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

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*Reserved on: 14.12.2022
Pronounced on: 31.01.2023*

+ **W.P.(C) 12520/2005**

NARENDER KUMAR

..... Petitioner

Through: Mr. Piyush Sharma,
Ms.Sakshi and Mr. Shivam,
Advocates with petitioner in
person

versus

**THE MGMT. OF M/S MAMAN CHAND
RAMJI DAS**

..... Respondent

Through: Mr. Suryakant Singla and Ms.
Karnika Dubey, Advocates

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present writ petition is filed under Article 226 of the Constitution of India impugning the award dated 16.07.2004 (*"the impugned award"*) passed by the learned Labour Court Karkardooma, Delhi in Industrial Dispute No. 1495/1997. Vide the impugned award, the learned Labour Court adjudicated the dispute in favour of the Respondent and held that the Petitioner failed to prove that he was under the employment of the Respondent. Learned Labour Court further considered the fact that the Petitioner worked at the premises of the Respondent for

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11 years and hence he is entitled to get an amount of 10 months' salary amounting to Rs.33,500/- (wrongly mentioned as Rs. 35,000/- in the impugned Award) towards his full and final settlement. Learned Labour Court noted that the Respondent already paid Rs. 16,000/- and hence directed the Respondent to pay the Petitioner a balance of Rs.17,500/- (Seventeen Thousand Five Hundred Rupees) towards his full and final settlement.

2. The Respondent/Management complied with the impugned Award and made the payment of Rs. 17,500/- to the Petitioner vide cheque dated 04.08.2007 drawn on Punjab National Bank, Chandni Chowk, New Delhi.

FACTS RELEVANT FOR ADJUDICATION OF THE PRESENT DISPUTE

3. It is the case of the Petitioner that he was working as a clerk/supervisor with the management of the Respondent since 14.01.1985, earning a salary of Rs. 3,350/- *per mensem*. Allegedly, dispute between the Petitioner and Respondent has its genesis from the time when despite numerous requests from the Petitioner, the Petitioner's name was not updated in the employment register/record of the Respondent. Moreover, the Respondent since 01.05.1996 failed to duly remunerate the Petitioner for his services and on 04.07.1996, the Petitioner was terminated from the service without payment of arrears. The petitioner on 28.09.1996 served upon the Respondent legal notice demanding payment of arrears of his salary and immediate reinstatement in the service.

4. Aggrieved by the aforesaid termination and non-payment of arrears, the Petitioner raised an industrial dispute before the appropriate authority. After being satisfied with the existence of an industrial dispute between the parties, the Appropriate government referred the matter for adjudication to the learned Labour Court with the following terms of reference:

"Whether the discharge of services of Sh. Narender Kumar have been terminated illegally and or unjustifiably by the management, and if so, to what other relief is he entitled and what directions are necessary in this respect?"

5. The Petitioner filed his statement of claims wherein it was averred that the Petitioner was in a continuous and permanent employment of the Respondent. It was further contended that the Respondent illegally terminated services of the petitioner without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (*"the I.D. Act"*) and failed to clear the arrears of the salary accrued to him.
6. Subsequently, the Respondent *via* the written statement contested the claims made by the Petitioner and contended that there existed no employer-employee relationship between the parties to the dispute. As a matter of fact, the Petitioner was employed by one of the partners of the Respondent, Sh. Rajesh Kumar who used to take the assistance of the Petitioner for the work related to the Respondent. The Petitioner was never appointed by the Respondent and all his salary was paid by Sh. Rajesh Kumar in his personal capacity. Furthermore, the Petitioner amicably

settled his account in full and final settlement *vide* its receipt dated 04.07.1996 which was duly signed by the Petitioner.

