

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

**Date of decision: 14<sup>th</sup> July, 2011**

**+**

**W.P.(C) No.4779/2008**

**% M/S SHEIBA VISION EXPORTS PVT.  
LTD. ETC.**

**..... Petitioners**

Through: Mr. Vivek Vidyarthi, Adv.

Versus

**INDER DEV PRASAD**

**..... Respondent**

Through: None.

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

- |    |                                                                       |    |
|----|-----------------------------------------------------------------------|----|
| 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 petition impugns the award dated 8<sup>th</sup> February, 2008 of the Industrial Adjudicator on the following reference:

*“Whether Sh. Inder Dev Prasad has left the job after full & final settlement of his accounts or his services have been*

*terminated illegally and / or unjustifiably by the management, and if so, to what relief is he entitled and what directions are necessary in this respect?”*

and granting the relief to the respondent workman of reinstatement with consequential benefits and continuity of service but without any back wages.

2. Though this writ petition was filed in or about May, 2008 but adjournments were sought for addressing on admission from time to time till 19<sup>th</sup> January, 2009 when notice was directed to be issued to the respondent workman. The summons sent to the respondent workman came back unserved with the report that the address was not correct. The petitioner thereafter furnished fresh address of the respondent workman on which the respondent workman was reported to have been served for 21<sup>st</sup> December, 2010. None appeared for the respondent workman on that date. None has appeared for the respondent workman today also. The respondent workman is thus proceeded against *ex parte*. The counsel for the petitioner has stated that the matter be decided on the basis of paper book filed.

3. The award also notices that the respondent workman had failed to appear for the purposes of addressing arguments before the Industrial Adjudicator. This Court also has not stayed the operation of the award. It is not the case of the petitioner that the respondent workman has approached it for reinstatement and / or for implementation of the award. Nearly three and a half years have elapsed. It appears that the respondent workman is no longer interested.

4. The claim of the respondent workman before the Industrial Adjudicator, besides against the petitioner was also against M/s Sheiba Optical with the same address as that of the petitioner. The respondent workman had claimed that he had been working with the petitioner and the said M/s Sheiba Optical as a Machine Man with effect from 1<sup>st</sup> April, 1974 and his last drawn wages were ₹3,000/- per month; that neither any appointment letter was issued to him nor his service record was properly maintained; that the employers were indulging in unfair labour practice by taking his signatures on blank papers and different vouchers; that his services were illegally terminated on 27<sup>th</sup> November, 1999 and his earned

wages for the months of October and November, 1999 were also not paid; the demand notice dated 17<sup>th</sup> January, 2000 having remained uncomplied, he raised the dispute and on which reference as aforesaid was made on 25<sup>th</sup> July, 2000.

5. M/s Sheiba Optical failed to appear before the Industrial Adjudicator. The petitioner herein denied relationship of employer employee with the respondent workman. It was the case of the petitioner that the respondent workman was a professional Grinder of optical glasses and used to grind glasses of spectacles for the employer on piece rate basis and was paid accordingly; that he had gone to his village on 25<sup>th</sup> November, 1996 for several months and started working again in June, 1997 on work rate basis and so worked with the petitioner till 13<sup>th</sup> September, 1999 when he left after taking his full and final dues.

6. Needless to state that the respondent workman in his rejoinder filed before the Industrial Adjudicator denied the aforesaid version of the petitioner.

7. The Industrial Adjudicator in the award, on the basis of the evidence led before him held:

- (i) That the onus was on the petitioner to prove that the respondent workman who was admittedly working for it, was so working on piece rate basis;
- (ii) The Managing Director of the petitioner had deposed that all of its workers were working on piece rate basis only; he had admitted that the petitioner had not filed any Payment Register on record to show whether the respondent workman was getting payment on monthly basis or on piece rate basis; that though he relied upon payment records of the respondent workman stated to have been maintained by the petitioner but when asked in cross examination replied that he had never seen the account produced earlier and therefore could not depose about the same; he admitted the signatures on the certificate issued by the petitioner in the name of the respondent workman;

- (iii) The other three witnesses produced by the petitioner though also deposed that the respondent workman was working on piece rate basis but there were glaring contradictions between their evidence and the evidence of the Managing Director of the petitioner;
- (iv) That though two of the said witnesses of the petitioner also claimed to be working for the petitioner on piece rate basis but affirmed that they were beneficiaries of ESI; no explanation was offered as to why the said two workers, claiming to be working on piece rate basis, were shown as workmen for the purposes of ESI and the respondent workman was not;
- (v) That no records which the petitioner ought to be maintaining in the regular course of business viz. Employee Register, Attendance Register, Accounts Book, ESI Returns, Payment of Wages Register etc. were produced;

- (vi) That the certificate produced by the respondent workman and on which signatures were admitted by the Managing Director of the petitioner certified that the workman had been working with the petitioner since 1997 and it was not stated therein that he was not a regular employee but was working on piece rate basis;
- (vii) That the petitioner relied upon vouchers purportedly signed by the respondent workman showing payment to the respondent workman on account of gratuity and full and final settlement under labour laws; if the respondent workman was not a employee, such payments were inexplicable.

8. The Industrial Adjudicator thus held existence of relationship of employer employee between the respondent workman and not only with the petitioner but also with M/s Sheiba Opticals since the witnesses of the petitioner had deposed that they as well as the respondent workman used to work for both the petitioner and M/s Sheiba Opticals.

9. The Industrial Adjudicator also held that the petitioner had failed to prove that the respondent workman had fully and finally settled his accounts. It was held that though vouchers in that regard were produced but not supported by other records.

10. The Industrial Adjudicator however denied the relief of back wages to the respondent workman for the reason of the respondent workman having not deposed that he had remained unemployed and the petitioner having proved photographs showing the respondent workman to be pulling a cart.

11. The aforesaid would show that the findings of the Industrial Adjudicator are factual in nature. The Legislature has not provided for an appeal against the award of the Industrial Adjudicator. This Court cannot in the garb of judicial review under Article 226 of the Constitution of India exercise appellate powers. Such findings of fact can be interfered with only if shown to be perverse or based on no material whatsoever.

12. A perusal of the grounds urged in the writ petition does not make out any such case. Though the petitioner has alleged that it had filed Wage

Registers before the Industrial Adjudicator but a perusal of the evidence of the Managing Director of the petitioner does not show any reference thereto. Without such Registers even if filed, being proved, no reliance can be placed thereon.

13. None of the other grounds urged also make out any case of perversity or of the factual findings returned being without any basis. I have perused the evidence and the documents and I am satisfied that the factual findings aforesaid are not such that can be interfered with.

14. The writ petition therefore fails and is dismissed.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**JULY 14, 2011**  
'gsr'..