

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

+ W.P.(C) 8061/2007

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Reserved on: 13th July, 2012

Decided on: 19th July, 2012

SUBODH KUMAR

..... Petitioner

Through Mr. Ranjit Sharma, Adv.

versus

THE MANAGEMENT OF INDIRA GANDHI NATIONAL OPEN
UNIVERSITY MEDIA PRODUCTION CENTRE

..... Respondent

Through Mr. Aly Mirza, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner challenges the award dated 18th April, 2007 holding that the Petitioner was not entitled to any relief as he had not worked for 240 days in the period of 12 calendar months preceding the date of retrenchment.

2. Learned counsel for the Petitioner states that the Petitioner was engaged as a daily wager/ Dollyman/ casual workman on 16th December, 1998 on sponsorship of name through the employment exchange and continued working there till 3rd May, 2001 when his services were dispensed with. Thus, the appointment of the Petitioner was as per the rules and regulations and the same could not be discontinued. To discharge the onus on the Petitioner, the Petitioner proved his letter of appointment and also the I-Card which stated that the Petitioner was a continuing casual since 1998. During the pendency of the proceedings before the learned Labour Court, the Petitioner filed an application seeking directions to the Respondent to

produce the record of the employment of the casual workman/ Dollyman with it, since the year 1998. Reliance is placed on *M/s Sriram Industrial Enterprises Ltd. Vs. Mahak Singh and Ors. 2007 (4) SCALE 237* to contend that in the absence of any cogent reason being assigned for not producing the attendance register of the previous years, an adverse inference was required to be drawn against the management.

3. Learned counsel for the Respondent on the other hand contends that the management has given a plausible reason in the reply to the application of the Petitioner that since the attendance sheets of the daily wagers were periodically weeded out, the records of the year 1999 to 2001 were not available. However, the Respondent/ management produced the vouchers for the entire period from March 1999 to March 2000 which showed that the Petitioner had worked only for 103 days in the preceding 12 calendar months. It is further submitted that the work of the Petitioner was of intermittent nature as the management conducted educational programmes and most of the programmes were indoor. The services of the Dollyman were required rarely only when complex format productions, drama, multiple sets, outdoor live etc., were to be done. Since this was not a regular work, the Petitioner's services were engaged casually and intermittently. Authentic documents were duly produced and proved by the Respondent/ management, thus no adverse inference can be drawn against it and the present petition is liable to be dismissed being devoid of the merit.

4. I have heard learned counsel for the parties. The Petitioner was engaged as a Dollyman/ helper on daily wage basis on 16th December, 1998 and his services were dispensed with by the Respondent with effect from 3rd

May, 2001. On a dispute being raised a reference was made to the learned Labour Court for adjudication. The terms of reference were “whether the services of Shri Subodh Kumar Son of Shri Ram have been terminated illegally and, or unjustifiably by the management, and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/ Government notifications and to what other reliefs is he entitled and what directions are necessary in this respect”.

5. The claim of the Petitioner was that the management engaged him as a helper/ Dollyman with effect from 16th December, 1998. Initially he was paid salary for few months by cheque but later on they started paying salaries on bills raised in names of various other workmen so as to deprive him of the benefit of continuous working up to 240 days. It is further stated that two months’ salary had not been given to him and his services were terminated illegally with effect from 13th May, 2001. The response of the management to the claim petition was that the Petitioner was employed purely on temporary daily wage basis and was called on duty as and when there was a need. According to the management Dollyman was required by the management earlier to shift the cameras from one location to another while preparing audios and videos for the students of the University at outdoor locations. However, with the advancement of technology, services of Dollyman were not required and thus the Petitioner was not engaged after 8th March, 2001. The management denied engaging the Petitioner thereafter and paying salary in some other names and also that the Petitioner worked for more than 240 days in the preceding calendar year.

6. The issues involved in the present petition are whether the Respondent/ management has discharged the onus of producing necessary documents which were in their possession to prove the number of days the Petitioner has worked with the Respondent/ management in the 12 calendar months preceding the date of termination of his services and whether an adverse inference has to be drawn against the Respondent/ management for not producing the attendance register. It may be noted that the application of the Petitioner for producing the document was filed in the year 2004 and in the reply it was stated that the attendance records of the daily wagers were being regularly weeded out and thus record for the relevant period was not available, however in support of their contention the management produced the vouchers. The monthly vouchers gave the days on which the Petitioner worked with the Respondent/ management. A perusal of the vouchers for the month of March, 2000 to March, 2001 shows that the Petitioner has worked for 103 days. Thus, even including the Sundays and holidays the requirement of 240 days in the 12 calendar months in the preceding year is not satisfied. So the Respondent having discharged the onus by filing the documents in its possession, I do not find that any adverse inference can be drawn against the management. Hence, there is no infirmity in the impugned order.

7. The reliance of the learned counsel for the Petitioner on *M/s. Sriram Industrial Enterprises Ltd.* (supra) is misconceived. In the said case the Hon'ble Supreme Court was dealing with the provisions of Sections 6(N) & 2(g) of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as 'U.P. Act'). The main difference between Section 6(N) & 2(g) of the U.P.

Act and 25(B) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Central Act') are that the word "preceding" from Section 2(g) of the U.P. Act is excluded which indicates that a workman in order to be in continuous service may have worked continuously for a period of 240 days in any calendar year during his period of service. However, in the Central Act the words specifically used is "during a period of 12 calendar months *preceding* the date with reference to which a calculation is to be made". It is in this context the Hon'ble Supreme Court held that the High Court therein was justified in drawing an adverse inference against the management for not having produced the attendance registers of all the years. In the present case the application was filed belatedly by which time the attendance registers had been destroyed, however the Respondent has discharged its burden by producing the vouchers of payment of salary for the relevant period.

8. The scope of interference by the High Court issuing a writ of certiorari is well defined. This power has to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. The High Court in exercise of its certiorari or supervisory jurisdiction will not convert itself into a Court of appeal and indulge in re-appreciation or re-evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character. I find no ground to interfere with the impugned award.

9. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

JULY 19, 2012/'ga'