

\$~

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

Date of Decision:- 06.11.2019

+ W.P.(C) 5242/2011
RAM PAL

..... Petitioner

Through Mr.Rajiv Agarwal with Ms.Meghna
De, Mr.Nawlendu Bhushan, Adv.

versus

I.B.P. CO. LTD

..... Respondent

Through Ms.Prachi V.Sharma, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition filed by the workman assails the award dated 14.05.2009 passed by the learned Labour Court-IX, Karkardooma Courts, Delhi in I.D.No.508/1991 (308/2008 New). Under the impugned award, the Labour Court has rejected the petitioner's claim by holding that he had failed to establish an employer-employee relationship with the respondent and that the Management/respondent was not an 'industry', within the ambit of Section 2 (j) of the Industrial Disputes Act, 1947 ('the Act' for short).
2. The petitioner, claiming that he had been illegally terminated from service on 01.04.1989 by the respondent, where he had joined as a peon on 26.12.1985, raised an industrial dispute. Before the Labour Court, the petitioner urged that after being appointed as a Peon, he

was posted at the respondent's residential complex in Sector-39, Noida and was regularly being paid salary by the respondent. In support thereof, he filed salary vouchers issued in his name by the IBP-BL Group of Companies, Noida Residential Complex, Noida which were exhibited as WW1/6 to WW1/8.

3. Rebutting the petitioner's claim in its written statement filed before the Labour Court, the respondent contended that the petitioner was not its employee but had been employed by the Housing Project Committee of the IBP-BL Group of Companies. However in its evidence and cross-examination, the respondent took a specific stand that though the petitioner had been engaged by the Management, this employment was solely for the purpose of a housing project, which employment came to an end when the project concluded. Based on the evidence led by the parties, the Labour Court passed the impugned award by observing as under:-

“ ISSUE No.1 (framed on 26.02.96):-

*13. The primary burden to prove this issue was upon the workman. In coming to this conclusion, I also find support from the judgment of Hon'ble Supreme court of India given in the case of **Workmen of Neelgiri Co-operative Marketing Society Ltd. v. State of Tamil Nadu and Ors. 2004 LLR 351 (Supreme Court)**. The Hon'ble Apex Court held in this case held mainly to the effect that it was well settled principle of law that the person who sets up the plea of existence of relationship of employer and employee would have to prove it. It was also held in this case that the burden of proof was on the workman to establish the employer and employee relationship and that an adverse inference cannot be drawn*

against the employer if the employer failed to produce certain documents before this Court. It was also held that where a person asserts that he was employed by the company and it is denied by the company then it was for him to prove that fact and that it was not for the company to prove that he was not an employee of the company but of some other person.

14. Now turning to the evidence on record, workman himself admitted in his cross-examination that he had not technical skills or qualifications; that it was correct that he was working with the Housing Project Committee at Noida, U.P.; that he did not know that the Housing Project was constituted by four independent companies, namely IBP Company, Balmer Lawrie Company, Bridge and Roof Company and Beicco Lawrie Company; that he did not have any document in support of his claim that he was an employee of the IBP Co.; that at the time of joining the services, he was not given any appointment letter nor did he makes any request for the same; that the construction of the project at Noida took more than three years for completion; that the construction site was situated at Sector 36, Noida, U.P.; that it was correct that IBP Company was a Government run Company and it was a public Sector undertaking; that his services were terminated on 01.04.1989 but he did not have any documentary evidence in support of the same. The workman has relied upon certain documents in support of his contentions which are Ex. WW1/1 to WW1/5 respectively and Mark A to E respectively on record. I have carefully gone through all these documents and none of these documents establishes relationship of employer and employee between the parties herein. Further, there are own admissions of the workman mentioned above that he did not have any authentic proof of having worked for the relevant period with the management herein. In view of these reasons, I am of the considered opinion that the workman has miserably failed to establish employer and employee relationship between the parties herein. Hence, this issue is decided against the workman and in favour of the management.”

