



\$~2

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P.(C) 11639/2023 & CM APPLs. 45432-33/2023**

Date of Decision: **20.09.2023**

**IN THE MATTER OF:**

**M/S AJIT MOTORS**  
THROUGH ITS PROP. SHRI NARENER  
KUMAR KANSAL,  
GOPI NATH BAZAR, DELHI CANTT.,  
NEW DELHI-110010

..... PETITIONER

Through: Mr. Anant Agarwal and Ms. Ritika  
Khanna, Advocates

Versus

**NEM SINGH**  
S/O SHRI MOHAR SINGH,  
R/O HOUSE NO.2/ 164,  
DAKSHINPURI EXTENSION, SECTOR 5,  
AMBEDKAR NAGAR, NEW DELHI-110062  
EMAIL: NEMSINGH12@GMAIL.COM  
THROUGH  
SECRETARY,  
OUDYOGIK KAM.GAR VIKAS UNION (REGD.4375)  
C-462, INDIRA KALYAN VIHAR,  
OPP. C-173A, OKHLA Phase I,  
New Delhi-110020

..... RESPONDENT

Through: Mr. Biswambar Nayak, Advocate

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

**ORDER**

Signature Not Verified  
Digitally Signed  
By: PURUSHAINDRA  
KUMAR KAURAV



**PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

**CAV 449/2023**

As the caveator put in his appearance, the caveat stands discharged.

**W.P.(C) 11639/2023 & CM APPLs. 45432-33/2023**

1. The present petition under Article 226 and 227 of the Constitution of India seeks for the following reliefs: -

*“a. Pass appropriate writs, orders and/ or directions particularly in the nature of Certiorari quashing the impugned order dated 02.02.2023 passed by Ld. Presiding Officer, Labour Court-IX, Rouse Avenue Courts Complex, New Delhi in L.I.D. No. 126/2018; and/or*

*b. Pass such other and further orders/directions which ever deem fit and proper: under the present facts and circumstances of this case”.*

2. The respondent-workman had filed a statement of claim before the Labour Court on 03.04.2018, whereby, it was stated that he was working with the petitioner as a salesman w.e.f. from 01.07.2003 on the last drawn salary of Rs.10,000/- per month. The salary was stated to be not as per the minimum wages skilled category as declared by the Govt. NCT of Delhi vide notification dated 03.03.2017. It was also alleged that being annoyed with his demand of adequate salary, his services were illegally terminated by the petitioner on 23.10.2017 without any reason and without paying legal benefits.

3. The petitioner-management in its reply has stated that the respondent-workman was receiving a salary of Rs.11,000/- per month since 22.12.2016



and the services of the respondent-workman were never terminated. It was further submitted that the respondent-workman has failed to join the duty despite the request made by the petitioner-management.

4. The Labour Court *vide* impugned order dated 02.02.2023 has directed the petitioner-management for reinstatement of service of the respondent-workman along with full wages and all consequential benefits and also for litigation costs of Rs.30,000/-.

5. Being aggrieved by the impugned order, the petitioner-management has filed the instant petition.

6. This court *vide* order dated 04.09.2023 observed as under:-

*“1. Learned counsel appearing on behalf of the petitioner, when confronted with the fact as to whether in terms of the impugned award dated 02.02.2023 the workman has been reinstated or not, he submits that the workman is not willing to join.*

*2. The workman is present in court today. Learned counsel appearing on behalf of the workman submits that the workman has never been offered to be reinstated.*

*3. Learned counsel appearing on behalf of the workman further submits that the workman is willing to be reinstated and there is no reason not to join the services if the same is offered to him.*

*4. In view of the aforesaid, the petitioner is directed to reinstate the workman within two working days, subject to the outcome of the instant writ petition.*

*5. List this matter on 12.09.2023”.*

7. When the matter was taken up for consideration on 12.09.2023, learned counsel for the respondent-workman pointed out that the workman was reinstated at the post of helper, whereas, before termination he was



working as a salesman. Learned counsel for the petitioner-management was therefore, directed to clarify the aforesaid position.

8. Learned counsel appearing on behalf of the petitioner-management submits that there was no post of salesman in the petitioner-management. He also submits that if the facts of the entire case are perused, the same would indicate that despite various requests, the respondent-workman did not join the service. He further submits that despite Show Cause Notice issued to the respondent-workman on 29.12.2017, he did not report to the petitioner-management. Accordingly, learned counsel tries to impress upon the fact that it is not a case of illegal termination but the same is a case of wilful abandonment of services and, therefore, the impugned award is illegal and improper.

