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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 05.02.2019

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W.P.(C) No.7107/2012

M/S POPULAR STEEL

..... Petitioner

Through: Mr.Satender Verma, Adv.

versus

RAJ KUMAR

..... Respondent

Through: Mr.H.R. Jha, Adv.

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W.P.(C) 7108/2012

M/S POPULAR STEEL

..... Petitioner

Through: Mr.Satender Verma, Adv.

versus

JAHANGIR ALAM

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. At the outset, it may be noted that on 01.02.2019, the parties were granted one final opportunity of six weeks to file their written submissions. However, at the joint request of the learned counsel for the parties, a short adjournment was granted and the matter was listed for

today. Today, the learned counsel for the parties have handed over their written submissions in Court itself and, therefore, with the consent of all the parties, the matter has been taken up for final disposal.

2. Vide the present petitions under Articles 226 and 227 of the Constitution of India, the petitioner impugns a common Award dated 16.08.2012 passed by the learned Labour Court in respect of two interconnected industrial disputes filed by two workmen, namely Raj Kumar and Jahangir, who have been arrayed as the respondents in *W.P.(C) No.7107/2012* and *W.P.(C)No.7108/2012* respectively. Under the impugned Award, the learned Labour Court, after holding the termination of the two workmen as illegal and unjustified, had granted each of them a lump sum compensation of Rs.1,00,000/- in lieu of reinstatement and backwages.

3. Since the petitioner impugns a common order passed by the learned Labour Court in respect of two employees who had filed separate claims before it, the present writ petitions are being decided by a common judgment. However, for the sake of convenience, only the facts of *W.P.(C) No.7107/2012* are being referred to hereinbelow and the respondents in the two writ petitions are hereinafter being referred to by their respective names, i.e., Raj Kumar and Jahangir.

4. The relevant facts emerging from the record are that Raj Kumar joined the services of the petitioner on 05.05.1999 as an Assistant Machineman and worked there for over eight years, during which period he allegedly met with two accidents as a direct result of the negligence

on the part of the petitioner's management. It is Raj Kumar's case that during his tenure with the petitioner, he performed his duties with utmost diligence and honesty till 15.07.2007, when he was not allowed to re-join his duties upon returning from his native village after attending to his ailing father, and was instead illegally terminated by the petitioner without assigning any reasons. He, therefore, filed a claim petition before the learned Labour Court challenging his termination by the petitioner.

5. The petitioner filed its reply to Raj Kumar's claim petition before the learned Labour Court denying that he had been illegally terminated from service. The petitioner's stand in its reply was that Raj Kumar was initially appointed from 04.01.2001 and not from 05.05.1999 as claimed by him, and he had continued to work as a helper till October 2001, whereafter he was appointed as an Assistant Machineman for a fixed term from 01.01.2002 to 31.03.2006. Thereafter, his services were dispensed with in accordance with the terms of his appointment letter dated 01.01.2002. Even though Raj Kumar admittedly did not file any document other than an Insured Person Card issued by the Employees State Insurance Corporation (hereinafter referred to as "ESIC") to show the nature of his appointment, the petitioner had filed a copy of his appointment letter dated 01.01.2002 showing that he was only appointed as an Assistant Machineman for a fixed period from 01.01.2002 to 31.03.2006, which letter was also claimed to have been counter signed by Raj Kumar. Thus, the petitioner's plea before the learned Labour Court was that Raj Kumar had been initially appointed as a helper from

04.01.2001 till October 2001, whereafter he was appointed as an Assistant Machineman w.e.f. 01.01.2002 only for a specific period.

6. In his rejoinder, Raj Kumar denied having been issued any appointment letter and specifically denied his signatures on the appointment letter dated 01.01.2002 produced by the petitioner. The petitioner, therefore, examined a handwriting expert, namely Mr.M.S. Mishra, as its witness. Mr.Mishra claimed to have compared Raj Kumar's disputed signatures on his appointment letters dated 04.01.2001 and 01.01.2002 as also on the full and final receipt dated 08.04.2006 stated to have been executed by him, with his admitted signatures in the affidavit filed before the learned Labour Court. After a close examination of the manner, design, nature and tendency of the curves, angles etc., Mr.Mishra claims that he had tendered his report opining that the disputed signatures on the letters dated 04.01.2001, 01.01.2002 and receipt dated 08.04.2006, were by the same person who had signed the affidavit filed before the Labour Court. Based on this report of the handwriting expert, the petitioner submitted before the learned Labour Court that there could be no doubt about the fact that Raj Kumar had been appointed only for a fixed term and his services had, therefore, come to an end on account of efflux of time and he had not been illegally terminated as alleged by him.

