the management neither reinstated her nor paid her dues. The case of the respondent no.2 was that her termination without issuing any notice or service of notice was in violation of Section 25-F of the I.D. Act and hence an industrial dispute was raised by her.

3. While in the present petition, the case as set out by the petitioner is that the respondent No.2/work lady joined the petitioner-management as Helper w.e.f. 7th August, 1998 at a monthly salary of Rs.1,950/-. It is also alleged that during the employment, she was provided all the benefits/facilities entitled in law including ESI facility. It is stated that the respondent No.2 worked with the management till 30th October, 1999 and thereafter absented herself from the duties. On 28th March, 2000 the respondent No.2 visited the office of the petitioner-management and by expressing her inability to work in the petitioner-management in view of her having delivered a child, submitted her resignation and on its acceptance by the petitioner-management, she collected a sum of Rs.3669/- towards earned wages and bonus etc. on 30.03.2000 by putting her thumb impression on the receipt/settlement and the voucher showing the payment. Thereafter, the respondent No.2 raised industrial dispute by alleging her termination from the services of the petitioner-management w.e.f. 12th December, 2001 before the

respondent No.1. The said reference was sent by the respondent No.1 to the learned Labour Court and vide impugned award, a sum of Rs.2,00,000/- was awarded in favour of the respondent No.2/work lady and against the petitioner-management and feeling aggrieved with the same, the respondent has preferred the present petition.

4. Notice of claim was sent to the petitioner-management but the management did not appear and hence was proceeded ex parte vide order dated 05.08.2004 and the case was adjourned for ex parte evidence. Thereafter, the said ex parte order was set aside and the petitioner was allowed to file written statement and in pursuance of the said order, written statement was filed by the petitioner wherein it was stated that the reference for adjudication of the Labour Court was not valid and proper as it had been made mechanically. It was also stated that the respondent No.2/work lady had voluntarily submitted her resignation which was duly accepted by the petitioner-management and after accepting her resignation, the respondent No.2 had settled all her

claims and received a sum of Rs.3,689/- towards full and final settlement in the presence of Shri Surender Pal Sharma.

5. Arguing for the petitioner, Mr.J.K.Sharma, learned counsel submitted that the respondent No.2 had filed a false and frivolous claim against the petitioner-management claiming employment with the petitioner w.e.f. 15.03.1994 as Helper and also her alleged termination by the petitioner on 12.12.2001. The contention of counsel for the petitioner was that the respondent was employed by the petitioner-management as Helper on 07.08.1998 at a monthly salary of Rupees 1,950/- and she voluntarily submitted her resignation on 28.03.2000 which was duly accepted by the petitioner-management and on acceptance thereof, the said resignation letter was submitted by the respondent No.2 as Ex.WW-1/M4, settlement document as Ex.WW1/M6, payment voucher Ex.WW1/M7 and all this documentary evidence was ignored by the learned Labour Court despite the fact that the same were bearing the thumb impression of respondent No.2. Counsel further submitted that the learned Labour Court even

ignored the evidence of the expert witness, MW3, who, based on his expert report, Ex. MW3/17, duly proved that the thumb impression on resignation letter, settlement receipt, etc. of the respondent No.2 were compared by him with her admitted thumb impression affixed by her on the statement of claim, her demand letter, on the rejoinder, on her affidavit as well as on her statement. Counsel further submitted that once the said hand writing expert produced by the petitioner had duly proved thumb impression of the respondent No.2, then it was of no consequence whether the said thumb impression was of her left hand or of right hand. Counsel also submitted that the learned Labour Court has also not given any reasons for awarding an exorbitant amount of compensation to the tune of Rs.2 lakhs to the respondent no.2 considering the fact that her employment with the petitioner was for a very short period.

