

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

Judgment reserved on: 22.12.2022

% **Judgment delivered on: 04.01.2023**

+ **LPA 744/2022 & CM APPLs. 56172-73/2022**

RAJENDER PRASAD PANT Appellant

Through: Mr. Chirayu Jain, Advocate.

versus

MS EXCHANGE AGENCIES & ANR. Respondents

Through: Mr. Rishikesh Kumar, ASC for
GNCTD with Muhammad Zaid and
Mr. Sudhir Kumar Shukla,
Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present Letters Patent Appeal (LPA) is arising out of order dated 26.07.2022 passed by the learned Single Judge in W.P.(C.) No. 11076/2022 titled *Rajender Prasad Pant Vs. M/s Exchange Agencies & Anr.*

2. The undisputed facts of the case reveal that the Appellant before this Court preferred an application under the Delhi Shops and Establishment Act, 1954 (the Act) before the Authority under the Act stating that he was

appointed as Clerk w.e.f. 19.04.2018 with Respondent No.1 and drawing wages at the rate of Rs.50,000/- per month and his services were discontinued on 12.08.2018. A claim was made for payment of wages for the period from 19.04.2018 to 12.08.2018 amounting to Rs.1,90,000/-. Issues were framed by the Authority under the Act and the Authority under the Act has dismissed the claim as no appointment order nor sufficient material was brought to the notice of the Authority under the Act to establish that the Appellant was appointed at a salary of Rs.50,000/- per month. Paragraph 9 onwards of the order dated 19.05.2022 passed by the Authority under the Act is reproduced as under:

“9. I have gone through the pleadings & evidence led by claimant and material available on records and my findings in the case are as under: -

Issue No.1: -The claimant has stated in his claim that his wage from 19.04.2018 to 12.08.2018 is due to be payable for which he had earlier filed a claim on 20.02.2020 under the Act as despite assurance and demand notice dated 16.11.2018, the Respondent did not pay his due earned wage. He has further stated that due to lockdown and carelessness of his counsel, his claim was closed on 23.12.2020 and his counsel even did not inform him regarding the closure of case. Thereafter he again sent a demand notice dated 11.02.2021 to the Respondent. An application has been filed by claimant for condoning the delay inter-alia stating there in that he was suffering from multiple disease owing to which he was rendered physically and mentally immobile & infom which caused delay in filing the claim, but no evidence regarding his illness has been filed by him on record even then since the Act under which the claim has been filed by claimant is a Social Welfare Legislation and its provisions be read in benevolence, hence delay in filing of claim is being condoned.

Issue No.2 & 3: - The claimant has claimed that he was working with respondent as "Clerk" w.e.f. 19.04.2018 on the last drawn wages of Rs.50,000/- per month with full dedication, sincerity and he never gave any chance of any complaint against him and never had any accusation upon him. He has further argued that the Respondent/ Management was not providing any legal facility like appointment letter, attendance card, annual and casual leaves to him. When he demanded for the same, the Respondent terminated his services illegally and unjustifiably w.e.f. 12.08.2018 without paying his legal dues. The claimant has further argued that the Respondent has not paid his earned wage for the period from 19.04.2018 to 12.08.2018 amounting to Rs.1,90,000/-. He has further claimed that he was entrusted by the Respondent with work related tasks which went beyond the ambit of clerical work, or the job-description of a clerk as he was instructed by the Respondent to carry out tasks such as maintaining proper books of account, conducting inventory /stock checking, preparing bank reconciliation statement done through BUSY Accounting Software. BUSY Accounting Software was purchased by him in his name vide invoice No.KGSS#2142#2016-17 dated 06.08.2016 and was upgraded by the Dinky's C-14, Meerut Road Industrial Area, Ghaziabad, Uttar Pradesh which is Mr. A.C. Khanna's Firm vide bill No. KS/18-19/0104 dated 25.08.2018. the claimant has relied upon marked document 'A' Ex.WW1/1, Ex.WW1/2 which are copy of resume, copy of purchase invoice & copy of upgraded invoice. The claimant has claimed that he purchased BUSY Accounting Software in his name vide invoice No.KGSS#2142#2016-17 dated 06.08.2016, it shows that it was purchased much before joining the Respondent. This software was upgraded as claimed by Dinky's C-14, Meerut Road Industrial Area, Ghaziabad, Uttar Pradesh vide bill No. KS/18-19/0104 dated 25.08.2018 and he has claimed that Dinky's is the firm of Mr. A.C. Khanna who is one of the Partner in Respondent firm. But these documents prove nothing in favour of claimant. He has further claimed that printout of sales analysis from 01.04.2018 to 31.07.2018 were used through BUSY Accounting Software

