

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 07th July, 2017

Date of decision : 14th July, 2017

W.P.(C) 9732/2015

SHAMBHU & ANR

..... Petitioners

Through Mr. Medhanshu Tripathi, Mr.
Manindra Dubey, Advs.

versus

M/S SUGAN DRYCLEANERS & ANR

..... Respondents

Through Ms. Pratishtha Vij, Adv. for
Mr. Sanjoy Ghose, ASC (Civil),
GNCTD for R-2.
None for R-1.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. Vide the present W.P. (C) 9732/2015, the petitioners Shambhu s/o Sh. Ram Sunder and Vishwanath s/o Sahagu Prasad have assailed the impugned Award dated 30.06.2015 of the learned Presiding Officer, Labour Court-IX, Karkardooma Court, Delhi in I.D. 243/11 (old), 392/13 (new) whereby the workmen arrayed as petitioners to the present petition have been held to be not entitled to any relief against the management i.e. M/s. Sugan Drycleaners, in as much as it has been held vide the impugned Award in relation to the issues (framed on 18.11.2013 and rectified in the impugned Award itself on 30.06.2015), which are to the effect :-

“1. Whether there is any employer employee

relationship in between the workman Sh. Indrason (Sh. Indrason rectified to read as Vishwanath vide the impugned Award) and the management?” OPW.

2. Whether there is any employer employee relationship in between the workman Sh. Shambhu Prasad and the management? OPW

3. Whether the services of the workman have been terminated by the management illegally and/or unjustifiably? OPW.

4. Relief ;

that there was no existence of any employer and employee relationship between the workmen Shambhu s/o Sh. Ram Sunder and Vishwanath s/o Sahagu Prasad and the management of M/s. Sukan Drycleaners and thus consequently it could not be held that the services of the workmen Shambhu s/o Sh. Ram Sunder and Vishwanath s/o Sahagu Prasad had in any manner been illegally and unjustifiably terminated by the management and likewise the petitioners were held to be not entitled to any relief.

The said issue was framed on the basis of the reference made by the Deputy Labour Commissioner as under:

“Whether services of (i) Shri Indrason s/o Sh. Jagan Pal, (ii) Shri Shambhu s/o Shri Ram Sunder and (iii) Shri Vishwanath s/o Shri Sahagu Prasad have been terminated illegally and/or unjustifiably by the management, and if yes, to what relief are they entitled and what directions are necessary in this respect?”

2. The observations in the impugned Award are categorical to the effect that the petitioners, who claimed themselves to be the workman

of M/s. Sagun Drycleaners had not produced a single document in support of their contention that they had ever been in the employment of the management, despite ample opportunity having been granted in relation thereto. The management of M/s. Sagun Drycleaners before the learned Presiding Officer, Labour Court-IX, Karkardooma Court, Delhi in I.D. 243/11 (old), 392/13 (new), had also categorically asserted that there was no employer and employee relation between the workmen and the management.

3. The impugned Award and the certified copies of the cross examination of the petitioner Vishwanath who was cross examined as WW1 on 22.05.2015 and Shambhu Prasad who was cross examined as WW2 on 22.05.2015 bring forth that the workmen have both categorically stated

“It is correct that I have not placed any document, which may prove that I was ever in the employment of the management”.

4. Vide the impugned Award, reference has been made to the verdict in ***UCO Bank Vs. Presiding Officer & Anr. 1999 V AD (Delhi) 514*** of this Court wherein it has been observed that the principles regarding burden of proof are stipulated in Chapter VII of Indian Evidence Act, 1872 (in short Evidence Act) and that Sections 101 to 114A of Evidence Act particularly Sections 101 and 102 of the Evidence Act, which bring forth that he who asserts must prove through evidence to the satisfaction of the Tribunal or Court to establish the existence or non-existence of a fact contended by him. It was further held vide this judgment that the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue

and not upon the party who denies it, for a negative is usually incapable of proof.