6. Opposing the present petition, learned counsel appearing for the respondent No.2 submitted that the respondent No.2 was illegally terminated from her services by

the petitioner-management and no fault can be found by this Court with the reasoned award passed by the learned Labour Court. Counsel also submitted that the learned Labour Court rightly rejected the testimony of the expert witness, MW3 as he was not only an unqualified expert but also a novice as he had compared two sets of thumb impressions, one of RTI and other of LTI and under no circumstances the two sets of thumb impressions could have tallied with each other. Counsel further submitted that the respondent on her own had never resigned from her service and the petitioner had deliberately forged and fabricated the documents with the sole objective to put up a false defence.

7. I have heard learned counsel for the parties at considerable length and gone through the records.

8. It is a settled legal position that the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution of India is to the limited extent to see as to whether the subordinate Courts or the Tribunals are acting within the limits of their authority and the orders passed by

the said Courts or Tribunals are not perverse or illegal on the very face of it. While exercising supervisory power under Article 227 of the Constitution of India, the High Court does not act as an Appellate Court and cannot re-weigh the evidence with a view to substitute its own view or to appreciate the findings of fact recorded by the subordinate Court or the Tribunal. The discretionary power under Article 227 can be undoubtedly used to advance justice but must be exercised sparingly and this power of superintendence cannot be used to circumvent the statutory law or in the cloak of an appeal in disguise. It is also a settled legal position that the Labour Courts or the Tribunals exercising their jurisdiction under the provisions of various Labour Acts and statutes are the final courts of facts and the High Court will not ordinarily interfere with the findings of facts recorded by the Labour Court or the Tribunal unless such findings by these adjudicatory bodies are perverse or irrational on the very face of it.

9. Keeping in view the above stated settled legal position, in the facts of the case at hand, the respondent No.2 claimed her employment with the petitioner-management since 15.03.1994 as a Helper from which job she alleged to have been terminated by the petitioner-management on 12.12.2001. The defence raised by the petitioner-management was that the respondent No.2 was never appointed on the post of a Helper on 15.03.1994 and consequently that she was never terminated from her said job, but had voluntarily resigned from her job on 28.03.2000. The petitioner-management also took the assistance of a handwriting expert to prove the resignation letter of the respondent No.2 and the payment voucher alleged to have been carrying her thumb impression.

10. What was the period of her employment with the petitioner and under what circumstances the respondent No.2 left her said job were the two main questions to be decided before the learned Labour Court. In support of her case, the respondent No.2 examined herself as WW-1 and the

petitioner-management produced three witnesses and one of them was the hand writing expert, MW3. Commenting upon the evidence of the hand writing expert, the learned Labour Court held that the said hand writing expert is not a qualified expert as he did not obtain any degree or diploma in the said technical field of hand writing examination and finger prints and this lack of qualification was duly admitted by the said witness in his cross-examination. The learned Labour Court thus found that the said witness is not a qualified and competent hand writing expert. Not only the incompetence of the hand writing expert, the learned Labour Court further found that the basis of his report was also erroneous, as he had carried out the comparison of the thumb impressions which were not of the same hand. After having examined the thumb impressions on the documents produced by the petitioner-management, the learned Judge observed that he himself had seen that the thumb impressions are of right hand while the hand writing expert referred to the thumb impressions as that of left hand. After examining the thumb

impressions on the admitted and disputed documents, the learned Labour Court observed that since the comparison of thumb impressions is not of the same hand which was admitted by the said hand writing expert, therefore, under no circumstances such a witness can be called as an expert and his opinion deserves to be discarded. Counsel for the petitioner has failed to point out any infirmity or perversity in the said finding given by the learned Labour Court. However counsel for the petitioner relied upon the judgment of this court in the case of *Mahender Singh Sachdeva vs. Kailash Rani Wadhwan 2010(120)DRJ34* to support his argument that the trial court has wrongly discarded the opinion of the expert. On a perusal of the said judgment, it is clear that it reiterates the well settled principle that the expert opinion as per the mandate of section 45 of the Indian Evidence Act, 1872 is to be received with great caution and is only advisory in character and hence the said judgment does not in any manner support the case of the petitioner. It would be

relevant here to reproduce the relevant para of the said judgment here:

"17. Now to examine the contention of the appellant relating to expert evidence, it is a settled legal position that the opinion of the expert is relevant as provided by Section 45 of the Indian Evidence Act, 1872 but the report submitted by an expert does not go in evidence automatically. He is to be examined as a witness in Court and has to face cross-examination. Hence in the present case the report of the CFSL would not carry the sanctity of being the gospel truth in the absence of the said expert being summoned. Even in the event of the expert being examined, it is also an established rule of evidence that the opinion of the expert is not conclusive and has to be corroborated by other piece of evidence. It would be relevant to refer to the judgment of the Apex Court in the case of State of Himachal Pradesh v. Jai Lal : (1999) 7 SCC 280 here:

17. Section 45 of the Evidence Act which makes opinion of experts admissible lays down that when the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identify of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

18. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons

stated in support of his conclusions and the data and materials furnished which form the basis of his conclusion.

18. Therefore the opinion of the expert can be relied upon when supported by other internal and external evidence as the opinion of the expert simply corroborates the other evidence produced and is not the only determining factor."

Thus in my considered view the learned Labour Court rightly found the expert opinion untrustworthy as it is well settled law that if the expert opinion is conflicting than the judge can form its opinion which has been rightly done by the learned trial court in the present case.

11. Dealing with the argument of the respondent that the petitioner had herself resigned for which they produced MW 2 as witness according to whom the resignation was tendered in his presence, the learned Labour Court while commenting on the testimony of MW-2, found that the said witness failed to give any explanation about his presence at the time of submission of resignation letter Ex.WW1/M4 by the respondent as he alleged to be present there because of some business dealings with the petitioner management but no document showing any kind of business dealings was placed and proved on record and hence the resignation

letter, copy of statement of claim Ex.WW1/M5, settlement letter Ex.WW-1/M6, payment voucher Ex.WW-1/M7 were correctly held as not proved. No argument was advanced by counsel for the petitioner to impeach the said finding of the learned Labour Court. The learned Labour Court in my considered view has rightly observed that MW2 in his cross examination stated that he knew the respondent no.2 for about 6-7 years which would imply that the petitioner management's claim that the respondent no.2 joined only on 7.8.98 is belied keeping in view the fact that as per the petitioner, the respondent no.2 had resigned on 28.3.2000 meaning thereby she worked only for a short span of time. In this background, the learned trial court rightly disbelieved the testimony of MW 2 that he was present at the time when respondent no.2 tendered her resignation. Taking a broad view of the matter, in the light of the inability of the petitioner management to prove its defence, it seems to be nothing more than a concocted story based on forged and fabricated documents to escape liability.

12. So far the argument of counsel for the petitioner regarding amount of compensation granted by the learned Labour Court is concerned, the only argument advanced by counsel for the petitioner was that the amount of compensation of Rs.2 lakhs awarded by the learned Labour Court cannot be justified on account of the short duration of the employment of the respondent No.2 with the petitioner-management. As per the stand of the petitioner-management, the respondent No.2 had resigned from her job on 28.03.2000 and this stand of the petitioner-management was disbelieved by the Labour Court and, therefore, clearly the respondent No.2 was illegally terminated from her said job by the petitioner-management in contravention of provisions of Section 25-F of the Industrial Disputes Act. The respondent No.2 in this manner remained out of job for a period of more than 10 years and even looking into the minimum wages payable to an unskilled worker, the award of compensation of Rs.2 lakhs in favour of the respondent No.2 cannot be termed as excessive, exorbitant or unreasonable.

13. In the light of the above discussion, this Court does not find any merit in the present petition and the same is hereby dismissed.

KAILASH GAMBHIR, J

December 19, 2011