

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

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Date of decision: 11th March, 2011

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WP(C) NO.18211/2006

M/S BATLIWALA AND KARANI

..... Petitioner

Through: Ms. Meenakshi Sood, Advocate

Versus

LALIT MOHAN JAIN & ANR.

..... Respondents

Through: Mr. Asit Kumar Roy, Advocate.

AND

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WP(C) NO.18288/2006

M/S BATLIWALA AND KARANI

..... Petitioner

Through: Ms. Meenakshi Sood, Advocate

Versus

SHITLA PRASAD SHUKLA & ORS.

..... Respondents

Through: Mr. Asit Kumar Roy, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No. |
| 2. | To be referred to the reporter or not? | No. |
| 3. | Whether the judgment should be reported in the Digest? | No. |

RAJIV SAHAI ENDLAW, J.

1. The petitions impugn the awards, both dated 30th January, 2006 of the Labour Court holding the services of the respondent workman in each case to have been terminated by the petitioner employer illegally and unjustifiably and granting the relief of lumpsum compensation of ₹2,00,000/- to the respondent workman in W.P.(C) No.18211/2006 and of ₹3,00,000/- to the respondent workman in W.P.(C) No.18288/2006 apart from the legal dues to which the said respondent workmen were entitled to as per law and their service rules. Notice of the petitions was issued and the operation of the awards stayed subject to the petitioner employer depositing 50% of the award amount in this Court. Accordingly, a sum of ₹1,00,000/- was deposited in W.P.(C) No.18211/2006 and a sum of ₹1,50,000/- was deposited in W.P.(C) No.18288/2006. Pleadings have been completed and the counsels have been heard.

2. The award in each case though separate but are otherwise identical save for the fact that while the respondent workman in W.P.(C) No.18211/2006 joined the employment initially on 14th October, 1992, the respondent workman in W.P.(C) No.18288/2006 had joined the employment of the petitioner employer initially on 1st January, 1983.

Both the respondent workmen were terminated vide letters dated 5th October, 1999. The petitioner employer had contested the dispute raised by the respondent workmen pleading that the respondent workmen were not “workman” but were working at managerial level and their appointment was contractual and as such on termination, as per contract, they were entitled only to two months notice or salary in lieu thereof.

3. It is undisputed that the respondent workmen were initially employed with M/s Das & Company, a sister concern of the petitioner employer and that the initial employment of the respondent workman in W.P.(C) No.18288/2006 was as a peon. It is also undisputed that on 1st October, 1996, the services of the respondent workmen were transferred from M/s Das & Company to the petitioner employer and the respondent workmen were in the said letter dated 1st October, 1996 described as working as FOREX Dealer and were continuing to enjoy the said designation till their termination on 5th October, 1999. Vide letter dated 5th October, 1999 they were informed that the management had decided to close down the Foreign Exchange operations from Delhi with immediate effect due to extremely difficult market conditions and accordingly their services were being terminated in accordance with the Contract i.e. the

Clause in the letter dated 1st October, 1996 permitting termination by two months notice or salary in lieu thereof. It is also not in dispute that the respondent workman in W.P.(C) No.18211/2006 was at the time of termination drawing salary of ₹13,000/- per month and the respondent workman in W.P.(C) No.18288/2006 at the time of termination was drawing salary of ₹10,000/- per month.

4. The Labour Court held that to exclude one from being a “workman” it has to be shown that the employment is in a supervisory capacity and which is to be decided on consideration of the essential nature of work and the entire context of employment and not designation alone. It was held that the petitioner employer had not placed any material on the file to show that the respondent workmen in the present case were exercising any administrative, executive, financial or disciplinary powers; that simply high-sounding designation of FOREX Dealer and wages of ₹13,000/- and ₹10,000/- respectively would not lead to the presumption that they were working in supervisory capacity; that merely because they had signed some letters addressed to outsiders also did not show that they were free to act independently in their discretion. It was further held that the mere fact that the respondent workman in W.P.(C) No.18288/2006 though

employed as a peon was also designated as a FOREX Dealer showed that the said post could not be supervisory.

5. Else, the Labour Court held that the termination was in violation of Section 25F of the Industrial Disputes Act, 1947 and did not fall within the definition of “retrenchment” under Section 2(oo) of the I.D. Act. However, in view of the statement of the petitioner employer’s witness that the FOREX operations had been closed down at Delhi, the respondent workmen were not granted the relief of reinstatement and were granted the relief of compensation as aforesaid.

6. The counsel for the petitioner employer has at the outset contended that there is an inherent contradiction in the awards - while the Labour Court has denied reinstatement for the reason of the petitioner employer having closed down the business, has not granted compensation in accordance with the rules of closure of business. It is contended that the Labour Court has not given due weightage to the letters written by the respondent workmen to others in connection with the business of the petitioner employer and which show that the respondent workmen were performing managerial functions.

