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

Judgement reserved on **28.01.2021**

Judgement pronounced on **06.04.2021**

+ **W.P.(C) 2002/2020 & CMAPPL. Nos. 7078-81/2020**

M/S RAMA TENT HOUSE

....Petitioner

Through : Mr. V.K. Garg, Senior Advocate with
Mr. Vishnu Sharma, Mr. Pawas
Kulshrestha, Mr. Ikat Anand, Ms. Vijeta
Singh and Mr. Parv Garg, Advocates.

versus

SH.INDERJEET AND ANR.

....Respondents

Through : None.

W.P.(C) 2041/2020

M/S RAMA TENT HOUSE

....Petitioner

Through : Mr. V.K. Garg, Senior Advocate with
Mr. Vishnu Sharma, Mr. Pawas
Kulshrestha, Mr. Ikat Anand, Ms. Vijeta
Singh and Mr. Parv Garg, Advocates.

versus

SHRI JAINUDDIN

....Respondent

Through : None.

W.P.(C) 2059/2020 & CM APPL. Nos. 7225-28/2020

M/S RAMA TENT HOUSE THROUGH: ITS PARTNER

....Petitioner

Through : Mr. V.K. Garg, Senior Advocate with
Mr. Vishnu Sharma, Mr. Pawas
Kulshrestha, Mr. Ikat Anand, Ms. Vijeta
Singh and Mr. Parv Garg, Advocates.

versus

SHRI RAM PRATAP

....Respondent

Through : None.

W.P.(C) 812/2021 & CM APPL. Nos. 2080-81/2021, 2084/2021

M/S RAMA TENT HOUSE THR. ITS PARTNER

....Petitioner

Through : Mr. V.K. Garg, Senior Advocate with
Mr. Vishnu Sharma, Mr. Pawas
Kulshrestha, Mr. Ikat Anand, Ms. Vijeta
Singh and Mr. Parv Garg, Advocates.

versus

SHRI MISHRI LAL

....Respondent

Through : None.

W.P.(C) 826/2021 & CM APPL. Nos. 2099/2021, 2103/2021

RAMA TENT HOUSE

....Petitioner

Through : Mr. V.K. Garg, Senior Advocate with
Mr. Vishnu Sharma, Mr. Pawas
Kulshrestha, Mr. Ikat Anand, Ms. Vijeta
Singh and Mr. Parv Garg, Advocates.

versus

SHRI JAISHRAJ

....Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

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Preface: -

1. The captioned writ petitions have been filed by an entity going by the name Rama Tent House [in short “RTH”]. These writ petitions are directed against five separate awards of even date i.e. 30.04.2019 [hereafter referred to as “the impugned awards”]. *Via* the impugned awards, Labour Court South-West District, Dwarka Courts: New Delhi [in short “the Labour Court”] has awarded monetary compensation in lieu of reinstatement, in service, to each of the respondents/workmen [hereafter collectively referred to as “workmen”] in the writ petitions.

2. All the five workmen have been granted a lumpsum compensation of Rs. 3,00,000/- with a rider that the same should be paid within 30 days from the date of publication of the award and, in case of failure to comply with the direction for payment of compensation, the workmen would be entitled to recover the same from RTH @ 8% per annum.

3. The RTH, being aggrieved with the impugned awards, preferred the captioned petitions under Article 226 of the Constitution.

Submissions advanced on behalf of RTH: -

4. Mr. V.K. Garg, Senior Advocate, instructed by Mr. Vishnu Sharma, Advocate, assailed the impugned awards, on the following grounds.