and print out of Excel sheets party wise and route wise sales from 01.04.2018 to 31.07.2018 have been filed as mark 'B' & 'C'. But these documents also prove nothing in favour of claimant. Further Ex.WW1/3, Ex.WW1/4, Ex.WW1/5, mark 'D', Ex.WW1/6, mark 'E', Ex.WW1/7 which are copy of registered notices, copy of notice sent by advocate, copy of postal receipt & copy of demand notice, all these documents are unilateral and can be created by anyone at any point of time. These documents are not sufficient to prove the claim of claimant against Respondent. Respondent was an educated person & claiming that he was appointed on a salary of Rs.50,000/- p.m. so he was expected to file some material evidence i.e. appointment letter, salary slip etc. on record to prove the relationship of employee and employer but no such document /evidence has been placed on record. Further he did not even summon the records of Respondent to prove his case. Hence the evidence led by claimant is not sufficient to prove his case accordingly the claim is dismissed."

3. The Appellant being aggrieved by the order dated 19.05.2022 passed by the Authority under the Act came up before this Court by filing W.P.(C.) No. 11076/2022 and the learned Single Judge has dismissed the said writ petition holding that the Appellant did not produce any appointment order and, therefore, the Authority under the Act was justified in dismissing the claim by holding that no appointment order or material evidence was brought on record. The Order dated 26.07.2022 passed by the learned Single Judge is reproduced as under:

" The present petition has been filed challenging the impugned order dated 19th May, 2022, whereby the claim of the petitioner for payment of four months' salary w.e.f. 19th April, 2018 to 12th August, 2018 has been rejected.

Learned counsel for the petitioner has submitted that the authority has rejected the claim despite there being sufficient

material on record. It has been further submitted that the respondent-management did not even lead any evidence and therefore the case of the petitioner was uncontroverted.

I have perused the impugned order. The authority in the impugned order notes that the evidence produced by the petitioner-claimant did not prove his case. The entire evidence produced by the petitioner-claimant had been appreciated and it was inter alia held that the same were not sufficient to prove the claim of the claimant against the respondent.

It has been noted that the respondent is an educated person and was appointed at a salary of Rs.50,000/- p.m. and therefore he was expected to file some material evidence i.e. appointment letter, salary slip etc. on the record to prove the relationship of employee and employer but no such document/evidence has been placed on record.

The writ jurisdiction conferred on the Court is although wide but has to be exercised in circumspection. This Court in its writ jurisdiction cannot re-appreciate the evidence. The order of the authority cannot be displaced merely because this Court can take another opinion on the same material.

The petitioner is an educated person and is a graduate from Delhi University. To say that he was not given any documents when he joined the services does not hold any ground. The petitioner had to be aware of his rights and should have insisted for the documents. This is not the case where the petitioner is an illiterate person or had been working as a labourer. The petitioner herein, is a professional and an expert in accountancy. It is also cardinal principle that one who makes the claim is bound to prove the same. The claim could not have been granted on the bald assertion.

This Court considers that there is no ground to interfere in the impugned order.

There is no substance in the present petition. Hence, the present petition is dismissed.”

4. Learned counsel for the Appellant has vehemently argued before this Court that there was no appointment order ever issued to the Appellant. It was only an oral agreement/ appointment order and he was required to handle the accountancy work entrusted to him. In these circumstances, as he has worked for the period from 19.04.2018 to 12.08.2018, he is entitled to wages.

5. Learned counsel for the Appellant has placed reliance on the following decisions:

- (i) ***Bank of Baroda Vs. Ghemarbhai Harjibhai Rabari***, (2005) 10 SCC 792;
- (ii) ***Kanpur Electricity Supply Company Limited Vs. Shamim Mirza***, (2009) 1 SCC 20;
- (iii) ***Upendra Choudhury Vs. J.K. Industries Ltd & Others***, 2022 SCC OnLine Cal 3038; and
- (iv) ***M/s Packbill Enterprises Vs. Dinesh Kumar Mishra @ Pappu***, W.P.(C.) No. 4895/2015 decided by this Court on 25.05.2015.

