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PETITIONER

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Kirtan
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Tehsil

RESPONDENTS

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION
OF INDIA

P. R. No. 252/03
Printed by Smt. S. K. J. Temple
dated 31-01-03

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23/10/16

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HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 631 of 2003

Kamal Salvent Extraction

---- Petitioner

Versus

The Presiding Officer Labour Court & Anr.

---- Respondents

For Petitioner	:	Shri B.D. Guru, Advocate
For Respondent No.2	:	Shri H.B. Agrawal, Senior Advocate with Smt. Meera Jaiswal, Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

18/10/2016

1. This petition under Article 227 of the Constitution of India arises out of the Award dated 21st December, 2001 by which the respondent-employee has been reinstated in employment with backwages of 50 per cent.
2. Quintessential facts for determination of controversy involved in the petition are that the respondent- employee filed statement of claim before the Labour Court seeking reinstatement on the pleadings *inter alia* that he was engaged by the petitioner-employer as a Labour on 25.6.1990 and he was removed from service on 22.8.1991 by an oral order without holding any enquiry and without giving any notice of retrenchment or retrenchment compensation. The petitioner-employer came out with the reply that the respondent No.2/employee was never engaged by them. The stand of the petitioner-employer was that respondent No.2 was engaged by one contractor Premlal who was engaged by the petitioner to get certain works done in connection with construction of factory building.

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On the basis of oral and documentary evidence led by both the parties, the Labour Court came to the conclusion that respondent-employee was engaged by the petitioner-employer for work of its factory and the retrenchment was illegal and passed an award of reinstatement with back-wages to the extent of 50 per cent. It is this award which is under challenge before this Court at the instance of petitioner/employer.

3. Learned counsel for the petitioner-employer argues that the Labour Court recorded perverse finding of relationship of employer and employee between the petitioner and respondent No.2, which is contrary to documentary evidence led by the petitioner-employer. Learned counsel for the petitioner advanced submission that the employee did not come with any documentary evidence of his engagement, either in the form of any order of appointment or any record maintained by the employer recording the name of the respondent-employee or any other document of registration, licence etc. maintained in any other office. On the contrary, the petitioner-employer produced before the Labour Court the register of employees being Ex. D-1, Ex.D-2 and Ex.D-3 which did not contain the name of respondent No.2-employer as its employee. However, the Labour Court illegally rejected those documents without any basis. The Contractor who was engaged by the petitioner-employer was also examined and he also produced a document register (Ex.D-4) which contains the name of respondent No.2-employee. All these documentary evidence were ignored by the Labour Court and it preferred a mere oral evidence of engagement of employee. The reason assigned for disbelieving the documentary evidence, it is contended, are not valid, therefore, the impugned order may be set aside.

Learned counsel for the petitioner also submits that even if it is found that termination was not valid, in view of the judgment of the Supreme Court in the case of **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** (2016) 1 SCC 521, instead of reinstatement, lump sum compensation may be awarded to the workman.

4. On the other hand, learned senior counsel appearing for the respondent-employee submits that it is a case where the Labour Court recorded its finding based on appreciation of material evidence on record. He submits that the

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Labour Court has appreciated oral as well as documentary evidence placed by the respective parties and for valid reasons those evidence have been accepted or discarded, therefore, there is no error of jurisdiction committed by the Labour Court in arriving at finding that respondent No.2 was engaged by the petitioner and not by any contractor. It is further submitted that the mere error of fact or even an error of law unless it is apparent one, could not be made a basis to seek interference of this Court in exercise of its supervisory jurisdiction.

5. I have considered the rival submissions made by learned counsel for the respective parties and perused the records.
6. The engagement of respondent No.2 for the work by the petitioner is not in dispute. It has also not been disputed by any of the parties that respondent No.2 was engaged in the work of the factory of the petitioner between period from 25.6.1990 to 22.8.1991. The dispute is whether the respondent-employee was engaged by the petitioner or he was engaged by a Contractor.
7. While the case of respondent No.2 is that he was engaged by the petitioner and working under Shri Jagdish Prasad, the Manger of the petitioner, the case of the petitioner is based on an agreement of the petitioner with one contractor Premlal.
8. The respondent-employee examined himself and his statement has been placed on record as Annexure P-6. In the statement, he has clearly stated that he was engaged by the petitioner. He has stated that he was engaged and working under one Jagidsh who is examined as one of the witnesses also by the petitioner. In para-5 of his cross-examination, the employee has admitted that his signature were being obtained in wage-payment register. He has denied that he was engaged by any contractor. He has stated in para-13 of his evidence that he was working under the supervision of Mr. Jagdish. The worker denied having signed in the register of the contractor.
9. The Labour Court has disbelieved the documentary evidence led by the petitioner-employer and Premlal mainly on the ground that the witnesses who produced the document is unable to clearly state whether the name of the respondent-employee is included in those register or not. Moreover, no

evidence has come from the employer side as to who prepared the register nor the person who made entry was examined. The defence of the employer that the employer had engaged a contractor Premlal who engaged the employee has been disbelieved by the Labour Court, as employer and the contractor both failed to place before the Labour Court any documentary evidence of engagement on contract by the petitioner.

10. In the considered opinion of this Court, the finding so recorded by the Labour Court is based on full appreciation of oral and documentary evidence on record. It is not a case where the Labour Court has recorded a finding of fact by completely omitting from its consideration any clinching oral or documentary evidence. The Labour Court has assigned valid and relevant reasons why the documentary evidence led is not liable to be believed.

Non-production of any documentary evidence of engagement of a contractor by the employer has been treated as one of the important circumstance to disbelieve the defence of the employer that the employer had engaged a contractor Premlal and in turn Premlal engaged the employee. This finding can neither be said to be perverse nor suffering from any apparent error of law so as to warrant interference of this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

At the most even if the argument of learned counsel for the petitioner is accepted, it does not mean that the view taken by the Labour Court is not possible. If on appreciation of oral and documentary evidence, two views are possible and the Labour Court has preferred one view, the scope of interference under Article 227 of the Constitution of India is ousted. In exercise of supervisory jurisdiction, this Court would not substitute its opinion in place of that formed by the subordinate Court or Tribunal once it is found that the finding recording by the subordinate Court or Tribunal could possibly be drawn on the basis of oral and documentary evidence on record.

The judgment of the Supreme Court in the case of **Vice -Chancellor, Lucknow University** (supra) is not applicable in the present case. That was a case of University, an Institution, where the appointments are made against vacant post. On facts, considering that appointment of daily wage was not

against sanctioned post, it was decided that interest of justice would be met by directing the payment of compensation in lieu of reinstatement. The ratio of aforesaid decision is not applicable in the present case as present is a case of engagement of a labour by an industrial concern.

11. In view of the above consideration I do not find any ground to interfere with the award passed by the Labour Court. The petition is therefore dismissed.

Praveen

Sd/-
Manindra Mohan Shrivastava
Judge