

\$~10

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

Reserved on: 09th March, 2015

%

Date of Decision: 06th May, 2015

+ W.P.(C) 3171/2012

DURGA PRECISION UDYOG Petitioner

Through: Mr. Pranay Trivedi, Adv.

versus

SIYA RAM TIWARI Respondent

Through: Mr. Brijballabh Tiwari, Adv.

+ W.P.(C) 3224/2013

SIYA RAM TIWARI Petitioner

Through: Mr. Brijballabh Tiwari, Adv.

versus

DURGA PRECISION UDYOG Respondent

Through: Mr. Pranay Trivedi, Adv.

CORAM:

HON'BLE MR. JUSTICE V.P.VAISH

JUDGMENT

1. These two petitions arise out of the award dated 25.02.2012 passed by the learned Presiding Officer, Labour Court No. IX, Karkardooma Courts, New Delhi in ID No. 34/08 (Unique Case ID No. 02402CO143652008) wherein the Presiding Officer held that the services of the workman were terminated illegally and unlawfully by

the management and further held that the workman is entitled to full back wages for 5 months w.e.f. 01.08.2005 to 31.12.2005 at the rate of Rs.2,500/- (Rupees Two thousand five hundred) per month or minimum wages of a skilled labour whichever is higher on that date and is also entitled for compensation @ 40% of his back wages @ Rs.2500/- or minimum wages of a skilled labour, whichever is higher w.e.f. 26.03.08 up till 25.02.12. The management was further directed to pay the aforementioned amount within a period of two months from the date of the award, failing which the amount was to carry simple interest @ 8 % p.a.

2. Since both these petitions are between the same parties and lay challenge to the award dated 25.02.2012, they are being disposed of by this common judgment. For the sake of brevity, the facts are being extracted from W.P.(C) No.3171/2012.

3. The facts of the case as culled out from the petition are that the respondent/ workman was appointed as an Assistant Operator with the petitioner at a monthly salary of Rs.3,050/- (Rupees Three thousand fifty). The respondent worked with the petitioner from August 2004 till October 2005, for which he was paid salary regularly against his signatures on the revenue stamp. On 10.11.2005, the respondent left the services of the petitioner and executed a receipt of full and final settlement.

4. Thereafter, the respondent/ workman raised an Industrial Dispute against his alleged termination. In the statement of claim filed by the respondent, it was contended that he was appointed as a Dye

Casting Operator with M/s. Durga Procession Industry (petitioner herein) on 01.01.2001 at a monthly salary of Rs.2,500/- (Rupees Two thousand five hundred). On 01.01.2004, the management of the petitioner issued an Employees State Insurance card (for short 'ESI Card') to the workman which was given to him on 15.02.2005. On 01.11.2005, an aluminum nail pierced in the foot of the respondent while running the Dye Casting machine, which led to the respondent being admitted to a private hospital for treatment. The respondent made repetitive requests to the petitioner's management to fill his accident form. However the management did not do the same and further blocked the ESI Card of the respondent as a result of which his medical treatment was not conducted properly. The petitioner neither paid the respondent's hospital bill nor did they pay outstanding wages earned by the workman from 01.10.2005 to 31.12.2005. On respondent's request for payment of the said amount, the petitioner terminated the services of the respondent on 31.12.2005 without making any payment towards his hospital bill and outstanding earned wages. On 01.01.2006, the respondent referred his request to the Industrial Workers Union, who sent a demand notice dated 02.01.2006 to the management and demanded the payment of the entire amount in favour of the respondent. However, the petitioner did not respond to the said demand notice as a result of which on 17.01.2006, the officer of the Industrial Workers Union filed a complaint before the learned Additional Labour Commissioner, Ashok Vihar, Delhi. The said complaint too did not yield any result. The respondent thereafter filed a complaint before the learned Labour Settlement Officer, Labour

Office, Ashok Vihar, Delhi and sent various notices from time to time to the petitioner but neither did the management appear before the Labour Office, nor did they file any reply to the said notice.

5. The petitioner filed its reply to the claim petition and denied all the allegations made by the respondent in his claim petition and stated that the workman himself left the services of the petitioner on 10.11.2005 while executing the receipt of full and final settlement.

