

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

% *Date of decision: September 09, 2015*

+ **LPA 36/2011**

M/S. SHRESTH INTERNATIONAL Appellant
Represented by: Ms.Raavi Birbal, Mr.Ravindra
Kumar, Advs.
versus

NCT OF DELHI & ANR. Respondent
Represented by: Mr.Awadhesh Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. On a dispute being raised by Surender Kumar against the management of M/s.Shresth International reference was made to the Labour Court on following terms:

“Whether the services of Surender Kumar 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?”

2. The claim of Surender Kumar was that he was working with the management as a Checker since January 01, 1990 on a salary of ₹1104/- per month. The management was being run by Shri Ratan Mani and his wife Smt.Kamini Devi with their head office at D-815, New Friends Colony. The management was also running a unit at premises No. A-68, Okhla Phase II, New Delhi which had been closed and the entire work had been shifted to head office. The management was not providing legal facilities to Surender

Kumar such as bonus, leave, PF, ESI and nor maintaining proper record of service. Surender Kumar claimed that his services were terminated on June 13, 1991 without any notice contrary to the provisions of the Industrial Dispute Act (in short 'the ID Act'). Further his wages for the month of May and June 1991 and over-time were also not paid.

3. Management contested the claim mainly asserting that it was not a partnership firm but a proprietorship firm being run by Mrs.Kamini Sadh and Surender Kumar was never an employee of the management in any capacity whatsoever.

4. As stated earlier it was the case of Surender Kumar that no legal facilities such as bonus, leave, PF, ESI was provided nor proper record was maintained. However, to prove his being employed with the management he exhibited gate passes issued to him by Shri Dubey supervisor of the management as Ex.WW-1/1, Ex.WW-1/2 and WW-1/2A respectively. The management witness admitted that a proprietorship firm was running from A-68, Okhla Phase II, New Delhi and D-815, New Friends Colony and did not refute the genuineness of gate passes Ex.WW-1/1, WW-1/2 and WW-1/2A. Surender Kumar also exhibited the report of the Labour Inspector Ex.WW-1/6 which fortified his claim. To rebut the evidence of Surender Kumar Management did not produce any document or evidence to show that Surender Kumar was never employed with it.

5. Thus the Labour Court drew a presumption in favour of the workman under Section 114(g) of the Indian Evidence Act and held that Surender Kumar was able to establish employer-employee relationship. Considering the fact that the termination was illegal the Labour Court directed reinstatement with back wages and that if arrears of back wages were not

paid he would not be entitled to a simple interest of 12% per annum.

6. The writ petition filed by the management was dismissed by the learned Single Judge vide order dated June 03, 2010 resulting in the filing of the present appeal. The learned Single Judge dismissed the writ petition for the reason that despite directions to pay wages under Section 17-B ID Act to Surender Kumar, the management failed to do so even though the Letters Patent Appeal challenging the order dated August 10, 2009 directing management to pay arrears under Section 17-B ID Act within six weeks and future payment month by month was dismissed by the Division Bench. The learned Single Judge following the decision in M/s. Hindustan Carbide Pvt.Ltd. Vs. NCT of Delhi W.P.(C) No.817/1999 decided on October 11, 2002 dismissed the writ petition for non-compliance of the order under Section 17-B ID Act.

7. Learned counsel for the appellant contends that the learned Single Judge could not have dismissed the writ petition for non-compliance of the order under Section 17-B ID Act and ought to have decided the writ petition on merits. Further on merits Surender Kumar was not able to establish employer-employee relationship as the onus to prove the same was on him and thus the award passed by the Labour Court is liable to be set aside.

8. The issue whether a writ petition of the management against an award directing reinstatement with back wages can be dismissed for non-compliance of an order passed on an application filed by the workman under Section 17-B of the ID Act is no more res-integra. The Supreme Court in the decision reported as (2001) 10 SCC 211 Hindustan Zinc Ltd.vs.Industrial Tribunal & Ors, deprecated the dismissal of the writ petition of the management for non-compliance of an order passed under Section 17-B of

the ID Act and remitted the matter back to the High Court for consideration on merits. Following the decision in Hindustan Zinc (Supra) the Division Bench of this Court in Delhi Transportation Corporation vs. Gurcharan Singh, LPA No.132/2012 decided on March 30, 2012 and Sanjay Sugandhit Dhoop vs. Rajinder Singh & Anr. LPA No.147/2012 decided on January 07, 2013 held that the writ petition could not have been dismissed merely because there was non-compliance of an order passed under Section 17-B of the ID Act.

9. Thus we have delved on the merits of the case and find that the appellant/management has no case in its favour. Undoubtedly the initial onus was on Surender Kumar to prove employer-employee relationship which he discharged by proving the gate passes Ex.WW-1/1, WW-1/2 and WW-1/2A which have been admitted by the appellant/management. Surender Kumar categorically stated that no bonus, leave, PF or ESI facilities were granted and further no legal records were maintained by the management. Thus it was not within his domain to have proved the employer-employee relationship by way of an appointment letter or other legal documents. Having discharged the initial onus burden shifted to the appellant/management to disprove the fact that Surender Kumar was not employed by the management in which it failed. Indisputably management was carrying on the work at the addresses mentioned above and had thus employed workers for the same. Thus having not produced the attendance registers and other relevant documents which could have disproved that Surender Kumar was not working with the management, the management failed to discharge its onus and thus the award was rightly passed in favour of the workman and against the management.

10. Faced with this situation learned counsel for the appellant/management states that management has since been closed down. The same would be an issue to be looked in as and when an execution is filed by Surender Kumar and this Court need not delve into it.

11. Appeal is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 09, 2015
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