



2023:DHC:7207



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

% **Date of order: 18th September, 2023**

+ **W.P.(C) 4009/2003 & CM APPL. 6870/2003**

M/S NATH INDUSTRIES Petitioner

Through: Appearance not given

versus

PRESIDING OFFICER LABOUR COURT Respondent

Through: Mr. D. B. Yadav and Ms. Leela,
Advocates for R-2 and R-3

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“a) pass such writ, order, direction in nature of certiorari or and other writ orders or direction or order thereby setting aside award/order dated 2.3.2003 passed by respondent No.1 in I.D. No.154 of 1993.

b award cost in favour of the petitioner

c) pass such other or further order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The petitioner i.e., M/s Nath Industries (hereinafter petitioner firm) was a partnership firm engaged in manufacturing and sale of auto lights and spare accessories. The petitioner firm was shut down in the year 2000.



3. The respondent Nos.2 and 3, employed with the petitioner firm filed a reference under the Industrial Disputes Act, 1947; to the Government of Delhi which was subsequently referred to the Labour Court *vide* order dated 12th February 1993 where the issue to be adjudicated upon was if the respondents' services had been terminated illegally and/or unjustifiably by the management and if so, what relief would they be entitled to in respect of the same.

7. The Hon'ble Supreme Court *vide* order dated 7th December 2000, directed closure of all polluting units functioning in the residential areas, pursuant to which the petitioner firm had to shut down the industries run by it.

8. Further, in view of the ongoing industrial dispute, the labour Court passed an award *vide* order dated 2nd April 2003 (hereinafter impugned award), thereby, reinstating the services of the respondents alongwith 50% back wages.

9. Aggrieved by the impugned award, the petitioner firm has preferred the present petition.

11. Learned counsel appearing on behalf of the petitioner submitted that the impugned award is arbitrary and not enforceable at all since the same has been passed without taking the entire facts and circumstances into consideration.

12. It is submitted that the petitioner had never employed the respondents in its firm i.e., M/s Nath Industries, rather the respondents were engaged with another firm namely, M/s Nath Industries (Somex Plastics) (hereinafter



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“Somex Plastics”). It is submitted that both the firms are different units, having completely different ownerships.

13. It is submitted that the learned Labour Court failed to take into account the submissions made in the Written Statement dated 5th March 1999, filed by the petitioner firm.

14. It is further submitted that the petitioner firm and Somex Plastics were being operated from the same address, wherein, five other different industries were running, all carrying out different businesses, which now remain shut in view of the order passed by the Hon’ble Supreme Court.

15. It is submitted that there is no factory and industry in existence, therefore, the respondents are not entitled to back wages.

16. It is further submitted that since no industry is being run by the petitioner, hence the impugned award is not tenable in the eyes of law and has been passed contrary to the law, as the learned Court below failed to take into consideration the contents of the affidavit and written statement filed by the petitioner.

17. It is submitted that in view of the foregoing paragraphs, the instant petition may be allowed and the impugned award be set aside.

18. *Per Contra*, learned counsel appearing on behalf of the respondents vehemently opposed the arguments advanced on behalf of the petitioner submitting to the effect that the impugned award has been passed on merits.

19. It is submitted that the petitioner had never filed a written statement before the learned Court below.

10. It is submitted that the respondents worked under the management of



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the petitioner firm at the post of 'Mistri' and drew a wage between Rs.1000-1400/- per month. The management of the petitioner firm did not provide any facilities as mandated by the law and did not pay earned wages for the period of January 1991- January 1992, and upon demanding the earned wages, the petitioner firm illegally terminated the services of the respondents.

11. It is submitted that the petitioner firm is run by three people i.e., Shri Ram Kirpal Verma, Smt. Lal Devi and Shri Amar Nath, who all belong to the same family and the management of the petitioner firm used to change the name and style from time to time only to deprive its employees i.e., the respondents in the present case, of their rights.

12. It is further submitted that Smt. Lal Devi, who admittedly runs Somex Plastics, is the mother of the owner of the petitioner firm and in view of the same, the contention of the petitioner with regard to the industries being different and operated by different management, cannot be sustained in the eyes of law.

13. In view of the foregoing paragraphs, it is submitted that the present petition may be dismissed and the impugned award be upheld.

14. Heard the parties and perused the record.

15. It is the case of the petitioner firm that the impugned award dated 2nd April 2003, cannot be enforced as the respondents never worked with the petitioner firm in the first place. It has been contended on behalf of the petitioner firm that the respondents worked with a firm called Somex Plastics, which was run in the same compound as that of the petitioner firm



and have erroneously stated that they were employed with the petitioner firm.

16. In order to adjudicate on the issue raised in the instant petition, it is imperative to analyse the impugned award dated 2nd April 2003, whereby, the learned Labour Court had reinstated the services of the respondents alongwith 50% back wages.

17. A bare perusal of the impugned award shows that the petitioner firm did not file any written statement and the absence of the same had compelled the learned Labour Court in not allowing the petitioner firm to lead its evidence. The relevant paragraphs of the impugned order are reproduced as under:

“2. The management contested the claim by cross examination of the claimants without filing any written statement, on record. My Id. Predecessor vide order dt. 05.02.02 did not allow the management to lead evidence by examination of Mill who also filed a claim in the absence of the written statement on record and finally vide order dt.15.4.2002, my Ld. Predecessor did not allow the management to lead evidence without pleadings.”