7. At this stage, it may also be noted that before the learned Labour Court, the petitioner had also taken a stand that after the termination of Raj Kumar's services in accordance with his terms of appointment, the

petitioner had closed its factory on 20.08.2009 and in this regard, based on the petitioner's application, an additional issue was framed on 10.11.2010 to the effect as to whether the Management had closed down its business/manufacturing activities w.e.f. 20.08.2009, which issue was decided in favour of the petitioner.

8. Based on the pleadings of the parties and the evidence led before it, the learned Labour Court rejected the report of the petitioner's handwriting expert by observing that his testimony did not inspire any confidence as there was no evidence to corroborate the findings of his report. Consequently, the learned Labour Court rejected the defence taken by the petitioner that Raj Kumar was terminated in accordance with the terms of his appointment, as the Court did not find that there was any such valid letter of appointment in the first place. The Court further held that in view of the admitted position that Raj Kumar had been employed with the petitioner for more than 240 days, his termination without assigning any reason was illegal and unjustified. In view of its finding that the petitioner's manufacturing activities had been closed from 20.08.2009, the Court instead of directing reinstatement and payment of backwages, awarded compensation of Rs.1,00,000/- to Raj Kumar.

9. The present writ petitions have been filed by the petitioner/management impugning the aforesaid Award on two primary grounds. Mr. Satender Verma, learned counsel for the petitioner first and foremost states that the factum of appointment of Raj Kumar being for a

fixed term, was evident from a bare perusal of the letter of appointment dated 01.01.2002 itself and the said letter has been wrongly rejected by the learned Labour Court. Secondly, the learned Labour Court has without any basis, discarded the testimony of the handwriting expert, who had given a specific report clearly stating that Raj Kumar's disputed signatures as appearing on the letter of appointment, were matching with his admitted signatures on the affidavit filed by him before the learned Labour Court. He further submits that once it is evident that the handwriting expert had clearly opined that the signatures on the said letter were that of Raj Kumar, there was no reason for the learned Labour Court to conclude that the appointment letter dated 01.01.2002, was not genuine. He, thus, contends that in view of the letter dated 01.01.2002, the finding of the learned Labour Court that there was nothing to show that the appointment of the respondent was for a fixed period, was wholly perverse.

10. In support of his aforesaid contention that the learned Labour Court could not have ignored the report of the handwriting expert and that too without assigning any cogent reasons, Mr.Verma has relied on a decision of the Supreme Court in the case of *Murarilal vs. State of M.P.* [AIR 1980 SC 531]. By drawing my attention to paragraph 11 of the aforesaid decision, he submits that the Supreme Court has categorically stated that there is no rule of law stipulating that the opinion of a handwriting expert can never be relied upon, unless the same is substantially corroborated by other evidence.

11. Mr.Verma further contends that once Raj Kumar had failed to file any document in support of his plea that he was in continuous employment w.e.f. 05.05.1999, the plea of the petitioner to the effect that he had been appointed for a fixed tenure ought to have been accepted. He places reliance on a decision of the Supreme Court in the case of ***Manager, R.B.I., Bangalore v. S. Mani [AIR 2005 SC 2179]*** to contend that the learned Labour Court has wrongly shifted the onus on the management/petitioner to prove that Raj Kumar was not in continuous employment since the date of his initial appointment. He states that the petitioner having never been directed to produce the attendance registers or salary registers, it was under no obligation to produce the same. Therefore, he contends that the learned Labour Court erred in drawing an adverse inference against the petitioner for its failure to produce to the aforesaid documents.

12. Lastly, Mr.Verma submits that the learned Labour Court had erroneously placed reliance on Sections 25R and 25O of the Industrial Disputes Act, 1947 as also Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, which he submits are not at all applicable to the facts of the present case, as it is not a case of closure or of a workman employed through a contractor. He, thus, states that the reliance placed on the aforesaid provisions, shows clear non-application of mind on the part of the learned Labour Court.