- i. There was no employer-employee relationship between RTH and the workmen. No evidence *qua* the same was placed on record by the workmen.
- ii. The workmen had failed to discharge the burden of proof that they were in continuous service for twelve months as required under Section 25B read with Section 25F of the Industrial Disputes Act, 1947 [in short “the I.D. Act”].
- iii. The Labour Court shifted the onus on RTH concerning the existence of an employer-employee relationship and the fact that the workmen had been engaged by RTH for a continuous period of 240 days.
- iv. The Labour Court held in favour of the workmen *qua* the aforesaid aspects by drawing an adverse inference against RTH. Importantly, the workmen had not filed any application for the production of documents and, therefore, the Labour Court could not have drawn an adverse inference against RTH.
- v. The workmen had failed to discharge the burden of proof that they were not gainfully employed. In this context, it was stressed that the workmen had not produced their savings bank passbook or their Aadhar Card.
- vi. In sum, the submission was that the impugned awards were *ex facie* unsustainable in law.

Background facts: -

5. To adjudicate upon the aforesaid contentions advanced by Mr. Garg, it would be necessary to note the following broad facts, concerning the instant cases.

5.1. The workmen claim that they were employed with RTH.

5.2. The dates of their employment, though different, are in close proximity; the details of which are tabulated below. However, four out of the five workmen were retrenched from service on the same date i.e. 24.09.2012 while the fifth workmen i.e. respondent in W.P. (C.) 826/2021 was retrenched on 12.03.2012.

Writ Petition	Month of Joining	Date of retrenchment	Last Drawn Salary
W.P.(C) 2002/2020	May 2005	24.09.2012	Rs. 5,700/-
W.P.(C) 2041/2020	May 2003	24.09.2012	Rs. 5,700/-
W.P.(C) 2059/2020	May 2003	24.09.2012	Rs. 5,700/-
W.P.(C) 812/2021	May 2003	24.09.2012	Rs. 5,700/-
W.P.(C) 826/2021	May 2001	12.03.2012	Rs. 5,700/-

5.3. At the time of retrenchment from service, the workmen were paid a remuneration of Rs. 5,700/- per month. The workmen being aggrieved had letters issued to RTH through their Union. Four out of the five workmen had these communications sent *via* letters dated 24.09.2012 while the fifth workmen [i.e. respondent in W.P. (C.) 826/2021] whose services were terminated earlier, as indicated above, had a communication sent, through the Union, via letter dated 26.06.2012.

5.4. Since the intercession made by the Union, on behalf of the workmen, had no impact, four out of the five workmen approached the Labour Court, directly, on 23.07.2013. The record shows that at a later point in time, the Government of National Capital Territory of Delhi [GNCTD] also made a reference *qua* them *vide* communication dated 11.11.2013. Insofar as the fifth workmen [i.e. respondent in W.P. (C.) 826/2021] was concerned, the industrial dispute *qua* him was referred on 17.01.2013.

5.5. Given this position, the Labour Court *vide* order dated 16.08.2014 clubbed the industrial disputes, which were directly raised by the workmen, and the references made *qua* the workmen.

5.6. Insofar as the first four writ petitions are concerned [i.e. W.P.(C) 2002/2020, W.P.(C) 2041/2020, W.P.(C) 2059/2020, and W.P.(C) 812/2021], the Labour Court, based on the pleadings, placed before it, which included the Statement of Claim, the Written Statement and the Rejoinder, framed the following issues *vide* its order dated 26.09.2014.

“(1) Whether management work is of seasonal nature and workman is a seasonal worker and work on temporary basis as per requirement. If so what effect? OPM

(2) Whether there exist no relationship of employer and employee between the claimant and management? OPW

(3) Whether the claimant has not completed 240 days service continuously in a year. If so what effect? OPW”

5.7. Besides this, the Labour Court also considered another issue i.e. the fourth issue in consonance with the reference made to it by GNTCD. The fourth issue, like the other three issues, was identical, except for the fact that in

each case the name of the concerned workmen was inserted. Thus, for the sake of convenience, the fourth issue is set forth hereafter, as framed in the case of one such workman i.e. Sh Inderjeet/respondent in W.P.(C) 2002/2020.

“Whether Sh. Inderjeet S/o Sh. Ram Milan Verma abandoned his services on his own or his services have been terminated illegally and/or unjustifiably by the management; and if so, to what reliefs is he entitled and what directions are necessary in this respect?”