6. This Court has carefully gone through the judgments relied upon by learned counsel for the Appellant and the undisputed facts of the case reveal that, except for a bald statement made by the Appellant that the Appellant has worked as clerk for the period from 19.04.2018 to 12.08.2018, no other material evidence to establish his claim has been brought on record except a purchase invoice. The Authority under the Act has dealt with the invoice dated 06.08.2016 – which is in respect of the BUSY Accounting Software

purchased in his name, which was upgraded by the Dinky's, C-14, Meerut Road Industrial Area, Ghaziabad, Uttar Pradesh – which is Mr. A.C. Khanna's Firm, vide Bill No.KS/18-19/0104 dated 25.08.2018. The Appellant has claimed that he has purchased the BUSY Accounting Software in his name. However, the said Software was purchased on 06.08.2016, i.e. much before the Appellant joined the Respondent M/s Exchange Agencies – which is owned by Mr. A.C. Khanna and Mrs. Monika Khanna. It is true that the said Software was upgraded by the Dinky's, C-14, Meerut Road Industrial Area, Ghaziabad, Uttar Pradesh and the Appellant has claimed that Dinky's is the firm of Mr. A.C. Khanna – who is partner of M/s Exchange Agencies. The aforesaid document does not establish that the appellant has worked with M/s Exchange Agencies at any point of time, and therefore, in the considered opinion of this Court, as there is no material evidence on record to establish that the Appellant has worked for the period from 19.04.2018 to 12.08.2018 with the Respondent, this Court is of the opinion that the Authority under the Act and the learned Single Judge were justified in rejecting the claim of the Appellant.

7. Learned counsel for the Appellant has placed heavy reliance on ***Bank of Baroda*** (supra). In the said case, the Respondent before the Supreme Court made a claim that he was employed by Bank of Baroda and the said Bank came up with the plea that the Bank allotted a car to some of its executives but the bank did not provide a driver for the car and the responsibility of having a driver was that of the executive concerned, and if such an executive appointed a driver, the employment of the driver came to an end with the executive's retirement or transfer. In those circumstances,

the appeal of Bank of Baroda was dismissed as the workman therein was able to make out a prima facie case regarding his engagement.

8. In the present case, the Appellant workman has not been able to even make out a prima-facie case regarding his engagement with the Respondent No.1 and, therefore, the Authority under the Act and the learned Single Judge were justified in declining relief to the Appellant.

9. Learned counsel has further placed reliance upon the judgment delivered in *Kanpur Electricity Supply Company Limited* (supra), wherein the workmen were not able to produce letters of appointment as also their salary slips but they were able to adduce some contemporaneous documentary evidence showing that they were collecting cash on behalf of the company. In those circumstances, the workmen were able to establish the claim of having worked with the Appellant for more than 240 days.

10. In the present case, no such contemporaneous documentary evidence was brought on record before the Authority under the Act to establish that the Appellant has worked with Respondent and, therefore, the judgment in *Kanpur Electricity Supply Company Limited* (supra) is again distinguishable on facts.

11. Learned counsel has also placed reliance upon the judgment delivered by the High Court of Calcutta in *Upendra Choudhury* (supra). In *Upendra Choudhury* (supra), the statement on record of the witnesses established that the workman therein was engaged by J.K. Industries Ltd. Even though there was no appointment order but there was enough material to hold that the workman was engaged by J.K. Industries Ltd, the Division Bench has

granted relief to the workman. The finding arrived in the aforesaid case was based upon a proper procedure of allowing both the employer and the alleged employee to adduce evidence both oral and documentary. Even though no appointment order was in existence, based upon the oral and documentary evidence, the workman was held to be an employee of the J.K. Industries Ltd.

12. In the present case, there is no material on record which establishes that the Appellant/ workman was an employee of the Respondent, and in those circumstances, the Authority under the Act was justified in dismissing the claim of the Appellant.

13. Lastly, learned counsel for the Appellant has placed reliance upon the judgment delivered in *M/s Packbill Enterprises* (supra), wherein the Division Bench has categorically held that the relationship of employer and employee was admitted by the Petitioner/ M/s Packbill Enterprises and the Petitioner made a categorical statement that the Respondent had worked as a driver with the Petitioner and the only plea taken was that he has worked for only 10-12 days.

14. In the present case, there is no such admission on behalf of the employer. There was no evidence brought on record by the Appellant before the Authority under the Act, nor before the learned Single Judge. Therefore, this Court is of the considered opinion that the Authority under the Act was justified in passing the order dated 19.05.2020 as the evidence led by the claimant was not sufficient to prove his case. The learned Single Judge has rightly affirmed the order passed by the Authority under the Act.

Neutral Citation Number: 2023/DHC/000061

15. This Court does not find any reason to interfere with the order passed by the Authority under the Act and the order passed by the learned Single Judge.

16. The net result is that the present appeal stands dismissed. No order as to costs.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

JANUARY 04, 2023

B.S. Rohella

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