7. In order to substantiate his claim, the Petitioner examined himself as WW1 and tendered his affidavit as Exhibit WW1/A relying on the documents **Exhibit WW1/1 to Exhibit WW1/7**. Whereas, the Respondent examined, Sh. Rajesh Kumar as MW1 who tendered his affidavit as **Exhibit MW1/A** and Sh. Ashok Kashyap, handwriting expert as MW2 who relied on document **Exhibit MW2/1**.
8. Based on the evidence adduced and arguments made by the parties, the learned Labour Court passed the impugned award on 16.07.2004. Relevant extract of the aforesaid award has been reproduced below:

“9. The counsel for the workman says that the workman was the employee of the management since 1985 but his name was not kept, on muster roll. He was not paid salary on register etc. Whereas the management witness Sh. Rajesh Kumar says that workman was his personal employee. So his name was not kept on muster roll. The firm is a different entity. In the entire evidence the workman failed to prove that he was the employee of the management of M/s Maman Chand Ramji Das. The version of the management seems to be correct that he was the personal employee of Rajesh Kumar since 1985. The further dispute is with regard to full and final settlement taken by the workman. The Handwriting obtained by the court Ex.CW whereas the handwriting produced by the management as Ex.WW1/M1. Both the handwriting admitted be of the same person by MW-2, the handwriting expert witness. In the disputed writing Ex.WW1/M1 does not mention how much amount was received. Whereas Rajesh Kumar management witness says that a sum of Rs. 16000/- was paid to the workman.

10. The above circumstances clearly says that workman has failed to prove to be the employee of the management but

he has served somehow with the firm from 1985 to 1996 for 11 years. Though the reference is answered against the workman but so far as the relief is concerned it is the admitted case of the management that the workman served for 11 years for that the management alleged to have been paid a sum of Rs. 16,000/-. The last drawn salary claimed by the workman is Rs. 3350/-. The 10 months salary @ Rs. 3350/- comes to Rs. 33500/- from that a sum of Rs. 16,000/- is to be deducted as it was paid to the workman after obtaining the receipt. The balance of Rs. 17,500/- is to be paid by the management to the workman. Accordingly, the workman is granted a compensation of Rs. 17500/- to be paid by the management.”

9. Being aggrieved, the Petitioner vide present writ petition is impugning the award dated 16.07.2004 and is seeking an order for quashing the impugned award along with direction for reinstatement of petitioner in the service.

SUBMISSIONS ON BEHALF OF THE PETITIONER

- 10.Mr. Piyush Sharma, learned counsel appearing for the Petitioner has submitted that sufficient evidence was brought on record by the Petitioner before the learned Labour Court to prove that he was under the employment of the Respondent. Despite the fact that the Petitioner dispensed his duty for 11 years in the management of Respondent, he was unfairly deprived of his legal benefits by the Respondent by excluding his name from the employment record, which clearly amounts to unfair labour practice. It is asserted by the learned counsel that the Petitioner was a permanent employee of the Respondent and his services could have been terminated only after complying with the provisions of Section 25-F of the I.D Act. *Howbeit*, no notice

stating reason for termination was furnished by the Respondent to the Petitioner before terminating the service.

11. It is further submitted by the counsel that the expert opinion tendered by the handwriting expert, Sh. Ashok Kashyap is unreliable, since the 'settlement receipt' (**Exhibit WW1/M1**) which was examined by the expert were only the xerox copy, and not the original one. It is an established law that when examination by the handwriting expert is only performed on the xerox copies, such examinations amount to improper examination practice.
12. Learned counsel for the Petitioner further submits that the Labour Court is a creature of the statute, and its jurisdiction is circumscribed by the I.D. Act. Hence the adjudication before the learned Labour Court must be limited to the reference made to it under Section 10(4) of the I.D. Act. Section 10(4) of the I.D. Act permits the learned Labour Court to decide the issues referred to it. Hence the learned counsel for the Petitioner submits that the learned Labour Court ought not to have framed the additional issues and hence adjudication on these additional issues were beyond the jurisdiction and hence illegal.
13. For further cementing the case, the learned counsel for the petitioner has relied upon the judgements delivered in ***Kanpur Electricity Supply Co. Ltd. v. Shamim Mirza, (2009) 1 SCC 20; Delhi Cloth & General Mills Co. Ltd. v. Workmen, (1967) 1 SCR 882; Hindustan Housing Factory Ltd. v. Hindustan***

Housing Factory Employees Union, 1969 SCC OnLine Del 257;

14. With these submissions, the learned counsel for the Petitioner prays for the setting aside of the impugned Award.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

15. *Per contra*, Mr. Suryakant Singla, learned counsel appearing for the Respondent has challenged the present writ on the grounds that there existed no relationship of employer-employee between the management and the Petitioner. The petitioner was never appointed by the Respondent, but rather was under the employment of one of the partners of the Respondent in his individual capacity. It is further submitted that Sh. Rajesh Kumar, partner of the Respondent has categorically deposed in his affidavit (**Exhibit MW1/A**) that he used to pay salary to the Petitioner from his own pocket and it is wrong to suggest that petitioner was an employee of the Respondent.