6. On 11.08.2009 issues were framed by the learned trial court in the aforementioned Industrial Dispute. On 13.12.2011, petitioner filed two applications to refer some documents to the CFSL for comparison along with the list of witnesses, which were dismissed by the Presiding Officer vide order dated 16.12.2011 who then proceeded to pass the impugned award dated 25.02.2012.

7. Learned counsel for the petitioner submitted that learned trial court failed to appreciate the fact that if respondent is claiming that none of the documents bear his signatures then the respondent should not have opposed the petitioner's application to refer the documents to CFSL. The labour court should have allowed the petitioner's application to refer the documents to CFSL. It was wrongly observed by the trial court that the respondent was not paid the salary for the month of February, March, October and November 2005. It was neither the case of the respondent that his salary for four months was due, nor it was his case that the salary for the month of February and March 2005 was not paid to him. Rather it was only contended by the respondent that he had not received his alleged legally due salary w.e.f.

01.10.2005 to 31.12.2005. The reason that some of the salary receipts were not signed by the respondent is that sometimes respondent and other workers used to take their salaries in advance or in case of urgency from the house of the petitioner. Under such circumstances the salary receipts could not be signed due to non availability of such receipts. It was also contended that the respondent failed to produce any document or even otherwise failed to prove his alleged termination on 31.12.2005.

8. *Per contra*, learned counsel for respondent contended that the issues framed by the labour court were adjudicated on the basis of material on record. The High Court while exercising its extraordinary writ jurisdiction cannot sit in an appeal over the decision of the trial court and cannot re-appreciate the entire evidence. It was further contended by the learned counsel for the respondent that the petitioner had filed forged receipt dated 10.11.2005 before the labour court which was in a printed form and the petitioner also forged the signatures of the workman on such receipts. The same was concocted with ulterior motive to defeat the claim of the workman.

9. I have heard the learned counsel for the parties and have also perused the material on record.

10. Industrial disputes tend to reduce economic profits and inflict damages on both employer and employee. It poses problems for rationalizing labour and capital and also creates problem in the production and financial profit of the industry that ultimately affects the economy of the country. Therefore, maintaining industrial peace

and harmony is important for a worker as it is for an employer as it postulates the existence of understanding, co-operation and a sense of partnership between the employers and employees. Keeping several such factors in mind the Industrial Disputes Act, 1947 (for short “ID Act”) was enacted with the object of making provisions for the investigation and settlement of industrial disputes, promoting measures for securing and preserving amity and good relations between employer and employees, preventing illegal strikes and lock-outs, providing relief to workmen during lay-off or after retrenchment, wrongful dismissal or victimization along with providing conciliation, arbitration and adjudication facilities. The object of the said enactment is to facilitate the workmen/ labourers to present their case. Its provisions are directed to secure industrial peace and harmony by providing a machinery and procedure for investigation and settlement of industrial disputes by negotiation. The workmen are given a beneficial status under its provisions which are essentially pro-workmen. However, having said that the Tribunal or the Labour Court is still bound by judicial principles of fair hearing and impartiality while forming its decision. The Tribunal/Labour Court must not always grant relief to the workman simply because the provisions of the Act are made in favour of the workman.

11. It is a settled principle of law that the burden of proof of the existence of a particular fact lies on the person who makes a positive assertion about its existence. Undoubtedly, it is always easier to prove a positive fact than to prove a negative fact. In the present case, it is primarily contended by the learned counsel for the petitioner that the

respondent was employed as an assistant operator with the petitioner with effect from 01.08.2004 whereas it is contended on behalf of the respondent that he was working with the management from 01.01.2001. However, from a perusal of the material on record, the contention of the petitioner finds favour with this court. MW1, Sh. Gaurav Bhutani has in his evidence by way of affidavit (Ex.MW1/A) stated that after getting the degree/certificate from Tool Room and Training Centre he, with an intention of doing business of aluminium casting, placed an order for the machines which are required for the purpose of aluminium casting (Ex.MW1/4 to Ex.MW1/6). He applied for PAN card and the same was issued vide No. AHLPB6008M (Ex.MW1/7 and Ex.MW1/8). He further stated that the subject property bearing Plot No. 58 SSI, GT Karnal Road, New Delhi-110033 on which the business of the petitioner company is going on till date was obtained on rent from M/s. Rajdhani Industries in the year June, 2004 through license agreement (exhibited as Ex. MW1/9). Prior to the petitioner company became tenant in Plot No. 58 SSI, GT Karnal Road, New Delhi-110033, M/s. SS Exports was the tenant of M/s. Rajdhani Industries. M/s. SS Exports vacated the subject property in the month of March, 2004. The lease agreement with M/s. SS Exports is exhibited as Ex. MW1/15. M/s. Rajdhani Industries had issued a No Objection letter in favour of the petitioner in obtaining sales tax registration or any other license required (exhibited as EX.MW1/10). He had also applied for MTNL connection vide acknowledgement slip dated 12.06.2004 (Ex. MW1/11 and Ex. MW1/12), sales tax registration was applied by him in the month of June 2004 and for the

