

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

+ W.P.(C) 1359/2003

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Reserved on: 13th December, 2012

Decided on: 6th February, 2013

M/S.L.S.DAVER & CO.

..... Petitioner

Through: Mr. G.D. Gupta, Sr. Advocate with
Mr. Suresh Gupta, Ms. Nordoa and
Mr. D. Vidyanathan, Advocates.

versus

SATYANARAIN RAI

..... Respondent

Through: Mr. Anuj Aggarwal, Advocate with
Respondent in person.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

CM APPL No. 1483/2012 (under Section 17B of the ID Act)

Admittedly the Respondent No. 1 has already attained the age of superannuation when this application was filed belatedly in the year 2012 though the writ petition was filed in the year 2003. Hence, I find no reason to entertain this application at this stage as such.

Application is dismissed.

W.P.(C) 1359/2003

1. By the present petition the Petitioner impugns the ex-parte award dated 13th September, 2002 whereby the termination of the Respondent No.1 was held to be illegal, unjustified and in violation of Section 25F of the Industrial Disputes Act, 1947 (in short the ID Act) and was directed to be reinstated with full earned wages w.e.f. 12th May, 1997 to 12th June, 1997 and 40% back wages of the last drawn wages w.e.f. 13th June, 1997 onwards.
2. Learned counsel for the Petitioner contends that Respondent No. 1 was not the driver of the Petitioner firm but was the driver of one of its

partner Shri G.S. Daver for his personal car at the residence. The name of Respondent No. 1 was not included in the list of employees of the firm. The case of the Petitioner even before the Assistant Labour Commissioner was that Respondent No. 1 was not an employee of the firm. The Respondent No. 1 clearly concealed his complaint written to the SHO, PS Greater Kailash dated 14th June, 1997 wherein he admitted that he was working in the house of Shri Daver. Reliance is placed on *S.P. Chengalvaraya Naidu (dead) by L.Rs. vs. Jagannath (dead) by L.Rs. and others, 1994 (1) SCC 1 and North Eastern Railway Administration, Gorakhpur vs. Bhagwan Das (D) by Lrs, 2008 (8) SCC 511*. The Petitioner was proceeded ex-parte because Petitioner's lawyer could not attend the proceedings due to the continuous confusion on account of the matter being transferred from Tis Hazari Court to Karkardooma Court. It is further stated that Respondent No. 1 was in domestic service and hence excluded from the definition of workman under the ID Act. The Petitioner has placed on record of this Court an additional affidavit with the documents to fortify his contention that the claim of Respondent No. 1 is without any basis. The certificate produced by the Respondent No. 1 purported to be signed by Shri R.P. Yadav, Advocate of the firm is a fabricated document and an affidavit of Shri R.P. Yadav, Advocate has been placed wherein it has been stated that he never issued this certificate to Respondent No. 1 however, he gave an experience certificate to the son of Respondent No.1 on his request in good faith keeping in view that his son may get a job somewhere as driver. Reliance is placed on *Punjab National Bank vs. Ghulam Dastagir, 1978 (2) SCC 358, Brijbhushan Yadav and Ors. v. Union of India (UOI) and another 2007 (7) SCC 794 and Santuram Yadav and Another vs. Secretary, Krishi Upaj M.S.*

Bemetara and Another, 2010 (3) SCC 189. Thus the matter be remanded back and the Petitioner be permitted to place the evidence before the learned Labour Court so as to arrive at just conclusion. Since the Respondent No. 1 was not a workman, the impugned award passed by the learned Tribunal is a nullity and the same being without jurisdiction is required to be set aside. Reliance is placed on *Kiran Singh and Ors. vs. Chaman Paswan and Others, AIR 1954 SC 340.*