5.8. Insofar as the fifth writ petition is concerned [i.e. W.P. (C) 826/2021], the Labour Court framed issues on 13.02.2015. In addition to the four issues framed, in the aforesaid writ petitions, an additional issue [i.e. Issue No. (5) Relief] was also framed in this matter.

6. The Labour Court decided all issues against RTH and in reaching this conclusion returned the following findings of fact after appreciating the evidence placed before it.

(i) Contrary to the stand taken by RTH in its written statement, its work was not seasonal.

(ii) The workmen were not employed temporarily.

(iii) There existed a relationship of employer-employee between RTH and the workmen.

(iv) The workmen had worked for 240 days during twelve calendar months preceding the date of termination of their services.

(v) Contrary to the stand taken by the RTH, the workmen had not abandoned their services.

6.1. The record shows that the evidence produced by each of the workmen consisted of photocopies of identity cards, gate passes concerning the worksites where they were deployed to carry on their work, election cards, loose sheets of papers concerning attendance and extra hours put at work apart from their affidavits of evidence.

6.2. More importantly, the workmen produced, as their witness, one Mr. Amarpal Singh [WW-2], who, in his testimony, before the Labour Court, deposed that he worked with RTH between 1999 and September 2014; the nature of work executed by RTH involved furnishing tents for marriages, family functions such as birthdays and marriage parties, religious functions, organizing fairs and functions on behalf of the Government. He deposed that towards this end, RTH provided tents and other equipment such as furniture, carrying out decoration and beautification activities as also wherever requested made provision for catering services. The said witness i.e. Mr. Amarpal Singh also deposed that during his employment with RTH he shared a room situate at H. No. 108, Sarai Kale Khan, Near Nizamuddin Railway Station. He went on to testify that the workmen were engaged as painters and that he knew them from the time they were drafted into service by RTH. The evidence produced by Mr. Amarpal Singh [WW-2] to establish that he was an employee of RTH comprised the following.

a) Ex. WW1/1 - Attendance card.

- b) EX.WW2/2 - Letterhead of sister concern.
- c) EX.WW2/3 - Salary vouchers for different months.
- d) Ex. WW2/4 - Challan of vehicles plying by WW2.
- e) EX.WW2/5 - Gate passed issued to the WW2 by the management.
- f) Ex. WW2/6 - Transit declaration Form.
- g) Ex. WW2/7 - Report of labour inspector dated 16-05-2015.
- h) Ex. WW2/8 - ESI Card of witness.
- i) Ex. WW2/9 – Identity Card of witness issued by Rashtriya Mazdoor Sang (Union).

6.3. Although Mr. Amarpal Singh was cross-examined, on behalf of RTH, his testimony could not be disturbed qua the following material aspects.

- i. He worked between 1999 and September 2014 with RTH.
- ii. The workmen were employed as painters with RTH.
- iii. He knew them personally and in fact, shared a common accommodation while they were in the employment of RTH.
- iv. The work performed by RTH was not seasonal since they provided tenting and other infrastructure for holding parties, holding political rallies and other celebratory events and functions and activities which were conducted throughout the year.
- v. The salaries were paid in cash and there was no permanent account maintained concerning attendance and number of hours spent at work by employees of RTH.

Analysis and Reasons: -

7. Based on the testimony of the workmen, the material produced by them, and the testimony of their star witness Mr. Amarpal Singh, the Labour Court ruled in favour of the workmen.

7.1. In this context, the testimony of Mr. Amarpal Singh [WW-2] [as recorded by the Labour Court, which is, the subject matter of W.P. (C) 2002/2020] attains importance and the same is set forth hereafter.

“I know the contents of my affidavit Ex. WW2/A. I have come today from my village Kamalpur post office Nanamau Distt. Mainpuri UP. I am not residing in Delhi. I worked as Driver in management since 1999 to 24.9.14. I was residing at H.No. 108 sarai kale khan near Nizamuddin railway station during duration of my service with management. I share a room with the rest of the workman. I used receive my salary by way of cash or cheque during duration of my service with management.

