

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

Reserved on : 1st July, 2013

Decided on : 4th July, 2013

+ **W.P.(C) 6786/2000**

ANURUDH PRASAD Petitioner

Through: Mr. H.K. Chaturvedi, Advocate.

versus

P.O. LABOUR COURT (DELHI-III) AND ORS.

..... Respondent

Through: None.

CORAM:

% **HON'BLE MR. JUSTICE NAJMI WAZIRI**

1. This is a petition filed against the award dated 17.1.2000 passed by the Labour Court No. III in I.D. No. 71/87 which held inter alia that the petitioner was not an employee of M/s Tej Press. The two issues to be determined by the Labour Court were:

1. "Whether there exists any relationship of employer and employee?"
2. "As per terms of reference."

Finding to the said issues was returned as under:

"ISSUE NO. 1

The onus to prove this issues (sic: issue), was on the workman. The workman, however, has not produced any evidence to establish the relationship of employer and employee between him and the management of M/s Tej Press except that 2/3 letters were received by him at the address of the

management. In the notice of demand as well as the statement of claim, the case of the workman was that he was being treated as an employee of the Contractor in violation of the provisions of the Factories Act. However, during evidence, when the workman filed his affidavit, it was stated that the management No. 1, i.e., M/s Tej Press wanted to transfer the services of the workman to Respondent No. 2, i.e., Sh. Hazari Lal, Contractor and when the workman had refused to do so the management got annoyed and terminated his services. The management has produced on record through the testimony of MW1, Sh. Vijay Nanda that the management was publishing only one magazine, namely, 'SUN'. The management was having contract for printing certain other magazines for limited period. The management had a regular Binding Department and that the extra work was being carried out through M/s New Link Binder, Jangpura which was owned by Sh. Hazari Lal. Nothing was brought in cross-examination of Sh. Vijay Nanda. Not even a suggestion was given that there was no establishment in the name and style of M/s New Link Binder or that the same was not being run by said Sh. Hazari Lal. It was not even the case of the workman that M/s New Link Binder was only a camouflage and that really the employees of M/s New Link Binder were the employees of M/s Tej Press. Ofcourse, 2/3 letters were received by the workman at the address of the management. That by itself would not establish the relationship of employer and employee between the parties, particularly,

when it has come during the conciliation proceedings that the workman had worked with Sh. Hazari Lal for some time. Thus, I hold that there was no relationship of employer and employee between the parties, i.e., the workman and the management of M/s Tej Press. The issue is accordingly decided against the workman.

12. ISSUE NO. 2

Since there was no relationship of employer and employee between the parties, there was no question of termination of services by the management of M/s Tej Press. The workman does not alleged the termination of his services by Respondent No. 2, ie., Sh. Hazari Lal. Thus, it cannot be said that services of workman Sh. Anurudh Prasad had been terminated illegally or unjustifiably by the management of M/s Tej Press. The workman is not entitled to any relief. The issue is decided, the reference is answered and an Award is made accordingly.”

2. Counsel for the petitioner argues that the Labour Court had erred in not taking into consideration the fact that the Wages Register for the period 1979 to 1985 was never produced in evidence by the respondent company. Therefore, adverse inference should have been drawn in favour of the petitioner to the effect that there existed an employer and employee relationship between the petitioner and the respondent M/s Tej Press. A perusal of the evidence of Sh. Vijay Nanda, (Personnel) Manager of the respondent shows that he was not cross-examined at all by the workman. Also vide affidavit dated 3rd June, 1999, the said Mr. Nanda had stated that

he tried to procure the relevant record but it was not traceable since it was very old i.e. belonging to 1979 to 1985. The petitioner-workman could have adduced such other evidence, if he had any, to prove that he was an employee of M/s Tej Press, rather than base his case on adverse inference to be drawn from the evidence of the respondent. The petitioner has failed to lead any substantive evidence in his favour. It was always open to the workmen to raise appropriate questions and put suggestions to the deponent so as to establish their case.

3. The conclusion drawn by the Labour Court is based on the correct assessment of the facts and the law. This Court finds no reason to interfere with the same. Accordingly, the writ petition is dismissed.

NAJMI WAZIRI, J
(JUDGE)

JULY 4, 2013
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