4. Aggrieved by this award passed by the Labour Court, the present petition has been preferred by the workman/claimant.

5. Mr. Rajiv Agarwal learned counsel for the petitioner, by drawing the attention of this Court to the salary vouchers issued in the petitioner's name by the IBP-BL Group of Companies, submits that the vouchers in themselves were sufficient to prove the petitioner's employment with the respondent. He urges that these vouchers also show that the petitioner had been employed with the respondent against a sanctioned post. He submits that in any event, once the respondent's own witness PW 1 admitted in his cross-examination that the petitioner was in the employment of the respondent from 26.12.1985 till 31.03.1989, the Labour Court could not have come to the conclusion that there was no employer-employee relationship between the parties. The respondent's plea that the petitioner was employed by a Committee was liable to be rejected as the said Committee, under which the petitioner was assigned to perform his duties, was controlled exclusively by the respondent. He further submits that the Labour Court has, by erroneously placing reliance on the decision of the Supreme Court in *Management of SOM Vihar Apartment Owners Housing Maintenance Society Ltd. v. Workmen C/o Indian Engineering and General Mazdoor* 2001 LLR 599 (SC), held that the respondent was not an 'industry', without appreciating that this decision related to a case where services were being provided by employees to members of an apartment association, which is not relevant to the facts of the present case where the petitioner was engaged in a construction project being carried out by the respondent.

6. On the other hand Ms.Prachi V.Sharma, learned counsel for the respondent supports the impugned award and submits that the respondent had been engaged by the Housing Project Committee formed by the IBP-BL Group of Companies, which comprises of four companies including the respondent. She submits that since the Committee was constituted by four companies, the respondent cannot be individually singled out and saddled with the responsibility of continuing to employ the petitioner, especially since the project for which he was specifically engaged by the Committee has come to an end. She further submits that in any event, the onus to prove the petitioner's employment with the respondent was on the petitioner, which he failed to discharge. In support of this contention, she places reliance on the decision in ***Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N. & Ors.*** [(2004) 3 SCC 514], which has also been referred to by the learned Labour Court while arriving upon its findings. She submits that the learned Labour Court has rightly held that the petitioner had not been engaged in any 'industry' within the ambit of Section 2(j) the ID Act, but had been engaged by the Housing Project Committee of the IBP-BL Group of Companies for the purpose of developing a residential complex for employees of the four constituent companies, and not the respondent individually. This Committee, she submits, stood dissolved when the housing project came to an end, which effectively also concluded the petitioner's engagement in the project. She submits that the impugned order is based on a correct appreciation of law and the evidence led by the parties and, therefore, prays that the writ petition be dismissed.

7. I have heard the learned counsel for the parties and with their assistance perused the record.

8. A careful perusal of the impugned award shows that the learned Labour Court has dealt with this dispute in the most cursory manner and has rejected the petitioner's claim without even appreciating the effect of the evidence led by the respondent, including the cross examination of its witness.

9. While dealing with the question of an employer-employee relationship between the parties, it appears that the learned Labour Court failed to take into account the salary vouchers produced by the workman. I find that these vouchers clearly show that salary had been paid to the workman by the IBP-BL Group of Companies which, admittedly, also comprised of the respondent. This is further compounded by the fact that the Management witness had, during cross-examination, admitted the employment of the petitioner with the respondent between 26.12.1985 and 31.03.1989. The findings of the learned Labour Court, however, make no reference to the contradictory stands adopted by the Management or the effect of salary vouchers placed on record by the workman in support of his claim. The respondent has contended that the actual employer of the petitioner, being the IBP-BL Group of Companies, could not be held as an 'industry' and stood dissolved when the housing project came to an end. It is, however, an admitted position, which is also reflected in the record of the lower court, that the respondent neither mentioned such dissolution of the Housing Project Committee nor pleaded that the Management has no connection with the petitioner before the

Labour Court. In the absence of specific and unambiguous pleadings made in this regard, I find that the Labour Court could not have arrived upon the definite conclusion that there was no employer-employee relationship between the parties.

10. In the facts of the present case, I find it appropriate to set aside the impugned award and remand the matter back to the Labour Court for a proper examination of the matter on merits. While directing a re-examination of the issue of employer-employee relationship between the parties, I am of the opinion that the finding of the learned Court with respect to the respondent being an 'industry' within the definition of the term under the ID Act also needs to be revisited as the answer to the said question would hinge upon whether the petitioner is able to show that he is indeed an employee of the respondent or whether he was an employee of the Housing Committee, as is sought to be contended by the respondent. In case the petitioner is successful in establishing that he was employed by the respondent, which is admittedly an industry, then the second issue would no longer survive for adjudication.

11. It is, however, made clear that this Court has not examined the rival contentions of the parties on the merits of the petitioner's claim and it will be open for the respondent to show before the Labour Court that the petitioner was, in fact, never in its employment.

12. In view of the fact that the present dispute arises out of a termination which took place in the year 1989, the learned Labour Court is requested to expeditiously decide the dispute, preferably within a period of six months, in accordance with law.

13. The writ petition is disposed of accordingly.

REKHA PALLI, J

NOVEMBER 06, 2019

sr