7. It is not as if the said letters have not been considered by the Labour Court. The Labour Court on appreciation of the said letters has reached a conclusion that the same did not show the respondent workmen performing managerial or supervisory functions. The Legislature has not provided for any appeal against the award of the Labour Court. This Court is only exercising the power of judicial review and the scope whereof is different from that of an appeal. The appreciation of evidence is within the sole domain of the Labour Court and this Court in exercise of power of judicial review would not interfere merely for the reason that this Court on appreciation of the same evidence would have arrived at a different inference / conclusion. Nevertheless, to satisfy myself that there is no perversity in the inference drawn by the Labour Court, I have examined the same letters. While one of the said letters has been signed on behalf of the Manager Mr. Pradeep Bhargava, the other letters are merely of forwarding cheques or explaining the delay in payment and thus of a routine nature and not such wherefrom it could be said that the conclusion reached by the Labour Court could never have been reached.

8. I have also perused the affidavit by way of evidence of the sole witness viz. Mr. Pradeep Bhargava examined by the petitioner employer as well as his cross examination. There is nothing therein also from which it could be said that the conclusion arrived at by the Labour Court is erroneous. Similarly, the petitioner employer could not elicit anything in the cross examination of the respondent workmen from which the conclusion drawn by the Labour Court can be found fault with.

9. The counsel for the respondent workmen while supporting the awards has contended that a few letters in the long span of service of the respondent workmen with the petitioner employer in any case cannot lead to a conclusion that the respondent workmen in the course of their duties used to correspond on behalf of the petitioner employer. He has also drawn attention to the cross examination of the sole witness of the petitioner employer where he admitted that both the respondent workmen were doing the same job. It is argued that a person initially appointed as a peon, without any evidence of having acquired any further skills can never be deemed to be performing supervisory or managerial functions.

10. With respect to the argument of the counsel for the petitioner employer of the entitlement of the respondent workmen being maximum of compensation as fore closure, I find that neither was any such case pleaded by the petitioner employer before the Labour Court nor proved nor any issue got framed thereon nor any finding has been returned in this respect. Merely because the Labour Court for the purpose of moulding the relief has stated that the relief of reinstatement was not deemed proper for the reason of the petitioner employer having claimed to have closed down the business would not mean that the case of closure under Section 25FFF of the Act had been made out.

11. During the course of hearing, it has also transpired that after the filing of the present petitions, disputes arose between the parties also as to the other emoluments besides the compensation to which the respondent workmen were entitled to. The respondent workmen filed applications before the Labour Court for computation of the amounts due to them and the said applications were contested by the petitioner employer and order thereon made by the Labour Court finding the amounts besides the payment made by the petitioner employer to be due to the respondent workmen. The respondent workmen thereafter attempted to recover the

amounts so found due. The petitioner employer filed applications in these proceedings to restrain the respondent workmen from doing so. On the said applications, on 26th April, 2010, the counsel for the respondent workmen made a statement that no action till the next date of hearing shall be taken for realization of the said excess amount. The said statement has continued till now. The counsel for the petitioner employer has sought adjudication in these petitions on that aspect also.

12. The counsel for the petitioner employer however admits that the said disputes are not subject matter of the present writ petitions. It has been enquired from the counsel for the petitioner employer whether the petitioner employer has challenged the said computation. The answer is in the negative. Without substantive challenge being made, merely because application for interim relief has been filed would not entitle the petitioner employer to make the said challenge in the present writ petitions. Now that the writ petitions are being disposed of, the question of considering any application for interim relief does not arise.

13. I also do not find any error capable of interference in the quantum of compensation awarded. In any case no arguments have been addressed

in that respect except for contending that nothing more than two months salary in accordance with contract could have been awarded.

14. The counsel for the respondent workmen has sought interest on the awarded amount for the delay in payment. The counsel for the petitioner employer has opposed the same by contending that no interest has been awarded by the Labour Court. Merely because the Labour Court has not awarded any interest would not come in the way of this Court awarding interest. The petitioner has enjoyed the interim order from this Court and this Court at the time of final decision can always balance the equities flowing from the interim order. (See *Abhimanyoo Ram Vs. State of U.P.* JT 2009 (1) Supreme Court 528 and *Ramesh Chandra Sankla Vs. Vikram Cement* AIR 2009 Supreme Court 713). The petitioner employer has admittedly enjoyed the benefit at least qua 50% of the award amount in each case. However, unfortunately the 50% of the award amount deposited pursuant to interim orders was not ordered to be kept in a fixed deposit and as such has not accrued any interest. However, since the petitioner employer was rendered out of pocket with respect to the said amount, it cannot be directed to pay any interest thereon.

15. Thus while dismissing the petitions, the Registry is directed to forthwith release the amounts deposited in each of the petitions in favour of the respondent workmen and the petitioner employer is directed to pay the balance award amount in each case to the respondent workmen together with interest at 8% per annum on the balance award amount from 8th December, 2006 i.e. the date of the interim order till the date of payment, within four weeks from today. If the same is not paid, besides other remedies of the respondent workmen, the same shall after four weeks incur interest at the rate of 12% per annum. Litigation expenses of ₹10,000/- in each case having already been paid to the respondent workmen, no order as to further costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MARCH 11, 2011
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