13. On the other hand, Mr.H.R. Jha, learned counsel for the workman Raj Kumar, while supporting the impugned Award, states that even

though Raj Kumar had not filed any letter of appointment, as none had ever been issued by the petitioner, he had duly placed on record the Insured Person Card issued to him by ESIC, which in itself shows that his date of appointment was 04.01.2001, whereafter there was nothing to show that there was any break in his service. He further states that it was for the petitioner to produce the relevant attendance registers and other connected documents, in support of its contention that Raj Kumar was not in continuous employment, which documents were deliberately not produced. Therefore, the learned Labour Court was justified in drawing an adverse inference against the petitioner in this regard. He further states that once the learned Labour Court, after examining the documents on record, was of the opinion that the report of the handwriting expert did not inspire confidence, there is no reason at all for this Court in the exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India, to interfere with the findings of the learned Labour Court. He, therefore, prays that the writ petition be dismissed.

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

15. In the light of the rival contentions of the parties, two primary issues arise for consideration in the present petitions, the first being as to whether the learned Labour Court was justified in discarding the testimony of the handwriting expert produced by the petitioner. In this regard, learned counsel for the petitioner has by placing reliance on the decision in *Murarilal (supra)*, vehemently contended that the learned

Labour Court could not have discarded the handwriting expert's report without assigning any cogent reasons. I am of the opinion that even though learned counsel for the petitioner is justified in contending that the report of handwriting expert cannot be simply brushed aside by the Court, in the facts of the present case, it cannot at all be said that the report has been simply discarded without assigning any reasons. The learned Labour Court has on a close scrutiny of the documents as also the report, categorically come to a conclusion that the same did not inspire confidence and I see no reason to differ with the conclusion while exercising the power of judicial review under Article 226 of the Constitution of India. It needs no reiteration that while exercising its powers under Article 226, this Court is not sitting in appeal and can only interfere with the learned Labour Court's Award if there has been a manifest failure of justice or when the principles of natural justice have been flouted. Merely because another view more favourable to the petitioner may be possible on the basis of the material on record, would not be reason for this Court to exercise its extraordinary writ jurisdiction. Reference may be made to the decision of the Supreme Court in *Shalini Shyam Shetty & Anr. v. Rajendra Shankar Patil* [(2010) 8 SCC 329].

16. Once I find no reason to differ with the conclusion of the learned Labour Court that the handwriting expert's report did not inspire confidence, as a necessary corollary thereof, the appointment letters that have been relied upon by the petitioner also have to be rejected. It is, therefore, evident that there was no other material before the learned

Labour Court in support of the petitioner's plea that Raj Kumar was only appointed for a specific period and, thus, in the light of the admitted position that Raj Kumar had been in employment for more than 240 days, his termination without assigning any reason has to be and has correctly been held by the learned Labour Court to be illegal and unjustified.

17. I cannot also lose sight of another vital fact that both Raj Kumar and Jahangir had suffered injuries leading to permanent disabilities while in the service of the petitioner. They both claim to have been in service for long periods and have been terminated in a similar manner without assigning any reasons. The petitioner's plea that both these workmen were appointed for fixed terms just does not inspire confidence. Merely because they are stated to have appended their signatures on the bottom of the alleged appointment letters, which signatures have been denied by them, it cannot be said that they were appointed only for fixed terms, especially in the light of the ESIC cards issued to them which show that they were in continuous employment with the petitioner.

18. In view of my aforesaid conclusion, I do not find any merit in the petitioner's contention that the learned Labour Court had erred in drawing an adverse inference against the petitioner for non-production of documents like the salary register and the attendance register. In my view, once there was no denial to the fact that the workmen were in service for more than 240 days and the only defence of the petitioner was that the same was on account of a fixed term appointment which came to

an end by efflux of time, which defence of the petitioner was rejected by the learned Labour Court, as a necessary corollary, it was only for the petitioner to produce evidence to show that the workmen had not been in employment for 240 days. In these circumstances, there is no infirmity in the approach adopted by the learned Labour Court in drawing an adverse inference against the petitioner on account of its failure to produce the documents in its possession.

19. Coming to the last contention of the learned counsel for the petitioner that the learned Labour Court has wrongly relied on Sections 25R and 25O of the Industrial Disputes Act, 1947 as also Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, even though I find merit in this contention of the petitioner as in the facts of the present case, the reliance on these provision was wholly misplaced, in my view nothing material turns on it as the petitioner has miserably failed to prove that the workmen had been appointed for fixed terms. Consequently, in view of the admitted position that their services had been terminated without assigning any reason, the challenge to the impugned Award has failed. There is absolutely no reason to interfere with the limited relief of compensation of Rs.1,00,000/- granted to the workmen.

20. For the aforesaid reasons, I find no infirmity in the impugned Award. The writ petition is dismissed with no order as to costs.

REKHA PALLI, J

FEBRUARY 05, 2019/gm