

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

Reserved on: 25th March, 2015
Date of Decision: 21st May, 2015

+ W.P.(C) 7267/2012

M/S SHREE JI SAREES THROUGH:
ITS PROPRIETOR SH. PANKAJ JAIN Petitioner
Through: Mr. Vivekanand, Adv.

versus

VED PRAKASH SHARMA Respondent
Through: Mr. Anurag Vashistha, Adv.

CORAM:
HON'BLE MR. JUSTICE V.P.VAISH

JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has assailed the award dated 11.07.2012 passed by learned Presiding Officer, Labour Court No.XVI, Karkardooma Courts, Delhi in I.D. No.33/2010, wherein the Labour Court held the respondent to be the employee of the petitioner and his termination to be illegal, consequently, awarded a lump-sum compensation of Rs.1,00,000/- (Rupees One lakh) in lieu of reinstatement and back wages to the petitioner.

2. Brief facts of the case as borne out from the petition are that an industrial dispute was raised by the respondent and on a reference made by the appropriate government, statement of claim dated 16.03.2010 was filed by the respondent before the learned Labour

Court. In his statement of claim, the respondent alleged that he was appointed as Recovery Officer and Field Staff by the petitioner w.e.f. 01.03.2003 and his last drawn salary was Rs.4,500/- (Rupees Four thousand five hundred) per month. The respondent was also promised 1% commission on sales of the petitioner but the same was never given. It was further alleged therein that on 12.07.2009, his services were terminated by the petitioner after withholding his earned wages of August 2007. While terminating his services, the petitioner did not serve a notice of termination on him. Neither was he paid any compensation and legal dues nor was any inquiry conducted at that time.

3. To the said statement of claim, the petitioner filed its reply dated 13.09.2010 wherein the petitioner denied all the allegations made by the respondent. It was also stated therein by the petitioner that the respondent was not their employee, rather the respondent was working as a freelance ferrywala in the local market and whenever he used to bring customers to the petitioner's establishment, he used to get commission on the sales. Thereafter, the evidences were adduced by both the parties and the parties were heard leading to the passing of the impugned award dated 11.07.2012.

4. Learned counsel for the petitioner contended that the impugned award was passed in gross violation of principles of natural justice, fair play and rule of law. The documents exhibited as Ex.WW1/1 to Ex.WW1/14, as produced by the respondent were allowed to be taken on record at the stage of evidence that too without any application to

that effect by the respondent and without recording any reason for doing so. The same were, thereafter, allowed to be read in evidence without being formally or legally proved. The originals of the said documents were never produced. The observation of the learned Presiding Officer with respect to the appointment letter as allegedly issued by the petitioner to the respondent (exhibited as Ex.WW1/8) is perverse. In his cross-examination, MW1 had only stated that the letter head of Ex.WW1/8 belongs to the management but he had not signed it at point A which was incorrectly assessed by the learned Presiding Officer that the respondent had proved the document Ex.WW1/8 by producing its original. In fact the respondent did not discharge even his initial burden of proving the alleged appointment letter and as such the burden never shifted on the petitioner to prove that the said document was not issued by him and that it does not bear his signatures.

5. Learned counsel for the petitioner further contended that it has been a consistent stand of the respondent in his alleged letter of demand dated 15.09.2010, in the conciliation proceedings, statement of claims and even in his evidence by way of affidavit that no appointment letter was ever issued to him by the petitioner. The respondent has also admitted in his cross-examination that no letter of appointment was issued by the petitioner.

6. It was also contended by the learned counsel for the petitioner that from a mere admission of the petitioner that the photocopies of the bills (Ex.WW1/9 and WW1/10) were that of the bill forms of the petitioner, a relation of employer-employee is not established between

the petitioner and the respondent as anybody can bring bill issued by the petitioner and manipulate it for his own benefit. The originals of said documents were never filed by the respondent. No books of accounts or bill books of the petitioner were ever summoned or asked for by the respondent for proving the contents of Ex.WW1/9 and Ex.WW1/10. The respondent also did not produce the persons in whose favour the alleged bills were issued by him. Further, the petitioner had never seen the respondent sign or write so it was not possible for the petitioner to admit or deny signatures of the respondent on the copies of the bills as produced by the respondent. No adverse inference can be drawn against the petitioner because of its ignorance about the signature of the respondent. The reliance of the learned Labour Court on the records of money collected on behalf of the petitioner which were maintained by the respondent (exhibited as Ex.WW1/11 to Ex.WW1/14) is perverse as the respondent had not proved the said documents.