5. Likewise, reference was also made to the verdict of the *Allahabad High Court* in *Canara Bank Vs. Union of India & Ors. 1998 Lab. I.C. 2923* wherein it has been observed that “*Section 101 of Evidence Act postulates that whoever desires any court to give judgment as to any legal right and liability dependent on the existence of facts which he asserts, must prove that those facts exist.*” It was further held that when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. Reference was also made by the Court to the provisions of Section 101, 103 and 106 of the Evidence Act pertaining to burden of proof in such like case.

6. Reference was also made in the impugned Award to the verdict of this Court in *Automobile Association Upper India Vs. P.O. Labour Court II & Anr. 130 (2006) DLT 160* wherein it has been observed in paragraph 14 thereof to the effect:

“14. Engagement and appointment in service can be established directly by the existence and production of an appointment letter, a written agreement or by circumstantial evidence of incidental and ancillary records which would be in the nature of attendance register, salary registers, leave record, deposit of provident fund contribution and employees state insurance contributions 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 then fails to produce such records, an adverse inference is liable to be drawn against the management and in favour of the workman.”

Reference was also made to the verdict to the Supreme Court of India in “***Range Forest Officer Vs. S.T. Hadimani, AIR 2000 Supreme Court 1147***” wherein it has been observed that a mere self serving affidavit does not tantamount to prove that there is relationship of employer and employee in between the parties.

7. Notice of the petition was issued to the respondents. Though the respondent no. 2 i.e. Government of the National Capital Territory of Delhi was represented, the respondent no. 1 chose not to put in appearance despite service and was thus proceeded ex-parte on 20.02.2017.

8. Written submissions were also submitted on behalf of the petitioners in terms of the order dated 20.02.2017 with submissions to the similar effect as made in the petition that the proceedings before the learned Presiding Officer, Labour Court-IX, Karkardooma Court, Delhi in I.D. 243/11 (old), 392/13 (new) have been conducted mechanically and that there was no suggestion given by the Authorized Representative of the management to the workmen in the cross examination that they were not employees of the respondent no. 1 and thus they would have to be deemed to be employees of the management. It was also submitted on behalf of the petitioners that

mere non – execution of the document by the employer cannot suffice to determine the existence of a relationship of the petitioners being the employees of the employer between the petitioners and the respondent no. 1.

9. On a consideration of the entire available record, it is apparent that there is nothing in the evidence led by the two petitioners before the learned Presiding Officer, Labour Court-IX, Karkardooma Court, Delhi in I.D. 243/11 (old), 392/13 (new) to indicate the existence of a relationship of the petitioners being employees of the respondent no. 1 and the petitioners have admitted that they have not placed any such document on record even before the learned Presiding Officer, Labour Court-IX, Karkardooma Court, Delhi in I.D. 243/11 (old), 392/13 (new) to bring forth such relationship.

10. No appointment letter, no written agreement, no joining registration, no attendance register, no salary register, no leave record, no deposit of PF contribution, no ESI contribution record has been produced by the petitioners. Even the co-workers, if any, have not been examined by the petitioners in the instant case in support of their contentions that they were the employees of the respondent no. 1.

11. Reliance thus placed on behalf of the petitioners on the verdict of the Supreme Court in the case of ***G.B. Pant University of Agriculture & Technology, Pantnagar, Nainital Vs. State of U.P. And Others, (2000) 7 SCC 109*** is thus misplaced as the facts therein were not in *pari materia* with the facts of the instant case.

12. In the circumstances, it is held that there is no infirmity in the impugned Award dated 30.06.2015 of the learned Presiding Officer,

Labour Court-IX, Karkardooma Court, Delhi in I.D. 243/11 (old), 392/13 (new), observing to the effect that there exists no relationship of employer and employee between the petitioners and respondent No.2, and that the petitioners are not entitled to any relief.

13. Thus, the petition is dismissed.

ANU MALHOTRA, J

JULY 14th 2017
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