I have studied upto 10th class but I cannot read English. The Ex. WW2/1 is attendance card which bears the signatures of Ramchandra Batra. I state that the Ex. WW2/2 are originals and not fabricated. The Ex. WW2/2 was not issued to me. Vol. Same was collected by me when it was thrown to bum in tandoor at Jaunapur.

At Jaunapur management had its godown. My scope of work is to drive the vehicle within Delhi and outside Delhi within the vicinity of 100 km. The Ex. WW2/2 in relation to letter head (Janki Transport Co., Kala Mahal, Mahima Tents and Decorators,) is related to management. Janki Transport co is situated at 5/1 Jangpura New Delhi. Ex. WW2/3 is related to salary and same was never issued to me. Indeneet workman used to do paint work. I know Inderjeet since 2005. I cannot say from when Inderjeet was working with the management. I was issued ESI card. Vol. Same was issued to me in 2012.

XXX

XXX

XXX

The Challan Ex. WW2/4 (colly) have been issued as and when there is a violation by me. I have filed a claim before labour inspector Pushpa Bhawan, Delhi. The BSI card was issued to me by Rama Tent house, however I do not know under which companys' name same was issued. It is wrong to suggest that I am deposing falsely.”

7.2. The important thing is that RTH produced no evidence. The defence taken by RTH that it was engaged in a business that was seasonal and that the engagement of the workmen was also temporary was not established. In my view, even qua temporary-workmen, RTH, in the normal course of events, would have maintained some record and, therefore, it ought to have produced the same to avoid an adverse inference being drawn against them. The argument thus, advanced by Mr. Garg, that the burden of proof was shifted, is misconceived as once the testimony of Mr. Amarpal Singh [WW-2] was tendered, the onus shifted on to RTH. RTH, concededly, neither cited any witnesses nor produced any documentary evidence to establish that the workmen were engaged on a need basis and that they could, at their own sweet will, decide when they would want to be engaged by RTH. Thus, if one were to apply the test of preponderance of probability, which is, what, in substance, the Labour Court did, on balance, the version of the workmen that they were employed permanently throughout the year by RTH would have to be accepted.

8. Therefore, while Mr. Garg is right in contending that the burden of proof lay on the workmen to establish that they were in the employment, the degree of proof would vary from case to case and the onus would shift once some bit of evidence is produced by the workmen to establish his/her employment with a particular industrial establishment.

9. The following observations made by the Supreme Court in *Bank of Baroda vs. Ghemarbhair Harjibhai Rabari*, (2005) 10 SCC 792, in my view, squarely answer the contention advanced by Mr. Garg on behalf of RTH.

“8. While there is no doubt in law that the burden of proof that a claimant was in the employment of a management, primarily lies on the workman who claims to be a workman, the degree of such proof so required, would vary from case to case. In the instant case, the workman has established the fact which, of course, has not been denied by the Bank, that he did work as a driver of the car belonging to the Bank during the relevant period which comes to more than 240 days of work. He has produced 3 vouchers which showed that he had been paid certain sums of money towards his wages and the said amount has been debited to the account of the Bank. As against this, as found by the fora below, no evidence whatsoever has been adduced by the Bank to rebut even this piece of evidence produced by the workman. It remained contented by filing a written statement wherein it denied the claim of the workman and took up a plea that the employment of such drivers was under a scheme by which they are, in reality, the employee of the executive concerned and not that of the Bank; none was examined to prove the scheme. No evidence was led to establish that the vouchers produced by the workman were either not genuine or did not pertain to the wages paid to the workman. No explanation by way of evidence was produced to show for what purpose the workman's signatures were taken in the register maintained by the Bank. In this factual background, the question of the workman further proving his case does not arise because there was no challenge at all to his evidence by way of rebuttal by the Bank.”

10. As indicated above, in my view, the testimony of Mr. Amarpal Singh [WW-2] nailed the case of the workmen that they were in the employment of RTH permanently. The conscious decision of RTH not to produce any material to demonstrate that it engaged the workmen temporarily or that their business was seasonal, was completely eroded.