7. It was lastly contended by the learned counsel for the petitioner that the respondent used to work as a 'ferrywala' in the locality for a long time and he was working as a commission agent on daily basis for various shopkeepers. Respondent's job was to bring customers to their shops and he was not an employee of the petitioner and was never on pay roll of the petitioner at any point of time.

8. *Per contra*, learned counsel for the respondent contended that the respondent was employed at the post of Recovery and Field Staff prior to 1.03.2003 with the management with a last drawn salary of

Rs.4,500/- (Rupees Four thousand five hundred) per month. The management had deliberately deprived the respondent from the entire statutory benefits, such as, Appointment Letter, Attendance Card, Attendance Register, Live Book, Pay-Slip, Weekly/Yearly Holidays, Casual Festival Leaves, Bonus, appropriate Overtime etc. The petitioner had assured the respondent to pay 1% commission on sale but no payment was made to him and he was illegally removed from his job withholding the salary earned by him. The respondent was illegally removed from his service on 12.09.2007 and his earned salary for the month of August, 2007 was withheld by the petitioner. The respondent was further not paid any leaves salary, bonus and due overtime arrears.

9. I have given my thoughtful consideration to the submissions made by learned counsel for both the parties and have also perused the material on record.

10. It is no longer *res integra* that the burden of proving the employer employee relationship primarily rests upon the person who asserts its existence. In a situation where a person asserts to be an employee of the management which the management denies, the duty primarily rests on the person so asserting to give positive evidence in his favour and discharge his initial burden. Once such a person has given positive evidence in his favour, only then, the burden would shift on the management to give evidence to counter such claims. This is because it is always easier to prove positive fact than a negative.

11. The Hon'ble Supreme Court in '**Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu**', *AIR 2004 SC 1639* held as under:-

"47. It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him.

48. In *N.C. John Vs. Secretary Thodupuzha Taluk Shop and Commercial Establishment Workers' Union and Others* [1973 Lab. I.C. 398], the Kerala High Court held:

"The burden of proof being on the workmen to establish the employer- employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship."

49. In *Swapan Das Gupta and Others Vs. The First Labour Court of West Bengal and Others* [1975 Lab. I.C. 202] it has been held:

"Where a person asserts that he was a workman of the Company, and it is denied by the Company, it is for him to prove the fact. It is not for the Company to prove that he was not an employee of the Company but of some other person."

50. The question whether the relationship between the parties is one of the employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse."

12. In '**Kanpur Electricity Supply Co. Ltd. v. Shamim Mirza**', (2009) 1 SCC 20, the Hon'ble Supreme Court held as under:-

"20. It is trite that the burden to prove that a claimant was in the employment of a particular management, primarily lies on the person who claims to be so but the degree of proof, so required, varies from case to case. It is neither feasible nor advisable to lay down an abstract rule to determine the employer-employee relationship. It is essentially a question of fact to be determined by having regard to the cumulative effect of the entire material placed before the adjudicatory forum by the claimant and the management."

(emphasis supplied)

13. In the instant case, the respondent workman has claimed to be the employee of the petitioner and in order to prove so had primarily relied on document exhibited Ex. WW1/8 alleging it to be an appointment letter issued by the petitioner. On the basis of this document, the learned labour court had reached a conclusion that the petitioner has proved his appointment with the petitioner and has observed in the impugned award as under:-

"11. Regarding appointment letter dt. 2.3.03 Ex. WW1/8 it is found that during cross examination the explanation of Sh Pankaj Jain, MW1 was called who deposed to the effect that the appointment letter Ex. WW1/8 belongs to Management. But immediately thereafter the witness stated to the effect that he has not signed this document at point 'A' nor the stamp of the Management at point 'B' belongs to the Management. Now the question arises, under these eventualities can the document terms to be proved. As per Law, the burden of proof to prove the document lies upon the party who assert it. By bringing the original document on record i.e. Ex.WW1/8, the

Workman released the initial burden of proof. The Management has denied its execution, hence, the burden of proof shift upon the Management to prove that the document is not genuine as it does not bear signatures of Sh. Pankaj Jain.....”

14. This court is not in agreement with the aforementioned observation of the Labour Court. While reaching such a conclusion the trial court has failed to consider that in his cross-examination, MW1 has, although, initially stated that the appointment letter Ex.WW1/8 belongs to the management. However, he further explained that the letter head of Ex. WW1/8 belongs to the Management but he had not signed it at point A. He had further stated in his cross-examination that the stamp of Ex.WW1/8 at point B does not belong to Management. Even in his evidence by way of an affidavit (Ex.MW1/A), MW1 has stated that the alleged appointment letter does not belong to him. In my opinion, merely by proving the fact that the letter head belonged to the management, the respondent could not have said to have discharged the onus to prove that the management had issued an appointment letter to him especially when the management witness had denied signing the said document and denied the seal so present on the said document to be that of the management.