said purpose he had submitted his statement with the Sales Tax Department on 17.06.2004 and the Sales Tax Department had further issued the certificate of registration (Ex.MW1/13 and Ex. MW1/14). The petitioner company had applied for a pollution certificate and the same was issued by Delhi Pollution Control Committee on 29.06.2004 (Ex. MW1/27). The same was reiterated by the said witness in his cross-examination on 19.12.2011.

12. From a perusal of all these documents it is clear that question of the establishment working prior to year 2004 does not arise. Even on the appointment letter (Ex.MW1/29) issued to workman by the petitioner, the date of his appointment is mentioned as 01.08.2004. The workman had not produced any evidence to show that he was employed with the management from year 2001, rather, the establishment itself came into existence, the machinery was brought and it started operating from year 2004. In fact in reply to a question put to the respondent in his cross examination dated 05.12.2011 regarding the date of his appointment, he had himself denied the suggestion that he had joined the company w.e.f. 01.01.2001.

13. So far as the contention of the petitioner that the respondent had abandoned his services on his own on 10.11.2005 and that he was not terminated on 31.12.2005 is concerned it is observed that the workman had himself in his cross examination dated 05.12.2011 stated that date of his termination from services was not 31.12.2005. On the same day, when the workman was asked to show his original ESI card, he refused to do so. The court thereafter allowed the representative of the

management to ask questions from him on the basis of the photocopy of the ESI card. However, when the said representative insisted on the production of the original document the workman produced the same. Thereafter, in reply to the question that all the particulars on the ESI Card were typed except one date of 31.12.2005 which was hand written, the respondent workman stated that the pasting on the original ESI Card was done when he had gone to take medicine and there the date was extended upon it. A perusal of the said ESI Card (Ex. WW1/1) shows that all the details except the date 31.12.2005 was typed on the said document and the said date was affixed by means of a slip over the ESI Card. MW1 in his cross-examination dated 19.12.2011 had denied the suggestion that the workman received injury while working and also denied that they had informed the ESI department to discontinue ESI facilities to the workman. He volunteered that the workman left his services with effect from 10.11.2005 and they had accordingly informed ESI department. He further stated that they did not write any letter to the workman to come and join his duties after 10.11.2005 because he had himself left the service on his own free will and that is why they did not think it essential to write any letter to him asking him to join his duties again. He also admitted the fact that in his affidavit Ex. MW1/A he had stated that they had requested the workman several times to surrender his ESI Card as they had to deposit the same in the ESI department. A perusal of the record also shows that despite MW1 making submissions about the full and final settlement record Ex.MW1/35, on that day, in his cross-examination no question was raised on behalf of the respondent

regarding its nature as a full and final settlement document. The workman had also not placed any objection to the contention of MW1 that the respondent had left their services from 10.11.2005. Even in the return of contributions (Ex.MW1/34) towards the Employees State Insurance Funds made by the petitioner, it has been specifically mentioned against the entry pertaining to the workman that he left his service w.e.f. 10.11.2005. The workman has not raised any objection regarding the said entry as well.

14. The trial court had come to the conclusion that the management had terminated the services of the workman on the basis of the observation that the signature on the said document of full and final settlement does not match with the signature of the workman on his affidavit. This observation of the trial court is not correct in my opinion because the workman had himself denied that he was terminated on 31.12.2005 and a perusal of his ESI Card Ex. WW1/1 shows that the said date was affixed with a slip on the said ESI Card. Except denying his signature on the said agreement, the workman has produced no other evidence in support of his contention. Neither has he produced any witnesses nor has he shown any documentary proof to the effect that he made any representation against his alleged termination. Under such circumstances relying solely on the submission of the respondent and holding that his services were terminated by the management and denying the submission of the management that the respondent himself left the services does not appeal to the sense of this Court.

