

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.18871 OF 2005

ORDER:

1. This writ petition is filed by the petitioner seeking to issue a writ of Certiorari calling for the records relating to and connected with I.D.No.268 of 1994 on the file of the Labour Court, Guntur, and to quash the award dated 8.4.2005 passed therein, by holding it as arbitrary and illegal.

2. Heard Sri Vedula Srinivas, learned Counsel for the petitioner and Sri M. Pitchaiah, learned Counsel for the 1st respondent.

3. It is the case of the petitioner that the 1st respondent-workman was engaged through a contractor in June 1983 and the 1st respondent-workman on his own accord left the service during January 1994 and thereafter, he got issued a notice through his Counsel on 8.7.1994 contending that he was orally terminated. Thereafter, he raised an industrial dispute by filing I.D. No.268 of 1994 and the Labour Court without appreciating the evidence which was led by the petitioner to demonstrate that the 1st respondent-workman was never engaged by the petitioner and he was engaged by a contractor viz., Atchuta Ramaiah and that there was no master and servant relationship between the petitioner and the 1st respondent workman, passed

the award by allowing the I.D. preferred by the 1st respondent-workman and directing the petitioner to reinstate the workman into service with back wages at the rate of Rs.18/- per day from 21.1.1994 till the date of the order with interest at the rate of 6% per annum. Challenging the said award, the petitioner filed the present petition.

4. The learned Counsel for the petitioner contended that the petitioner led evidence by examining 9 witnesses including Atchuta Ramaiah, who was a contractor through whom the 1st respondent-workman was engaged, and if at all any relationship of employer and employee was there, it was between the said Atchuta Ramaiah and the 1st respondent-workman but not with the petitioner. Further, it has been contended that the petitioner led evidence before the Labour Court to demonstrate that an agreement was entered by the petitioner and Atchuta Ramaiah; that the acquittance register was maintained by Atchuta Ramaiah, contractor and the 1st respondent-workman signed in the said register maintained by Atchuta Ramaiah. The learned Counsel for the petitioner vehemently argued that the 1st respondent-workman was never engaged by the petitioner and therefore, question of terminating his services as contended by the 1st respondent-workman would not arise, and the labour Court without appreciating any of the contentions raised by the petitioner mechanically allowed

the I.D. preferred by the 1st respondent-workman on 8.4.2005. To strengthen his arguments, the learned Counsel for the petitioner has relied upon the judgment of the Calcutta High Court in ***Ramendra Narayan Deb. Vs. 8th Industrial Tribunal, West Bengal and others***¹, wherein it is held as follows:

“The Evidence Act as such does not apply to the industrial adjudications. However, the principle of law enunciated on the burden of proof or onus of proof being a basic principle of law, the Industrial Tribunals are also required to follow it. Where therefore the Tribunal finds it difficult to make up its mind the question of burden of proof comes to the foreground and becomes a deciding factor. Burden of proof on pleading and burden of adducing evidence or two different things while the former is constant, the latter is shifting.”

He further contended that even the Labour Court ought to have looked into the evidence which was led by the petitioner to demonstrate that there was no master and servant relationship and it ought to have dismissed the I.D.

5. Further, the learned Counsel for the petitioner contended that the Labour Court perfectly extracted only certain depositions of the management witnesses, and came to an erroneous conclusion and therefore, the award passed by the Labour Court is liable to be set aside on that ground.

¹ 1975 LAB. I.C.94

6. The learned Counsel for the 1st respondent-workman contended that the petitioner has not filed any counter to deny the relationship of employer and employee between the petitioner and the 1st respondent-workman and that the petitioner has not tried to defend, and the Counsel for the petitioner filed the so called counter before the Labour Court, and that in the absence of any specific pleading denying relationship of employer and employee, any kind of evidence led by the petitioner would have no significance, and that the Labour Court has rightly passed orders in favour of the 1st respondent-workman.

7. This Court having considered the rival submissions made by the petitioner is of the view that the basic principle of law is that in the absence of pleading any amount of evidence will not be considered. In the instant case, admittedly no pleading was raised and in fact, no counter was filed before the Labour Court by the petitioner denying the relationship of employer and employee. But the evidence was led to demonstrate that there is no relationship between the petitioner and the 1st respondent-workman. The issue as to whether in the absence of any pleading, evidence can be led and what will be the effect of such evidence was considered by the Hon'ble Supreme Court

in ***Ram Sarup Gupta (dead) by L.Rs Vs. Bishun Narain Inter College and others²***, as follows:

"It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the court to ascertain the substance if the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of pleadings, instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings, parties knew the case and they proceeded to trial on those issue by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal."

In the instant case, since no pleading was raised to the effect that the 1st respondent-workman was engaged through a private contractor and there is no master and servant relationship between the petitioner and the 1st respondent, any

² AIR 1987 SC 1242

amount of evidence led by the petitioner would not be helpful to him. Admittedly, the 1st respondent-workman worked with the petitioner right from 1983 to 1994. Therefore, this Court is of the view that the Labour Court has rightly passed orders in favour of the 1st respondent-workman holding that he is entitled for reinstatement. There are no merits in the writ petition.

8. Accordingly, the Writ Petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

(ABHINAND KUMAR SHAVILI, J)

Dated: 11th October, 2018
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THE HON'BLE SRI ABHINAND KUMAR SHAVILI



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