16. Learned counsel furthered his case by submitting that it is a cardinal principle of law that the onus to prove is on the individual who asserts a fact. The petitioner, in this case, has asserted that he was under the employment of the Respondent, however, he failed miserably before the learned Labour Court to establish the same. The petitioner further failed to explain why he was singled out while names of the other counterparts were present in the wage register. Such other employees were contributing towards ESI and GPF and were deriving benefits of

the Provident Fund (PF), bonus and other legal facilities because they were the employees of the Respondent. The petitioner even failed to examine any of the employees in whose presence the incident of 04.07.1996 allegedly took place to prove that the signatures were obtained by threat and coercion.

17. Further, it is submitted by the counsel that the Petitioner is not a 'workman' within the meaning of Section 2(s) of the I.D. Act. Earlier, the Petitioner himself in the legal notice dated 28.09.1996, stated that he was working as Supervisor since 14.01.1985. However, strategically, in order to bring the dispute within the purview of the legislation, the Petitioner in his statement of claims averred that he was appointed by the management as a clerk. Since no appointment letter was issued to the Petitioner; no question of aforesaid designations arises in such a situation.

18. Learned counsel for the Respondent, for buttressing his arguments, has placed reliance upon the judgement delivered in *Umed Singh v. Presiding Officer* reported as **2013 SCC OnLine Del 5149**.

19. With these submissions, learned counsel for the Respondent prays for the dismissal of the present Writ Petition.

LEGAL ANALYSIS

20. This Court has heard the arguments advanced by both the parties and have perused the documents and Judgments relied upon by the parties with the assistance of the learned counsels for the parties.

21. Before adverting to the main dispute between the parties, this Court notes that the learned counsel for the Petitioner raised an objection regarding the framing of the additional issues by the learned Labour Court. Hence this Court finds it appropriate to examine the said preliminary objection at the first instance.

22. The appropriate Government referred the industrial dispute to the learned Labour Court with the following reference:

“ Whether the discharge of service of Sh. Narender Kumar has been terminated illegally and/or unjustifiably by the Management and if so to what other relief is he entitled and what direction is necessary in this respect?”

23. Based on the pleadings of the parties, the learned Labour Court framed the following issues:

*“(i) Whether the Claimant is not a Workman?
(ii) Whether there exists no relationship of employer and employee between the parties?
(iii) As per the terms of reference.”*

24. Section 10(4) of the I.D. Act, reads as follows:

“(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be shall confine its adjudication to those points and matters incidental thereto.”

25. Hence from the aforesaid Section, it is clear that that the learned Labour Court can adjudicate the disputes which are ‘incidental’ to the terms of reference. In the present case, the Respondent raised objections; (i) to the effect that the Petitioner is not a workman and (ii) that the Petitioner was not an employee of the Respondent. Hence the learned Labour Court framed the

additional issues as they were incidental to the terms of reference. Therefore, it is not correct to say that the additional issues framed by the learned Labour Court was beyond the terms of reference. It is also noted that the Petitioner never challenged the framing of these additional issues before the learned Labour Court. The petitioner is raising this objection for the first time before this Court. The Petitioner cannot raise this objection at this stage. In view of the same, the objection raised by the petitioner regarding the issues framed by the learned Labour Court is hereby rejected.

26. Main bone of contention in the present matter is the employment status of the Petitioner and subsequent termination/discharge of the services along with non-payment of arrears by the Respondent. Issue that requires judicial consideration of this Court relates to ascertainment of the fact as to whether the Petitioner was under the employment of the Respondent to claim benefit under the Section 25-F of the I.D. Act and for demanding reinstatement in the service.

27. On the bare perusal of the impugned award, it is found that the learned Labour Court rejected the claims of the Petitioner. Learned Labour Court arrived at the conclusion that the Petitioner was unsuccessful in establishing that he was indeed in the employment of the Respondent and was terminated illegally without compliance of Section 25-F of the I.D. Act. It is also evident from the impugned award that the learned Labour Court proceeded ahead with the opinion of the handwriting expert that

disputed signature contained in final settlement/**Exhibit WW1/M1** and signature in admitted document belongs to the same person i.e. the Petitioner.

