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

Date of decision: 1st October, 2018

+ WP (C) 10371/2018 & CM Nos.404405-40406/2018

M/S VASANT VIHAR CLUB Petitioner

Through: Mr. Inder Jit Singh, Adv.

versus

SUKHBIR SINGH Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

1. This writ petition assails an Award, dated 18th January, 2017 passed by the Labour Court. The dispute, referred to the Labour Court, by the Government of National Capital Territory of Delhi, on 8th December, 2011 has been set out, by the Labour Court, in para 1 of the impugned Award, in the following terms :

“Whether Sh. Sukhbir Singh S/o Sh. Tapraj Singh is entitled for payment of salary of Assistant Electrician as fixed by the management w.e.f. 29.09.2008 if so, what directions are necessary in this respect.”

2. Mr. Inder Jit Singh has raised a preliminary objection to the effect that the term of reference, thus extracted by the Labour Court, is not the term of reference as contained in the order of reference dated 8th December, 2011 which read thus :

“Whether Sh. Sukhbir Singh S/o Sh. Tapraj Singh is entitled for payment of salary of Electrician as fixed by the management w.e.f. 29.9.2008 if so, what directions are necessary in this respect?”

3. I will deal with this aspect at a later stage.

4. The respondent in the present case claimed to have been working, with the petitioner, since 11th February, 2000. His case was that he had initially been appointed as a helper, and that, during the course of his tenure as a helper, he had undergone a course in Electric Trade, which he successfully passed in 2007, resulting in the issuance of a certificate of training, in Electric Trade. Subsequently, he contended, on 29th September, 2008, the petitioner issued him a letter, which constitutes the linchpin of the controversy in the present case, and consequently merits reproduction, thus:

“29.9.2008

OFFICE ORDER

With immediate effect from 29.9.2008, Sh. Sukhbir Singh (Helper) is transferred to Maintenance (Assistant Electrician) he will assist and learn the job from Electrician from 9.30 A.M. to 5.00 P.M. with Tuesday being off day.

Lt. Col. J.S. Dayal (Retd.)
General Manager”

5. The case of the respondent, before the Labour Court, was that, by the aforementioned letter, dated 29th September, 2008, he had been transferred from the post of Helper to the post of Assistant Electrician. He contended that he had continued to work as Assistant Electrician, since that date. He also contended that he fulfilled the requisite qualifications for Assistant Electrician.

6. On the said premise, the respondent represented, to the petitioner, for being paid the wages payable to an Assistant Electrician. He also pointed out, in that regard, that other persons, working as Assistant Electrician with the petitioner, were being paid more than him. The dispute was initially referred for conciliation and, on the efforts at conciliation failing, was referred by the appropriate Government, as noted above, to the Labour Court.

7. I may, at this juncture itself, dispose of the preliminary objection, of Mr. Singh, regarding the manner in which the term of reference was worded in the impugned Award. It is true that the order of reference uses the word “Electrician” instead of “Assistant Electrician”. Mr. Singh, however is unable to dispute the fact that, from the very beginning, the respondent’s claim was for being paid as Assistant Electrician, and not as Electrician. Apparently, the conciliation proceedings were also to the same effect. It is also a matter of record that the proceedings, before the Labour Court, were also on the issue of whether the respondent was entitled to be paid the wages of Assistant Electrician. Rival stands were put forth on the said aspect, resulting in the impugned Award.

8. Clearly, therefore, both parties had proceeded, from the beginning, with the clear understanding that the dispute, as initiated by the respondent, and as objected by the Labour Court, was as to whether the respondent was entitled to be paid the wages of Assistant Electrician. That being so, I am not inclined to treat the impugned Award as vitiated solely because, apparently owing to an inadvertent

error in the order of reference, the word “Electrician” has been used, in the term of reference, instead of “Assistant Electrician”.

9. The said preliminary submission of Mr. Singh is, therefore, rejected.

10. In the impugned Award, the Labour Court notes the following :

(i) The relationship of employee and employer, between the petitioner and the respondent, was not denied by the petitioner. The case of the petitioner was that the respondent, who was working as a semi skilled worker, was being paid the wages appropriate for a semi skilled worker, which were in excess of the minimum wages notified by the Government for payment to semi skilled workers in the GNCTD.

(ii) The petitioner also sought to contend, before the Labour Court, that the respondent was not as yet fully capable of independently attending to electrical faults and, that various complaints had been received against him.

(iii) Consequently, on completion of pleadings, the Labour Court framed the following issues, on 11th February, 2013:

- “1. As per term of reference.
2. Relief.”

(iv) The respondent examined himself as WW-1 and did not lead the evidence of any other witness. The petitioner examined Mr. Subhamoy Ghosh as MW-1 and Mr. Anil Gupta as MW-2.

(v) Consequent to evidence being led and cross examination, etc. being concluded, the Labour Court proceeded to return the following observations/findings:

(a) Re. Issue (1)

(i) The employment of the respondent, the service conditions of his employment, his last drawn salary, and the salary being paid to him, were not in dispute.

(ii) The respondent was relying on the letter dated 29th September, 2008, which stands reproduced hereinabove, and which was exhibited, before the Labour Court, as Ex. WW-1/1. The said letter, and the issuance thereof to the respondent, was admitted by the petitioner.