11. Thus, having perused the impugned awards and the material on record, to my mind, this is not a case where one can conclude that the findings returned by the Labour Court qua the issues framed were perverse. It is well-established that the jurisdiction of the writ court is supervisory. The writ court does not sit in appeal over the decisions of the Labour Court/Industrial Tribunal. The writ court would interfere only if it is a case where there is an error of law apparent on the face of the record or the Labour Court/Industrial Tribunal steps outside

the periphery of its jurisdiction or fails to exercise its jurisdiction or exercises its jurisdiction irregularly. The other areas where the writ court could, possibly, interfere with the findings of the Labour Court/Industrial Tribunal would be where there is a breach of principles of natural justice or a case of "no evidence" i.e. perversity. The appreciation and adequacy of evidence are matters that fall within the domain of the Labour Court/Industrial Tribunal. [See: Observations in *Tulsidas Paul vs. Labour Court*, (1972) 4 SCC 205 (2)]

“8. It is well established that in exercise of its jurisdiction under Article 226, the High Court does not sit in appeal over the orders of industrial-tribunals. Its jurisdiction is supervisory, and therefore, it interferes if the jurisdiction conferred on such tribunals is improperly, or in non-compliance of well-established principles, exercised or for any such other reason.”

12. I may also refer to the observations made by Hon’ble Mr. Justice D.A. Desai, as the Judge of The High Court of Judicature, Gujarat [as he then was] in respect of the contours of the jurisdiction of a writ court, when dealing with decisions rendered by the Labour Courts, under the I.D. Act, in the judgement rendered in *Navinchandra Shakerchand Shah vs. Ahmedabad Co-operative Department Stores, Ltd.*, 1977 SCC OnLine Guj 5 : (1978) 1 LLN 242 : (1978) 19 GLR 108 : (1979) 1 LLJ 60 at page 249.

“7. Could the facts as alleged by the employer without any controversy about anything in it except the embellishments and embroideries made after some days be styled as gross negligence ? Before we travel into this, which according to Sri Nanavati is a forbidden field, let us clear the ground as to under what circumstances the High Court exercising extraordinary jurisdiction under Art. 226 can interfere with the finding recorded in the disciplinary inquiry or by the Labour Court. As a serious controversy about our jurisdiction in a petition for issuance of a writ of certiorari under Art. 226 is raised, it is necessary to clear the ground. The law in relation to the limits of the jurisdiction of the High Court in entertaining a plea for a writ of certiorari under Art. 226 of the Constitution is well-settled. In order to justify the

issue of a writ of certiorari it must be shown that the impugned order suffers from an error apparent on the face of the record. It is clear that the error must be an error of law and not an error of fact because an error of fact though serious, and though it may be apparent on the face of the record cannot sustain a claim for a writ of certiorari. It is only errors of law that justify the issuance of said writs provided, of course, they are of such a character as would reasonably be treated as error apparent on the face of the record. If a finding of fact is made by the impugned order and it is shown that it is based on no evidence, that would no doubt be a point of law open to be urged under Art. 226. Vide Agnani v. Badri Das [1963-I L.L.J. 684]. This very view was also affirmed in Tata Oil Mills Company, Ltd. v. Its workmen [1963-II L.L.J. 78].”

13. Thus, insofar as findings of fact are concerned, that can be interfered with, only if it is shown, that they are based on no evidence i.e. are perverse, as noted above.

14. Therefore, having regard to the fact that the evidence placed on record before the Labour Court, pointed in the direction that the workmen were employed permanently, the reference made to the Labour Court, to the effect, that whether or not the workmen had abandoned their employment was, correctly, answered in favour of the workmen.

Conclusion: -

15. Therefore, for the foregoing reasons, I find no merit in the captioned writ petitions. The writ petitions are, accordingly, dismissed.

15.1. All pending application(s) shall stand closed.

16. The Registry will dispatch copies of the common judgement to the Labour Court.

RAJIV SHAKDHER, J

APRIL 06, 2021

Click here to check the corrigendum, if any

