

\$~

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

Date of Decision: 5th November, 2015

+ W.P.(C) 614/2011
INDERJEET

..... Petitioner

Through: Mr Mohd. Nayeemuddin, Adv.

versus

MANAGEMENT OF ANU ENTERPRISIES AND ORS.

..... Respondent

Through: Mr M.R. Chanchal, Adv.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. By way of this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the award dated 9th April, 2010 passed by the learned Presiding Officer, Labour Court XVII, Karkardooma Courts, Delhi in DID No. 1246/2006 whereby the claim of the petitioner/workman was dismissed as he could not establish relationship of employer and employee between the parties.

2. Brief facts of the case as borne out from the petition are that a direct dispute was filed by the petitioner (hereinafter referred as workman) before the Labour Court alleging that he worked as a fitter/*karigar* and his last drawn salary was Rs.3500/- per month. He joined in the year 1964 and has an unblemished record. There were 40-45 employees who were denied all

statutory benefits. Management withheld Rs.4,00,000/- towards the statutory benefits payable to the workman. He joined Rajdhani General Ekta Union, which infuriated the management. In turn, the management did not pay the salary to the workman for the period from July, 2006 to 15th September, 2006. When he demanded the same, he was abused and was terminated from the services on 15th September, 2006. A notice of demand dated 4th November, 2006 was sent. As such, he claimed reinstatement along with full back wages.

3. To the statement of claim, the respondent filed written statement denying relationship of employer and employee between the parties. It was alleged that one Inderpal was employed by M/s. Anu Enterprises. He was a casual worker on daily wages of Rs.126/- per day. He left M/s. Anu Enterprises on 15th September, 2006 after attaining the age of 62 years citing the reason of old age. He had taken his full and final settlement by way of a voucher. As such, prayer for dismissal of the claim was made.

4. Evidence was adduced by both the parties and the parties were heard leading to the passing of the award dated 9th April, 2010.

5. Assailing the findings of the learned Labour Court, learned counsel for the petitioner submits that although in the written statement, the respondent denied the relationship of employer and employee between the parties but in the affidavit, the same was admitted, however, it was alleged that he left the services on his own after full and final settlement of all his claims. The petitioner had placed on record the attendance card as well as the bonus register to prove the relationship of employer and employee but

the trial court did not consider these documents. The petitioner has now attained the age of superannuation. As such, it was prayed that he be awarded compensation and retiral benefits.

6. Learned counsel for the respondent, on the other hand, submits that onus of proving the factum of employer and employee relationship was upon the petitioner who failed to prove the same. He failed to place on record the original attendance card or the bonus register. Even the same were not summoned from the respondent. No co-employee was examined to prove that he was working in the establishment of the respondent. The award has been passed by the learned Trial Court on the basis of evidence available on record which does not call for interference. As such, the petition deserves to be dismissed.

7. 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.

8. Hon'ble Supreme Court in '*Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu*', (2004) 3 SCC 514 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** [1976 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."

9. Again 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)

10. Similarly, in **Automobile Association of Upper India vs. PO, Labour Court II and Anr.**, (2006) 130 DLT 160, it was observed as under:-

"Engagement and appointment in service can be established directly by existence and production of an appointment letter, a written agreement or by circumstantial evidence of incidental and ancillary records which would in the nature of attendance register, salary register, leave record, deposit of PF

contribution and Employees State Insurance contribution etc. The same can be produced and proved by the workman or he can call upon and caused the same to be produced and proved by calling for witnesses who are required to produce and prove these records. The workman can even make an appropriate application calling upon the management to call such records in respect of his employment to be produced. In these circumstances, if the management fails to produce such records, an adverse inference is liable to be drawn against the management and in favour of the workman."

11. Similar view was taken in ***Shree Ji Sarees through its proprietor Pankaj Jain vs. Ved Prakash Sharma***, 2015 VI AD (Delhi)602.