9. Learned counsel appearing on behalf of the respondent-workman opposes the submissions made by learned counsel for the petitioner-management. He points out from the evidence of Mr. Anil Gupta, being the management witness, that in terms of paragraph no.2 of his affidavit (*Annexure P-8*), it is stated that the petitioner-management is a proprietorship establishment firm, existing since 22.12.2016 and the respondent-workman was employed as salesman on a salary of Rs.11,000/- per month from 22.11.2016. The paragraph no. 2 of the affidavit of Mr. Anil Gupta reads as under:

**“2. That Our Proprietorship Establishment Firm came into existence on 22/12/2016 and, we employed Sh. Nem Singh as Salesman on a salary of Rs. 11000/- from 22-12-2016 only. That no relief can be granted under the provisions of I.D. Act since the Claimant workman has not completed 240 days work with the Proprietorship Firm; The Copy of the MOU**

Signature Not Verified  
Digitally Signed  
By: PURUSHAINDRA  
KUMAR KAURAV



*Agreement Signed with the New Proprietorship Firm with Indian Oil Corporation as proof of. Start of Business is Annexed herewith as MW 1/1. That Copy of My authority letter by the management is enclosed herewith as MW 1/2 and my Copy of Aadhar Card is enclosed as MW 1/3.”*

10. On a perusal of the paragraph no. 2 of the affidavit of Mr. Anil Gupta it can be seen that the respondent-workman was working on the post of salesman in the petitioner-management. Therefore, the fact is established that the post of salesman exists in the petitioner-management.

11. Further, it is noted that the oral submission made by the learned counsel for the petitioner-management claiming that the post of salesman does not exists in the petitioner-management, is contrary to the statements made by Mr. Anil Gupta in paragraph no. 2 of his affidavit. The court is of view that the petitioner-management is trying to misrepresent the facts while taking a distorted plea.

12. The Hon’ble Supreme Court in the case of ***Prestige Lights Ltd. V. State Bank of India***<sup>1</sup> has discussed the settled law that it is of utmost necessity that when a party approaches a High Court, he must place all the facts before the court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

---

<sup>1</sup> (2007) 8 SCC 449



13. The same has been reiterated by the Hon'ble Supreme Court in the case of ***K. Jayaram v. BDA***<sup>2</sup> wherein it is held that a litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.

14. The petitioner-management is trying to mislead the court by not disclosing the true facts. Since, the true facts establishing the existence of the post of salesman are already on record, therefore, the oral submissions made by the learned counsel of petitioner are incorrect and cannot be accepted.

15. It is further noted that the Labour Court *vide* impugned award dated 02.02.2023 has specifically framed the issues with respect to illegal termination of the services of the respondent-workman. In paragraph no.9.3 of the impugned award, the Labour Court has discussed the material and evidence produced by the respondent-workman. The paragraph no. 9.3 of the impugned award reads as under:

*“9.3 The burden of proof to prove present issue is on the workman. **The workman has pleaded in same terms of his pleadings that he has joined the management on 01.07.2003 and his service was terminated illegally on 23.10.2017. He has similarly deposed in evidence by way of affidavit Ex. WWI/ A. The burden of proof to prove abandonment by the workman is on the management. The management has pleaded that the workman has abandoned the service. It is deposed by the workman that he was posted as Head Salesman Cashier with the management.** It is deposed that when he demanded legal facilities from the management which are minimum wage of skilled category as declared by Govt. NCT of Delhi, appointment of letter, wage slip, ID card, payment of bonus, leave*

---

<sup>2</sup> (2022) 12 SCC 815



*record then the management was got annoyed and illegally and unjustifiably terminated the service of the workman on 23.10.2017 without any show cause notice or opportunity of being heard.*

16. In paragraph no.9.5, it has been noted that the petitioner-management did not put any questions to the respondent-workman during his cross examination with respect to the different dates, etc., which were claimed to be incorrect according to the petitioner-management. The paragraph no. 9.5 of the impugned award reads as under:

*9.5 The workman has submitted that his claim is as per certificate issued by the Competent Authority and so his evidence. **At the outset one thing which is to be noted that the said two dates which are in series one after another are not put as contradiction to the workman in cross-examination of WWL. Had such contradiction been put to the workman then the workman would be able to explain the above discrepancy.** It is settled law that an ambiguity has to be put to the witness to explain it. The two different dates are in the nature of ambiguity and not in the nature of contradiction. The case of the workman is what is put to the management vide his statement of claim and evidence by way of affidavit Ex.WWL/A unless such ambiguity is put to the witness it cannot be made out that in what sense the workman has used the date 23.10.2017 in the statement of claim and 24.10.2017 in demand notice Ex.WWL/1. A person may use same words in different sentence in a different sense. In absence of same it cannot be said that there is such material ambiguity arose in this matter which is not even put to the workman during cross-examination. of WWL. Hence the above plea of the management as to two different dates cannot be sustained and stands rejected.”*

17. The argument raised by the petitioner-management has also been considered in paragraph no.9.8 of the said award. The Labour Court eventually has come to the conclusion that the services of the respondent-workman have been illegally terminated and accordingly, in paragraph no.11.2, the following directions have been issued: -



*“11.2 In view of findings under issues above it is held that this case falls under the category of illegal retrenchment in violation of principle of Sec. 25F of Industrial Disputes Act, 1947 without any justification and non-compliance of principles of natural justice.*

*Accordingly workman is held entitled and has been granted the following reliefs:*

- (i) Immediate reinstatement from the date of publication of this Award with;*
- (ii) Full back wages since 23.10.2017 from the date of his illegal termination @Rs.10,000/- per month the last drawn wages and as raised from time to time upto the date of publication of Award with;*
- (iii) All consequential benefits from the date of his termination till the date of his reinstatement.*
- (iv) All the due amount be paid within one month of the date of publication of present Award with interest @6% per annum from the date of publication till its realization.*
- (v) The workman is also awarded the cost of litigation for a total sum of Rs.30,000/- u/Sec. 11(7) of Industrial Disputes Act, 1947”.*

18. It is noted that the Labour Court has passed the impugned award only after perusing the evidences of both the parties and has duly appreciated the facts and circumstances of the case.

19. On perusal of the averments made and the documents referred above by the parties, this court finds that the order of the Labour Court is well-reasoned and there is no ambiguity or jurisdictional error in it. Therefore, this court does not find any cogent reason to interfere with the order of the Labour Court.

20. It is well settled that the scope of interference under Article 227 of the Constitution of India is only limited to correct the jurisdictional error of the inferior courts or tribunals. The Hon’ble Supreme Court in the case of



*Sadhana Lodh v. National Insurance Co Ltd*<sup>3</sup> has held that the supervisory jurisdiction conferred on High Courts under Article 227 of the Constitution of India is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct errors of all kinds in the decision. Also, the decision of the Hon'ble Supreme Court in the case of *DN Banerjee v. PR Mukherjee*<sup>4</sup> restricts the invocation of Article 227 of the Constitution of India to the cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, or where grave injustice would be done unless the High Court interferes.

21. The Hon'ble Supreme Court in the case of *Iswaral Mohanlal Thakkar vs Paschim Gujarat Vij Company Ltd. & Anr.*<sup>5</sup>, while discussing the scope of the High Court under Article 227 of the Constitution of India in interfering with the orders passed by the tribunals and courts inferior to it, has held as under: -

*“15. We find the judgment and award of the Labour Court well-reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power under Article 227 of the Constitution of India to annul the findings of the Labour Court in its award as it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or reappreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well-reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere with the same as the*

---

<sup>3</sup> AIR 2003 SC 1561

<sup>4</sup> AIR 1953 SC 58

<sup>5</sup> (2014) 6 SCC 434



*award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice.”*

*[Emphasis supplied]*

22. The above position of law has been reiterated by the Hon’ble Supreme Court in the case of ***Rengali Hydro Electric Project v. Giridhari Sahu***<sup>6</sup>, wherein, the court after relying upon a catena of judgements has held as under:-

**“20. An erroneous decision in respect of a matter which falls within the authority of the Tribunal would not entitle a writ applicant for a writ of certiorari. However, if the decision relates to anything collateral to the merit, an erroneous decision upon which, would affect its jurisdiction, a writ of certiorari would lie.”**

*[Emphasis supplied]*

23. In view of the aforesaid, this court is not inclined to entertain the instant petition. The same is accordingly dismissed alongwith pending applications.

**PURUSHAINDRA KUMAR KAURAV, J**

**SEPTEMBER 20, 2023**

*p'ma/vg*

---

<sup>6</sup> (2019) 10 SCC 695