

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

**BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY**

WPO/572/2017

**GAJENDRA PADIHARI
-VS-
STATE OF WEST BENGAL AND ORS.**

For the petitioner	:	Mr. Tapas Kumar Dey, Adv. Ms. Susmita Mondal, Adv. Mr. Rakesh Roy, Adv.
For the State	:	Mr. Santanu Kumar Mitra, Adv.
For the Respondent No.5	:	Mr. Sailesh Kumar Gupta, Adv.
Heard on	:	18 th May, 2023 & 10 th October, 2023,
Judgment on	:	17 th October, 2023

RAJA BASU CHOWDHURY, J:

1. The present writ petition has been filed, *inter alia*, challenging the award dated 27th September, 2016 passed by the Second Labour Court, West Bengal, Calcutta.
2. It is the petitioner's case that the petitioner was an employee under the respondent no.5 since, the year 1988 and had continued to work with the said respondent till the date of his termination that is 14th January, 2010.

3. The petitioner claims that the respondent no.5 is engaged in profit making business. Despite diligently working with the respondent no.5, the said respondent without any reason and without any proper notice terminated the petitioner from service.
4. Prior to his termination the petitioner was receiving a monthly salary of Rs.1,600/- per month, the payment whereof was being made by the respondent no.6, a sister concern of the respondent no.5.
5. By reasons of the wrongful and illegal termination, the petitioner had protested and demanded his immediate re-instatement in service, inter alia, sending a written representation dated 5th January, 2010 addressed to the respondent no.5.
6. Despite receipt of such letter, the respondent no.5 did not respond to the same. It is under such circumstances that the petitioner was compelled to make a representation before the Labour Commissioner, Government of West Bengal on 28th July, 2011. Dismissal of the petitioner was treated to be a deemed industrial dispute and the petitioner had thereafter, on the failure of conciliation, filed a case before the learned Second Labour Court, West Bengal for adjudication of the disputes as regards his dismissal from service making both, respondent nos. 5 and 6 as parties. Both the respondent nos. 5 and 6 filed their respective written statements. On the basis of the pleadings filed by the parties, the learned Second Labour Court, West Bengal was, inter alia, pleased to frame the following issues:

1. *Is the case maintainable in its present form and prayer and whether this court has jurisdiction to entertain the application under Section 10(1B)(d) of the Industrial Disputes Act, 1947?*
 2. *Is there any employer-employee relationship between the parties?*
 3. *Whether the certificate issued by the conciliation office is proper and justified?*
 4. *Whether the termination of service of the applicant with effect from 04.01.2010 by the Opposite Party Company is justified or not?*
 5. *Whether the Applicant is entitled to get relief as prayed for?*
 6. *To what other relief/reliefs, if any, the applicant is entitled to as per law & equity?*
7. On contested hearing, by an award dated 27th September, 2016 the learned Second Labour Court having concluded that the petitioner having failed to prove that he was an employee of the respondent no.5 due to the lack of oral and documentary evidence, is not entitled to any relief and accordingly, has dismissed the case.
8. Mr. Dey, learned advocate representing the petitioner submits that the petitioner had himself filed an affidavit-in-chief and had led oral evidence in support of his case. By relying on the evidence-in-chief of the petitioner, it is submitted that the petitioner has made a positive statement that he used to work with the respondent no.5 and had entered in the service sometime in the year 1988. The petitioner was a plumber and he used to carry out the work of repair of pipelines. It is

the petitioner's case that he was never served with any letter of appointment nor his name was entered in the master roll of the company. According to the petitioner the respondent no.6, used to issue the payment vouchers and that the said respondent is also controlled by the respondent no.5. The office of respondent no.6 and that of the respondent no.5 are in the same building. By referring to the cross-examination of the petitioner, it is submitted that both the respondent nos.5 and 6 had never cross-examined the petitioner on his positive statement that he used to work with the respondent no.5 since, the year 1998. There is no suggestion by the respondent nos. 5 and 6 that the petitioner was not their employee or that the statement made by the petitioner was incorrect. Although, in the affidavit-in-chief filed on behalf of the respondent no.5, it has been claimed that he was never employed with the said respondent, no such suggestion thereof, has been made to the petitioner. There is no denial that the respondent no.6 was a sister concerned of the respondent no.5. In the circumstances as noted hereinabove, it is submitted that the award passed by learned Second Labour Court cannot be sustained and the same should be set aside. The petitioner should be directed to be reinstated in service along with back wages.

9. By referring to the award passed by the learned Second Labour Court and by comparing the same with the evidence of the petitioner, it is submitted that the learned Judge Second Labour Court, overlooked the oral

testimony of the petitioner and the finding returned that due to lack of oral evidence the petitioner had not been able to prove his case is incorrect. Admittedly, the petitioner had led oral evidence, which had remained uncontroverted. Having regard to the aforesaid, it is submitted that the award passed by the learned Second Labour Court is perverse and has been passed by overlooking the positive evidence led by the petitioner. The award should be set aside and the respondent no.4 should be directed to reinstate the petitioner.

10. Mr. Gupta, learned advocate representing the respondent no.5 submits that there is no irregularity in the award passed by the learned Second Labour Court, the petitioner had not been able to demonstrate by filing documentary evidence that the respondent no.5 had employed the petitioner or the service of the petitioner had been terminated by the respondent no.5. There is no document on the record to establish the case as made out by the petitioner.

11. The respondent no.6, however, remained unrepresented.

12. Heard the learned advocate appearing for the respective parties and considered the materials on record. I find that the learned Second Labour Court has returned a finding in answer to issue no.5 that the petitioner had failed to prove that he was an employee of respondent no.5, due to lack of oral and documentary evidence. As noted above, the learned Second Labour Court had framed 6 several issues, and issue no.2 relates to the existence of employer-employee relationship.

While answering the said issue, it appears that the Labour Court has returned a finding that it is the positive case of respondent nos. 5 and 6 that the petitioner was never employed by them and had never drawn any salary though any voucher allegedly issued by the respondent no.6. Proceeding on such premise and taking note of the fact that no document had been produced by the petitioner in support of his case, the learned Second Labour Court has returned the following finding:

“In view of the above all discussion I am of the considered opinion that due to absence of sufficient oral and documentary evidence the applicant has not been able to prove that he was an employee of the Opposite Party Company. The applicant has also failed to prove any employer-employee relationship between the applicant and the Opposite Party Companies, as claimed.”

13. Although, the learned advocate appearing on behalf of the petitioner has highlighted that the learned Second Labour Court ignored two important aspects, (1) the positive statement made by the petitioner (2) no cross-examination on the point of employer-employee relationship by the respondent no.5, it must, however, be born in mind that for a party to succeed in trial it is obligatory for the said party to establish the case as pleaded and as made out. The said party cannot rely on the lacuna of the other side to prove its case. Since, the learned Second Labour Court has returned its specific finding that the petitioner had failed to prove its case and by reason of absence of oral

and documentary evidence and the records also not throwing much light on the proof of the petitioner's case, I am of the view that there is no irregularity on the part of the learned Second Labour Court in returning such finding. The finding returned by the learned Court cannot be said to be perverse or illegal.

14. In view thereof, the writ application (WPO/572/2017) fails, and the same is accordingly dismissed.
15. There shall be no order as to costs.
16. The department is directed to return the original records of the case to the learned Second Labour Court, West Bengal forthwith.
17. Urgent Photostat certified copy of this order, if applied for, be made available to the parties subject to compliance with all formalities.

(RAJA BASU CHOWDHURY, J)