12. In order to establish relationship of employee and employer, the workman relied upon three documents, namely, the demand notice sent on 4th November, 2006 Ex.WW1/1, UPC receipt Ex.WW1/2, acknowledgement receipt Ex.WW1/3, Mark 'A' Attendance card of Malhotra and Company showing the name of Inderjeet and Mark 'B' photocopy of payment of bonus in favour of Inderjeet for the year ending 31st March, 1980. So far as the documents demand notice, UPC receipt and acknowledgement receipts are concerned, these documents does not establish the relationship between the parties. As regards attendance card mark 'A' and bonus register mark 'B' are concerned, the workman admitted in his cross-examination that he does not have the originals of these documents.

13. There is nothing to show that if the workman was not in possession of the original of mark 'A' and mark 'B', any notice was issued to the management calling upon it to produce the relevant record. No documents to prove his EPF record etc. were summoned by the workman. Although according to him, 40-45 employees were working in the establishment, even then, no co-employee was examined to prove the relationship. He admitted that the respondent M/s. Malhotra and Company is not in existence now.

14. On the other hand, MW1 Yashpal Malhotra in his affidavit Ex.MW1/A deposed that one Inderpal was employed by him. However, he left on 15th September, 2006 due to his old age. He further stated that Inderjeet never worked in his firm. Madan Lal, Ramu, Avdesh and Inderpal (the workman contesting) were employed by M/s. Anu Enterprises. M/s. Anu Enterprises and Malhotra and Company are distinct and separate entities and M/s. Anu Enterprises came into existence four years ago. He further stated that the workman was working with M/s. Anu Enterprises in the year 2004. MW2-Ms. Anu Malhotra was also examined and she deposed that she was the proprietor of M/s. Anu Enterprises and the firm is being managed by her father. According to her, one Inderpal, S/o Bhagwan Dass was working with her company on daily wages and he left the employment on attaining old age on 15th September, 2006 after taking full and final settlement. She produced three vouchers signed by Inderpal. On the basis of evidence adduced by the parties, learned Labour Court observed that in the pleadings, name of M/s. Anu Enterprises never appeared. According to him, Malhotra and Company is the employer with whom he worked since 1964 as a fitter. He produced attendance card and the bonus register but the original of these documents were not produced by him. The written statement was filed by Yash Malhotra, Manager of M/s. Anu Enterprises wherein it was alleged that Inderpal was never employed by Malhotra and Company. It was alleged that Inderpal was employed by M/s. Anu Enterprises. Under the circumstances, it was held that the workman did not produce any cogent and acceptable evidence to establish the relationship between the parties, therefore, he was not entitled to any relief. The findings given by the learned Labour Court have been arrived at after proper

appreciation of the evidence on record. It is not a case where it can be said that the findings are not based on any evidence so as to warrant re-appreciation of evidence by this Court.

15. The settled position of law in respect of the interference by the writ courts under Article 226 of the Constitution of India is that a writ court exercises its power of judicial review well within certain parameters.

16. In ***Syed Yakoob v. K.S. Radhakrishnan***, AIR (1964) SC 477, Hon'ble Supreme Court identified the limitations of certiorari jurisdiction of the High Court under Article 226 of the Constitution in the following words:

"The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced

before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised."

17. In **Swarn Singh v. State of Punjab**, (1976) 2 SCC 868, Hon'ble Supreme Court reiterated the limitations of certiorari jurisdiction indicated in **Syed Yakoob v. Radhakrishnan** (supra) and observed:

"In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice."

18. In **Surya Dev Rai v. Ram Chander Rai**, (2003) 6 SCC 675, the two-Judge Bench noticed the distinction between the scope of Articles 226 and 227 of the Constitution and culled out several propositions including the following:

"(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction--by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction--by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice."

19. What can be culled out from the aforesaid decisions is that the limitations on the jurisdiction of this court are well settled. A writ in the nature of certiorari may be issued only if the finding of the Labour Court

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 established. The Court will not countenance the picking of holes here and there in the award on trivial points and thereby attempting to frustrate the entire adjudication process before the Industrial Adjudicator on hypertechnical grounds as is being sought to be done by the petitioner in the present case.

20. For the foregoing reasons, I find no merit in the submissions made on behalf of the petitioner. The award does not suffer from any infirmity so as to warrant interference by this Court. As a result, the writ petition fails and is accordingly dismissed but with no order as to costs.

(SUNITA GUPTA)
JUDGE

NOVEMBER 05, 2015
rs