

\$~

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

Date of decision: 27th November, 2015.

+ W.P.(C) 2074/2012

UDAYVEER SINGH

..... Petitioner

Through: Mr Varun Prasad, Advocate

versus

PUBLIC WORKS DEPARTMENT

..... Respondent

Through: Mr Sunil Goel, Advocate

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this writ petition under Article 226 and 227 of the Constitution of India is to the Award dated 3rd May, 2010 passed by the Labour Court No. XIX, Karkardooma Courts, Delhi in LIR No.387/06.

2. The petitioner claimed himself to be employed as daily rated peon in Public Works Department (hereinafter referred to as 'the respondent') and alleged his illegal termination of service on 10th April, 2003, as such, he raised an industrial dispute which was referred by Secretary (Labour) Govt. of NCT of Delhi for adjudication of the Labour Court with following terms of reference:-

"Whether the services of Sh. Udayveer Singh, S/o Sh. Chander Pal Singh 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/Govt. Notification and to what other relief is he entitled and what directions are necessary in this respect?"

3. The petitioner (hereinafter referred to as 'claimant') filed his statement of claim alleging, *inter alia*, that he was initially employed as daily rated peon w.e.f. 18th May, 1999 by PWD Division 31 (Civil) and was posted in Sub Division-I of the said Division where he worked continuously from 18th May, 1999 up to the date of his illegal termination on 10th April, 2003. At the time of his termination, no notice or one month's pay in lieu of notice was served and no compensation was paid as he had completed 240 days in all the calendar years. He claimed termination of his service by management as illegal and unjustified and claimed reinstatement with continuity of service and consequential benefits.

4. The management contested the claim by filing written statement taking preliminary objection, *inter alia*, on the ground that the claim was false, frivolous and misconceived as he was never employed by the management. There was no contract of employment between the claimant and the respondent. The respondent never had the claimant on its muster roll and that no remuneration or wages were paid to the claimant. On merits, it was denied that the claimant was employed as daily rated peon w.e.f. 18th May, 1999 by PWD Division-31 or that he was posted in Sub-Division No.1 or he had worked continuously till 10th April, 2003. Since the claimant was never employed by the management, there was no question of his termination, as such, claim be dismissed.

5. On the pleadings of the parties, following issues were framed:-

- (i) Whether there existed any relationship of employer and employee between the parties? OPW

- (ii) Whether the services of the workman were terminated illegally and/or unjustifiably?
- (iii) Relief.

6. In support of his claim, claimant examined himself and relied upon documents Ex.WW1/1 to Ex.WW1/3. On the other hand, management examined Sh.Inder Raj and relied upon documents Ex.MW1/1 to Ex.MW1/4. Onus of proving the factum of relationship of employer and employee between the parties was upon the claimant. In order to prove this fact, the claimant placed on record copy of I-Card (Ex.WW1/2), copy of certificate issued by management (Ex.WW1/1) and undertaking of Sh. S.L.S. Yadav(Ex.WW1/3). It was alleged by the workman that the official who had issued the I-card to the workman was not examined by the management and as such, adverse inference has to be drawn against the management. However, the Labour Court observed that Sh. Suresh Mohan had already expired and, therefore, could not be examined by the management. Therefore, no adverse inference can be drawn against the management. Moreover, MW-1 examined by the management had deposed that the Assistant Engineer who is purported to have issued I-card was not authorized to issue the same nor it was signed by him. The I-card relied upon by the claimant is not a genuine document as it does not bear any serial number nor the workman had undergone any selection procedure. It also does not bear any employee number. The claimant claimed to have received the I-card from one Ajit Singh who was posted as clerk. He admitted that no signatures were obtained by the said Ajit Singh against handing over this I-Card to him. As such, the issuance of this I-card was not duly proved.

7. The claimant also relied upon a certificate allegedly issued by an Assistant Engineer certifying that the claimant had worked in Sub-Division-I, PWD-31 (Civil) as peon for the last three years. The claimant admitted that he had not taken this certificate for any special purpose. Moreover, it could not spell out as to where was the occasion for issuance of this certificate on 1st July, 2008 as according to the claimant he was already working in PWD for the last about 3 years.

8. The workman also placed on record photocopy of the peon book. An application was also moved for summoning the relevant record. Vide order dated 11th May, 2009, the Labour Court partly allowed the application directing the management to place on record the relevant instructions. However, as regards the peon book, the request was declined as stand of the management was that the workman was never employed with them and peon book was never issued to him. The photocopy of the peon book filed by the claimant did not bear name or signatures/initials of the claimant. That being so, the same could not establish the relationship of workman as employee of the management. The instructions were placed on record by the management and proved as Ex.MW1/W2 where it was specifically mentioned:-

"Since the instructions with regard to absolute ban on engagement of workers on Muster Roll issued on 19.11.85, will also apply to any form of engagement of workers of daily rated including work order, you are, therefore, requested to follow the instructions quoted above and in future no recruitment even on work order be made."

9. From these instructions, it becomes clear that there was a ban even on engaging daily rated workers. As per the case of the claimant, he had worked on daily basis and, therefore, no appointment could have been made by A.E. etc. working under the management.

10. Learned counsel for the petitioner referred to the written statement filed by the management wherein it was stated that the claimant might have worked with some independent contractor. The counsel, however, fails to show as to how this averment helps the petitioner as even if the claimant might have worked with some independent contractor, how could he lay his claim against the management. After appreciating the entire evidence coming on record, the learned Labour Court answered the reference against the petitioner. Learned counsel for the petitioner has failed to point out any infirmity or perversity in the impugned order which calls for interference.

11. Moreover, this Court under the provisions of Article 226 of the Constitution of India cannot undertake the exercise of liberally re-appreciating the evidence and drawing conclusions of its own on pure questions of fact. The findings of fact recorded by a fact-finding authority duly constituted for the purpose cannot be interfered with as long as they are based upon some material relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken.

12. *In Sadhu Ram vs. DTC*, (1983) 4 SCC 156, three judges of the Supreme Court has discussed the jurisdiction of this court under Article 226 of the Constitution and has held as under:

“3. We are afraid the High Court misdirected itself. The jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate court over tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of fact decided by those Tribunals.....”

13. In *Harbans Lal vs. Jagmohan Saran*, (1985) 4 SCC 333, the Supreme Court has clearly held that the High Court cannot re-appreciate the evidence in exercise of its jurisdiction under Article 226 in a writ of Certiorari.

14. In the present case the findings of the Industrial Adjudicator are based on the appreciation of evidence produced before it. I am of the view that the findings cannot be said to be based on no evidence at all, so as to, warrant re-appreciation of evidence, by this Court. The limitations on the jurisdiction of this Court, as stated above, are well settled. A writ in the nature of certiorari may be issued only if the finding of the Industrial Adjudicator suffers from an error or jurisdiction or from a breach of principles of natural justice or is vitiated by a manifest or apparent error of law. No such issue has been urged or established in the instant case on behalf of the petitioner.

15. This Court under the provision of Article 226 of the Constitution of India does not interfere with the finding of fact arrived at by the Industrial Adjudicator unless the same is based on no evidence or is perverse. In my view impugned order of the Industrial Adjudicator does not suffer from any infirmity so as to warrant interference under the provision of Article 226 of the Constitution of India, which even otherwise is a discretionary relief.

16. In the circumstances, the writ petition is devoid of merits and is hereby dismissed as such.

(SUNITA GUPTA)
JUDGE

NOVEMBER 27, 2015/rs