3. Learned counsel for Respondent No. 1 on the other hand contends that the Petitioner was proceeded ex-parte on 11th October, 2000 and application was filed by the Petitioner in the year 2002 to set aside the ex-parte order however, on 10th September, 2002 the said application was dismissed for non-prosecution and thus the impugned award was passed on 13th September, 2002. In the light of the fact that the Petitioner filed an application before the learned labour Court at Kakardooma Court, it cannot be said that there was any confusion with regard to the matter being transferred from Tis Hazari to Kakardooma Courts. The Petitioner was grossly negligent in pursuing the matter and since no sufficient cause having been shown, the award cannot be set aside. The Petitioner has not challenged the order dated 10th September, 2002 dismissing his application for non-prosecution for setting aside the order declaring the Petitioner ex-parte and thus there is no ground to challenge the award dated 13th September, 2002. All pleas of Respondent No. 1 not being a workman and finding of facts etc. are being taken for the first time before this Court by filing an additional affidavit, which is not permissible. Finding of facts have already been arrived at on the basis of evidence on record by the learned Labour Court that there is an employer employee relationship which finding

of fact cannot be disturbed by this Court. Reliance is placed on *Management of Garrison Engineer vs. Bachhu Singh, 2010 (115) DRJ 576* to contend that the finding of fact arrived at by the Labour Court cannot be disturbed in the writ jurisdiction. Reliance is also placed on *Harjinder Singh vs. Punjab State Warehousing Corporation, 2010 (3) SCC 192*. Respondent No. 1 has already attained the age of superannuation and thus he should now be granted the relief of back wages during this period.

4. I have heard learned counsel for the parties.

5. The impugned award arises from a reference made to the learned Labour Court by the government on the following terms:

“Whether the services of Shri Satya Narayan Rai 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?”

6. In the statement of claim Respondent No. 1 stated that he was employed as car driver with the Management in January 1995 and his last drawn salary was Rs.2,700/- per month. The Management was not providing him various statutory benefits such as yearly and weekly leaves, house rent allowance, pay slip, log book, attendance card etc. On Respondent No. 1 demanding the statutory benefits the Petitioner got annoyed and withheld his earned wages for a period w.e.f. 1st May, 1997 to 12th June, 1997 and terminated his services illegally on 13th June, 1997. It was stated that the action of the Management in terminating the service of Respondent No.1 was illegal, unjustified and against the provisions of Section 25F of the ID Act. The Management contested the claim of Respondent No. 1 and filed a written statement on 7th October, 1999 wherein it was contended that the

Respondent No. 1 was not its workman and thus the question of removal from services does not arise. In view of the pleadings of the parties, the following issues were framed on 15th December, 1999:

- “1. Whether there was relationship of employer employee between the parties?
2. Whether the services of the workman were terminated illegally and/or unjustifiably?
3. Relief.”

7. Since none was present on behalf of the Petitioner it was proceeded ex-parte on 24th October, 2000. Respondent No. 1 filed his affidavit by way of evidence on 5th December, 2001 when his oral statement was recorded as WW1 and the matter was adjourned for 19th February, 2010. However, even on the next date none was present on behalf of the Management. In the meantime, an application was filed by the Management under Rule 9 order 13 of CPC for setting aside the order proceeding it ex-parte however, none came to press the said application thus the same was also dismissed for non-prosecution. Thus the evidence of the workman before the Tribunal remained unchallenged.

8. There appears to be gross negligence on the part of the Petitioner in pursuing the matter before the learned Trial Court either due to confusion with regard to transfer of the case from Tis Hazari Court or pursuing its application for setting aside the ex parte order. However, in view of the fact that there are serious allegations regarding manipulation and concealment on both side, it would be appropriate to remand back the matter. The certificate allegedly issued to the Respondent/his son in light of the affidavit of the

lawyer of the Petitioner and concealment of the application made by the Respondent before the Police wherein he admitted that he was working at the house of one of the partners need consideration. Thus, ends of justice would meet if an opportunity of hearing/leading evidence is granted to the Petitioner, subject to payment of costs of Rs.20,000/- in view of the protracted litigation being faced by the workman. Ordered accordingly. The impugned order is set aside. The parties shall appear before the learned Trial Court on 25th February, 2013 when the Petitioner shall pay the costs to the workman. The Petitioner is directed to diligently pursue the case. It is made clear that no unnecessary adjournments should be granted.

9. Petition is disposed of.

(MUKTA GUPTA)
JUDGE

FEBRUARY 06, 2013
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