(iii) The allegations, regarding the inability of the respondent to discharge the duties of Assistant Electrician properly, were denied, by him, in his cross examination.

(iv) Regarding the letter dated 29th September, 2008 (Ex. WW-1/1), MW-2 Mr. Anil Gupta had deposed that the General Manager, who had issued the said letter, Lt. Col. J.S. Dayal, was not authorized to do so, and that he had issued the letter without the approval of the management. He had further contended that the management did not approve the issuance of the said letter.

(v) At the same time, MW-2 Anil Gupta admitted that he was not in a position to inform the Labour Court of any action having been taken against Lt. Col. J.S. Dayal, for having issued the said letter.

(vi) The following facts were, therefore, undisputed:

(a) The respondent was initially appointed as Helper.

(b) He qualified the course of Electrician, with the approval of the management of the petitioner.

(c) He submitted the certificate received by him from the NHRD.

(d) The letter dated 29th September, 2008 (Ex. WW-1/1) had indeed been issued to him by the petitioner.

(e) The said letter was neither withdrawn nor modified at any point of time.

(f) The respondent was, in fact, drawing lower salary than the other Assistant Electricians working for the petitioner.

(g) No action had been initiated against Lt. Col. J.S. Dayal who had issued the letter dated 29th September, 2008 (Ex. WW-1/1).

(h) No complaint had ever been received, by the petitioner, regarding the manner in which the respondent was discharging his duties.

Having thus distilled the evidence before it, the Labour Court proceeded to discountenance the submissions, of the petitioner, to the effect that there were complaints against the respondent, by opining that the said issue was entirely irrelevant to the controversy of whether the respondent was, or was not entitled to be paid the wages of Assistant

Electrician. It proceeded to hold, *vide* the impugned Award, that, once the respondent had been appointed as Assistant Electrician *vide* letter dated 29th September, 2008 (*supra*), he could not be deprived of the salary or benefits attending the said post. The Labour Court found that the respondent was, in fact, being discriminated vis-à-vis other Assistant Electricians, who were working in the office of the petitioner, and that the said discrimination, being invidious in nature, could not sustain in law, especially as the respondent was in possession of a valid and subsisting letter appointing him as Assistant Electrician.

(b) Re. Issue (2)

In view of the above findings regarding issue (1), as framed by the Labour Court, Issue (2) was answered by directing the petitioner to pay, to the respondent, the salary of Assistant Electrician, from 29th September, 2008, with all consequential benefits, including increments from time to time and interest at the rate of 9% per annum.

11. The petitioner, aggrieved thereby, is before this court, in the present writ proceedings.

12. The only ground raised in the writ petition – which indeed, is the only ground, canvassed by Mr. Inder Jit Singh, learned counsel for the petitioner – is that the letter, dated 29th September, 2008, was not a letter appointing the respondent as Assistant Electrician, or even transferring him as Assistant Electrician, but was only a letter which stipulated that he would “assist and learn the job from Electrician”. To say the least, this submission is completely misconceived, and amounts to a desperate attempt to escape from the actual contents of the letter dated 29th September, 2008. There is little doubt, on reading the said letter, that the letter does not merely limit itself to a direction, to the respondent, to assist and learn the job from Electrician, but specifically transfers the petitioner from the post of Helper to that of Assistant Electrician. This may also be gleaned from the fact that the words “Helper” as well as “Assistant Electrician” are both parenthesized in the said letter. The post of Helper being the post to which the respondent was appointed, there is no reason not to treat the post of Assistant Electrician, which is also parenthesized in the said letter, as the post to which he was transferred. It is clear, from a reading of the letter that the reference to the respondent having to assist and learn the job from Electrician, is only with reference to the job of Assistant Electrician, being the post to which he has been transferred. There can be no other interpretation accorded to the said *transferred*.

13. In any event, even if the letter were, at the very worst, to be treated as ambiguous – which in my opinion, it is not – the benefit of

any such ambiguity would have to enure to the workman, rather than to the management.

14. The matter may be viewed from another angle as well. This court is exercising jurisdiction, in the present case, under Articles 226 and 227 of the Constitution of India. The nature of jurisdiction exercised by me is that of certiorari, and is essentially supervisory, not appellate, in nature. The limits of certiorari jurisdiction are well known, and have been authoritatively delineated by the Supreme Court in a variety of decisions, notably in *Syed Yakoob v. K. S. Radhakrishnan*, AIR 1964 SC 477. It is trite that this court does not sit in appeal over the decisions of the Labour Court. Interference, with the decision of the Labour Court, especially whether the finding is one of fact and not of law, would be warranted only where the finding suffers from perversity *ex facie*, or is such at which no reasonable man, conversant with the facts and the law, would arrive.

15. The issue in controversy in the present case, viz, whether the respondent was appointed and working as Assistant Electrician, or not, is a pure question of fact. The Labour Court has interpreted the letter dated 29th September, 2008, in a manner in which it cannot be said to suffer from perversity, or be such as no reasonable man would interpret.

16. No other submission was canvassed by Mr. Inder Jit Singh.

17. Resultantly, it cannot be said that any case for interference, by this court, with the impugned Award of the Labour Court, is made out.

18. As a result, the writ petition is dismissed *in limine*, with no order as to costs.

C. HARI SHANKAR, J

OCTOBER 01, 2018/kr