15. It is also worth mentioning here that the respondent had consistently denied the fact of management having issued an appointment letter to him in his statement of claims (Ex. WW1/7) and evidence by way of affidavit (Ex. WW1/A). Even in his cross-examination dated 02.09.2011, the respondent has admitted the fact

that in his claim statement as well as affidavit it is written that he has not been issued any appointment letter. Even so, the said document as alleged to be the appointment letter issued by the management is not an original document. The document exhibited as the 'appointment letter' is only a photocopy of the original document. Therefore, the Labour Court should not have relied on this document in making its observations. The respondent in his claim petition dated 16.03.2010 has stated that he was given leaves salary, without bonus etc. However, nowhere in his alleged appointment letter have these monetary incentives been mentioned apart from his salary i.e. Rs. 3,000/- per month. Therefore, reasonable doubt appears as to the contention of the petitioner and as such since original appointment letter has not been brought before the court for comparative purpose this Court has no reason to believe that Ex. WW1/8 is even a photocopy of an original appointment letter. Even otherwise, no circumstances are forthcoming from the workman respondent which would permit him to produce the secondary evidence of the said 'appointment letter'. Under such circumstances, the possibility of the alleged appointment letter being forged and fabricated cannot be ruled out, therefore, a reliance on it is not justified.

16. With regards to documents exhibited as Ex.WW1/9 and Ex. WW1/10, alleged to be the bills issued by the respondent on behalf of the petitioner and Kaya Fashions, it is once again observed that these documents too are not the original documents. Rather, they are the photocopies of the bills furnished without proof of any circumstance by the respondent permitting their admission in absence of the original

documents or without comparison from the same. The respondent has also not produced any witnesses from whom he received the cheques against these bills to prove that the payment on the said bills was received by him on behalf of the petitioner.

17. So far as documents exhibited as Ex.WW1/11 to Ex.WW1/14 are concerned, this court is of the opinion that the said documents serve no purpose in proving that the respondent received these payments on behalf of the petitioner. The said documents only appear in a nature of a diary entry or record of payments made. Nothing has been brought on record to prove these documents or to prove that the said payments were made by or to the respondent on behalf of the petitioner.

18. Further, from a perusal of the evidence by way of affidavit filed by the respondent before the Labour Court (Ex.WW1/A) certain discrepancies are also observed. In the said document, the respondent has stated his date of termination to be 12.09.2009 at some places while at other places as 12.09.2007. It is also alleged on behalf of the respondent that Shriji Sarees and Kaya Fashions belong to the petitioner proprietor. However, the respondent has not brought anything on record to prove this fact neither before this court nor before the learned Labour Court. Further, discrepancies appear in the alleged “commission” that the respondent was bound to receive from petitioner and Kaya Fashions. In his statement of claim filed before the Labour Court while, the respondent has stated that he was also promised ‘a commission on sales’ in petitioner establishment apart from his salary whereas in his affidavit (Ex.WW1/A) it has been stated

that the commission was assured only for working in Kaya Fashion. However, respondent has not produced any evidence to prove this contention. Therefore, these discrepancies further suggest an attempt on the part of the respondent to fabricate statements before the Labour Court and this court. Clearly, the conduct of the respondent throughout the proceedings before the Labour Court has not been free from doubt. The respondent cannot be said to have approached the Labour Court with clean hands.

19. It is now settled law that a person who, approaches Court for enforcement of his legal rights must come to the Court with clean hands and disclose all facts to the Court. Even when approaching a Court of equity such as the High Court, invoking its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India, the claimant should do so not only with clean hands but also with clean mind, clean heart and clean objective. Undoubtedly, the courts have to weigh interest of justice vis-à-vis the private interest. However, a petition containing misleading and inaccurate statement(s), if filed, to achieve an ulterior purpose, amounts to an abuse of the process of the Court. The Court is not a forum to achieve an oblique purpose. Although, a beneficial legislation is to be given a liberal view and interpreted to the advancement of the class for which it is enacted. However, the court, cannot under the garb of the purpose which the enactment seeks to achieve, turn a blind eye and grant relief even in cases where the relief prayed is not established by evidences brought on record.

20. In view of the above discussion, the present petition is allowed. Consequently, the impugned award dated 11.07.2012 passed by the learned Presiding Officer, Labour Court No.XVI, Karkardooma Courts, Delhi in I.D. No.33/2010 is set aside. No order as to costs.

21. Trial court record be sent back forthwith.

(VED PRAKASH VAISH)
JUDGE

MAY 21st, 2015
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