15. Another fact that makes it difficult for this court to rely solely on the testimony of the respondent and evidences produced by him and to grant relief as prayed by him is that the said workman, by his conduct, has not emerged as a reliable witness. In fact the trial court has also reached a conclusion that the workman has not approached it with clean hands. The respondent in his evidence by way of an affidavit (Ex.WW1/A) stated that he was working on Dye casting machine and the said machine was defective and that he had informed the management about the defective machine, but the management did not pay any heed. On 01.11.2005, when he was working on the said defective machine, he received injury in his leg due to hitting of aluminium rod. He took treatment in a private hospital and he requested the management to fill his accident form but the management did not fill up his form. In his cross examination on 05.12.2011 he denied the suggestion that he received injury in his leg on 01.11.2005. He also denied that he had pain in his legs earlier and affirmed that he got his treatment on 20.09.2005 from ESI Hospital and that he took his treatment due to the said injury in his leg. He volunteered that he suffered injury due to aluminium nail that entered in his leg/foot. When he was confronted with the OPD ticket dated 03.11.2005 on which it was mentioned that he was suffering from cough for two weeks prior to it, he answered that he used to suffer from fever as well as cold due to injury received by aluminium nail. On a perusal of OPD ticket (Mark D colly.) it is observed that in the ticket dated 03.11.2005 there is no mention of the workman being injured with an aluminium nail. If the workman was suffering from a

nail injury then he should have explained the same to the doctor and the doctor would have recorded the same on the said ticket. Otherwise also as already observed, the respondent has been consistently changing his stand before the trial court both about his appointment and termination from the petitioner organization. Even with regard to Ex. MW1/35, the document of full and final settlement by the management, the respondent has not confronted MW1 about the nature of the said document.

16. In the instant case the trial court has observed that the respondent was not paid the salary for the months of February, March, October and November, 2005. However, on perusal of the claim petition filed by the respondent he had claimed outstanding earned wages for the period from 01.10.2005 to 31.12.2005 only including other legal benefits. To prove his claim, respondent has relied upon the Wages Register (Ex. WW1/M1 to WW1/M4). The trial court has reached a conclusion that the workman was not paid salary for the months of February, March, October and November, 2005. It is beyond the understanding of this court that had the respondent not received the wages for the months of February and March why would he not make any representation to the management regarding the same, when he was paid salary for the months before and after the months of February and March. Otherwise also, even in his claim petition, the respondent has not claimed the salary for the said period. Therefore, this court does not consider it fit to grant the salary even for the months of February and March, 2005. So far as the unpaid wages from 01.10.2005 to 31.12.2005 is concerned it is observed that the

respondent had not signed the salary receipts for the months of October, 2005 and November, 2005. Further, as this court has already observed that the stand of the management that the workman had left his services from 10.11.2005 appeals to this court, the question of payment of salary to the respondent after the said period, i.e., from 11.11.2005 till 31.12.2005 does not arise.

17. Undoubtedly, the High Court while exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India cannot sit as an appellate authority upon the findings recorded by the disciplinary authority or the Labour Court on questions of fact. However, if findings are based on no evidence, and are perverse on the face of it, the Court cannot remain oblivious. It is a settled law that the power of judicial review of the High Court under Article 226 of the Constitution is limited. The High Court would step in, only if an award is based on no evidence or suffers from any manifest error of law. If the award of the Industrial Adjudicator is based on substantial evidence, the High Court would refrain from interfering on technical grounds. An award can only be set aside if it is based on no evidence or is contrary to any substantive law. It can also be set aside when it violates the principles of natural justice.

18. In the light of the aforesaid discussion, W.P.(C) No.3171/2012 is partly allowed and the impugned award dated 25.02.2012 passed by Presiding Officer, Labour Court No. IX, Karkardooma Courts, New Delhi is modified to the extent that the petitioner is directed to pay wages for the period from 01.10.2005 to 10.11.2005 @ Rs.3,050/-

(Rupees Three thousand and fifty) which is the last paid wages or minimum wages whichever is higher.

19. The writ petition bearing W.P.(C) No.3171/2012 stands disposed of in the above terms.

20. W.P.(C) No.3224/2013 deserves to be dismissed and is hereby dismissed.

21. The trial court record be sent back forthwith.

(VED PRAKASH VAISH)
JUDGE

MAY 06th, 2015
hs