

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4895/2015 & C.M.No.8862/2015 (for stay)**

Judgment reserved on: 19.05.2015

% Judgment pronounced on: 25.05.2015

M/S PACKBILL ENTERPRISES Petitioner
Through: Mr. Amarjit Singh Sahni, Advocate
along with the petitioner
versus

DINESH KUMAR MISHRA @ PAPPU Respondent
Through: Nemo.

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide the present writ petition the petitioner has challenged the award dated 01.07.2014 passed by the authority under Section 21 of the Delhi Shops and Establishment Act, 1954 (hereinafter referred to as 'the Act') whereby directions have been issued to the petitioner to deposit a sum of Rs.52,000/- along with compensation of Rs.100/- which amount was towards the unpaid earned wages of claimant Dinesh Kumar Mishra @ Pappu. The contention of the petitioner is that it was an ex-parte award; that signatures of its manager Mr.Sandeep were manipulated on the summon dated 10.04.2013; that the petitioner was not aware of such an award and

they came to know of it only in February, 2015 when he had received attachment warrants. It is further submitted that the respondent had worked as a driver with them only for 10-12 days and he had never worked for the petitioner with effect from 01.07.2012 to 10.11.2012 at the monthly salary of Rs.12,000/-. It is further submitted that he was found taking drugs and in drunkard condition and was expelled from the job. The respondent along with workers of Karamsheel Mazdoor Sangarh Union (Regd.) came to the petitioner demanded a sum of Rs.20,000/- as compensation and threatened with false court cases in case of refusal. He had also filed a claim petition before the Labour Court, Karkardooma, Delhi, seeking his reinstatement with full back wages and he had not disclosed in the said petition about this ex-parte award passed in his favour. It is further submitted that no one would believe that if a driver is not paid for such a long period, his salary, he would continue to work and the allegations itself show that he had filed false and frivolous claim with malafide intention. It is further submitted that ex-parte award has not been passed following all rules and regulations under the law and the same is illegal, arbitrary, unjustified and unwarranted and is liable to be set aside.

2. I have heard arguments of Mr.Amarjit Singh Sahni, learned counsel

for the petitioner.

3. Learned counsel for the petitioner has submitted that the award is bad because the learned labour court had believed the oral testimony of the respondent and no document showing the relationship and no other document showing that he had worked with the petitioner, had been placed on record. It is submitted that believing bald statement of the respondent and giving its findings is contrary to the established provisions of law. Reliance has been placed on the findings in *Titan Industries Limited vs. Kishan Lal*: 137 (2007) DLT 566 and *Sukhram & Others vs. Guptaji Tent House and Another*: 204 (2013) DLT 462.

4. It is argued that in *Sukhram's case* (supra) this court has clearly held that mere bald statement of petitioner is not sufficient to prove the employer and employee relationship between the parties and something more in the shape of document i.e. appointment letters, payment vouchers, etc. is required to be proved on record to indicate that the workers had been in the employment of respondent and worked with it continuously for a period of 240 days in a year preceding date of termination. It is further argued that in *Titan Industries Limited's case* (supra) this court has also held that burden was upon the petitioner to prove that he was in the employment of the

respondent and for that purpose he was required to produce on record the appointment letter, any document to ascertain that he was on the rolls of the petitioner and in view of this deficiency in the evidences of the workman, onus could not be shifted upon the management.

5. It is submitted that in view of this, the reliance of the court on the oral testimony of the workman/respondent and giving its finding is contrary to the established principles of law.

6. I have given due consideration to the case laws relied upon and supplied by the learned counsel for the petitioner. In *Titan Industries Limited's case* (supra) the facts were that the workman had claimed to be an employee of the Titan Industries which fact was denied by the Titan Industries and contention was raised that the workman was a private employee of the Regional Manager. In the light of these facts this court had given its finding that the oral testimony of the workman was rebutted by oral testimony of the management witness was not sufficient to prove relationship. In the present case, as is apparent from the award, the oral testimony of the workman/respondent was not rebutted by any evidence on record. The evidence of the workman remained uncontradicted since the petitioner had chosen to stay away from the proceedings of that court. Thus,

the findings in that case which were given on a different set of facts, is not relevant for the purpose of this case.

7. From the facts of *Sukhram's case* (supra), it is apparent that the management in that case had contested the plea of the workers and the court was not confronted with the situation where the oral testimony of the workers remained unrebutted. Principles enumerated in *Sukhram's case* (supra) also have no application to the present case.

8. Moreover, in the present case the relationship of employer and employee is admitted by the petitioner. In the present writ petition, the petitioner has categorically stated that the respondent had worked as a driver with the petitioner. The only plea taken was that he had worked only for 10-12 days. The date of employment is not disclosed in the writ petition. While it is contended that he was expelled from the job, date of such expulsion is also not given on record. The only plea of the petitioner is that the respondent had never worked during the period from 01.07.2012 to 10.11.2012. No such contention had been raised by the petitioner before the concerned court. This contention requires the findings on the facts and thus, ought to have been raised before the concerned court. It is also not the case where the petitioner had been taken by surprise. It is apparent from the

impugned award that the workman/respondent before moving an application under Section 21 of the Act, had filed a police complaint dated 12.11.2012 exhibited as Ex.WW1/1, sent a demand letter to the petitioner dated 12.11.2012 exhibited as Ex.WW1/3, duly sent vide Ex.WW1/4, also filed a complaint dated 16.11.2012 in Labour Office, exhibited as Ex.WW1/5. The workman had also proved on record the report of the labour inspector dated 22.07.2013 as Ex.WW1/6. This shows that immediately after 10.11.2012 when his services were allegedly terminated without paying the salary etc., the workman/respondent had been taking steps towards recovery of his unpaid wages as well.

9. The next contention of the petitioner is that signatures of its manager Mr.Sandeep were manipulated on the summons dated 10.04.2013. This court cannot enter into this question whether signatures of Mr.Sandeep, manager of the petitioner were manipulated or not because this issue could have been raised by the petitioner before the labour court by moving an appropriate application but he had chosen to file the present writ petition. The determination whether the signatures were manipulated or not, needs proof of facts on record. Moreover, it is apparent from the impugned order that the concerned court had not acted in haste. Summons dated 10.04.2013

was for appearance on 02.05.2013 despite that the court had adjourned the matter for the appearance of the petitioner for 12.06.2013, 26.08.2013 and 05.09.2013. It is not in dispute that the address of the petitioner on the process is correct. There is presumption under the General Clauses Act that when a letter has been sent to the addressee bearing the correct address, the same must have reached to the addressee. No doubt, such a presumption is rebuttable but there is nothing on record which can show that the process had never reached the addressee. As discussed above, it was received by the Manager of the petitioner whose name is Mr.Sandeep. It is not the contention of the petitioner that the name of petitioner's manager is not Mr.Sandeep.

10. From the above discussion, it is apparent that there is no infirmity or illegality in the impugned order dated 01.07.2014. The writ petition has no merit and the same is dismissed in limine.

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11. In view of the dismissal of the writ petition, this application has become infructuous and the same is dismissed.

**DEEPA SHARMA
(JUDGE)**

MAY 25, 2015/rb

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