18. The learned Labour Court had carefully examined whether or not the respondents were employed with the petitioner firm and summarised their findings as under:

“As such, I have heard. Ld. A.R for the parties and have perused the evidence, documents on record carefully. My findings on the reference is as under

4. The claimants substantiated their averments of claim,



petition in toto in their respective affidavits which were placed on record in evidence and were duly sworn in before the Oath Commissioner appointed by the Hon'ble Delhi High Court. Besides, the claimants proved copy of demand notice as Ext. WW1/1 as well as intervention letter sent the management as Ext. WW1/2 with envelope thereof as Ext. wn./3. "The claimant Ganga Ram also proved certificate issued by the management as Ext. WW1/4 showing his services with the management from 1987 to 1989. Similarly, the claimant Munshi Prashad Yadav proved on record a photo copy of ration card as Ext. WW2/1 which was issued at the address of the management and the letters so received by him at the address of the management as Ext. W72/3 to TW2/11 in support of; their case that they were working with the management for the period as stated in the statement of claim. The Id. A.R for the management submitted that ration card is no proof of employment, as admittedly, Munshi Prashad, claimant used to live in the house of the management where he used to prepare food etc. The claimant no doubt, admitted that he remained in the house of the management for five or six years but that was the initial period as was stated by the claimant himself. The management, as such failed to belief the claim of the claimants that they had been working with the management where they had been receiving letters also besides having a ration card of the a same place, in fact, this very claimant, Munshi Prashad Yadav clarified during cross examination that management was starter after closure of Somex industries which was owned by the mother of the; proprietor of the present management...

6. In view of- the evidence and the documents on J record, I hold that claimants were in services of the management for the period as stated by them in the statement of claim and the management is not able to assail the evidence i.e. the letters received, by the claimant at the given address of the management nor any explanation brought on record as to how



the claimants received the letters at the management address if they were not employees of the management. There is no evidence contrary to the evidence brought on record by the claimants as no pleadings were filed by the management and the management preferred to contest the case without filing WS and on merits of the case as was filed by the claimants vide statement of claim.

7. There is nothing on record as to disbelieve that services of the claimants were terminated otherwise than as punishment inflicted by v/ay of disciplinary action and without notice or show cause.”

19. The learned Labour Court *vide* the impugned order held that there were several documentary evidences such as the certificate issued by the management of the petitioner firm to the respondents and letters received by the respondents at the address of the petitioner firm, which clearly establish that the respondents were indeed employed with the petitioner firm. Further, the learned Labour Court held that the ration card of respondent no.2 was issued at the address of the petitioner firm.

20. The petitioner firm through its own contentions established that respondent no.2 was residing at the house of the owner of the petitioner firm and remained there for around five to six years, which was the period stated by the respondents as well.

21. The learned Labour Court further stated that certain letters were received by the respondents which were in fact letters for job and service and clearly states that respondent no.3 was working with the petitioner firm for the period of 1987-1989.



22. This Court is of the view that the learned Labour Court has rightly adduced that no contrary evidence was produced by the petitioner firm, given the documentary evidence such as the letters received, and the ration card issued to respondent no.2 at the address of the petitioner firm.

23. The learned Labour Court further held that the respondents herein were in fact terminated illegally and are entitled to reinstatement and 50% back wages, as per the evidence brought on record.

24. At this stage, it becomes pertinent to examine this Courts power to issue a writ of *certiorari* as prayed. The Hon'ble Supreme Court, in a catena of judgments has examined the jurisdiction of High Courts with respect to invoking a writ of *certiorari*.

25. It is a well settled principle of law that a writ of *certiorari* can only be issued in cases wherein there is an evident error of law which can be corrected by a superior Court while exercising their writ jurisdiction.

26. The Hon'ble Supreme Court in the case titled ***BHEL v. Mahendra Prasad Jakhmola, (2019) 13 SCC 82***, analysed of the scope of *certiorari* and held as under:

“26. Ms Jain also pointed out three judgments of this Court in Calcutta Port Shramik Union v. Calcutta River Transport Assn. [Calcutta Port Shramik Union v. Calcutta River Transport Assn., 1988 Supp SCC 768 : 1989 SCC (L&S) 106] , PepsiCo India Holding (P) Ltd. v. Grocery Market & Shops Board [PepsiCo India Holding (P) Ltd. v. Grocery Market & Shops Board, (2016) 4 SCC 493 : (2016) 1 SCC (L&S) 685] and Harjinder Singh v. Punjab State Warehousing Corpn. [Harjinder Singh v. Punjab State



Warehousing Corpn., (2010) 3 SCC 192 : (2010) 1 SCC (L&S) 1146] for the proposition that judicial review by the High Court under Article 226, particularly when it is asked to give relief of a writ of certiorari, is within well-recognised limits, and that mere errors of law or fact are not sufficient to attract the jurisdiction of the High Court under Article 226. There is no doubt that the law laid down by these judgments is unexceptionable. We may only state that these judgments have no application to the facts of the present case. The Labour Court's award being perverse ought to have been set aside in exercise of jurisdiction under Article 226."

27. As per the aforementioned paragraph, it is evident that unless there is an error of law, the High Courts' do not have the jurisdiction to invoke the writ of *certiorari*. In the instant petition, the learned Labour Court has taken into consideration all the evidence that has been brought on record by the respondents, which *prime facie* establishes that the respondents were indeed employed with the petitioner firm.

28. This Court is of the view that no interference is warranted as the learned Labour Court has rightly analysed and adjudicated the case of the respondents, while taking into consideration the evidence brought on record.

29. In view of the above discussions of law and the factual position, this Court is of the view that the petitioner has been unable to make out a case that would warrant this Court's interference by exercising its writ jurisdiction and therefore, this Court does not find it fit to issue the writ of *certiorari* or any other writ for that instance.

30. Accordingly, the instant petition is dismissed.



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31. Pending applications, if any, also stand dismissed.
32. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 18, 2023
gs/ds

Click here to check corrigendum, if any