28.*Firstly*, as far as the expert opinion is concerned, it is prudent to examine the provision under Section 45 of the Indian Evidence Act, 1872 for better grasping of the issue:

“Section 45. Opinions of experts.

When the Court has to form an opinion upon a point of foreign law or of science, or art, or as to identity of handwriting, [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identity of handwriting] [or finger impressions] are relevant facts.

Such persons are called experts.

Illustrations

(a) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.”

29. Section 45 of the Indian Evidence Act provides relevancy and weightage to the expert opinion with regards to the disputes relating to handwritten documents. It is no more *res integra* that courts should exercise great caution while determining the disputed handwriting. It is alleged by the Petitioner that the handwriting expert only examined the Xerox copies and not even analyzing/requesting for the original copy of the settlement slip, amounts to unprofessional practice and hence report submitted by the expert is completely unreliable.
30. In the present case, the Respondent took professional assistance of the handwriting expert to put a quietus to the dispute regarding the signature. The expert tendered his expert opinion *vide* the report dated 11.09.2003 (**Exhibit MW2/1**) after examining the disputed document (receipt) and admitted document (**Exhibit WW1/3**). It is an admitted fact that the handwriting expert examined the disputed signature from a document which was a xerox of the original document. It is admitted by the expert himself as given in the report dated 11.09.2003:

“This is to certify that I have very carefully examined and compared with the aid of lenses, magnifiers and such geometrical appliances, which are needed for the purpose of comparison, the following signatures after the examination of their zerox copies and preparation of enlargements in my laboratory and detailed as under.”

31. It is pertinent to refer the judgment delivered by the Hon'ble High Court of Madhya Pradesh in ***Abhay Jain v. State of M.P.*** reported as ***2018 SCC OnLine MP 1839*** wherein it was observed that examination carried out by an expert must be based upon the

original document, rather than examining the xerox copy of the same.

“29. The expert should form opinion on the basis of study of original document. The reason being that the pressure points are analyzed by the hand writing expert for which original are required. In the absence of original documents, the analysis of a questioned document is limited to the features that survive the copying process. This is like to identify a person behind a cloudy window; the basics are there, but details are missing. What we call the “three-dimensionality” of the original document is lost. Not to mention that if the copy is a copy of a copy, the details become increasingly difficult to verify.

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44. Originals are always the best evidence. For a more productive result, both questioned and admitted documents should be in original.

*45. While considering the question as to whether hand writing expert can give opinion on the basis of photocopy, the Hon'ble High Court of Andhra Pradesh replied in **Bheri Nageswara Rao v. Mavuri Veerabhadra Rao, AIR 2006 AP 314** that:*

5. The opinion of a hand writing expert involves the analysis of the slant, which a person uses in the matter of putting his signature, and in some cases, the point of time, at which it may have been subscribed. These analyses would become possible only vis-a-vis an original signature; and the signature mark on a xerox copy of a document can never constitute the basis.”

32. Similarly, the Hon'ble Apex Court in **S.P.S. Rathore v. CBI** reported as **(2017) 5 SCC 817** touched upon the issue of reliability of the expert opinion in handwriting dispute matters. Relevant extract of the judgement is reproduced as below:

“47. With regard to the contention of the learned Senior Counsel for the appellant-accused that the signatures of Ms. Ruchika on the memorandum were forged though she signed the same in front of Shri Anand Prakash, Shri S.C. Girhotra, Ms Aradhana and Mrs Madhu Prakash and they have admitted the same, we are of the opinion that expert

evidence as to handwriting is only opinion evidence and it can never be conclusive. Acting on the evidence of any expert, it is usually to see if that evidence is corroborated either by clear, direct or circumstantial evidence. The sole evidence of a handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not. A court is competent to compare the disputed writing of a person with others which are admitted or proved to be his writings. It may not be safe for a court to record a finding about a person's writing in a certain document merely on the basis of expert comparison, but a court can itself compare the writings in order to appreciate properly the other evidence produced before it in that regard. The opinion of a handwriting expert is also relevant in view of Section 45 of the Evidence Act, but that too is not conclusive. It has also been held by this Court in a catena of cases that the sole evidence of a handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not. It follows that it is not essential that the handwriting expert must be examined in a case to prove or disprove the disputed writing. It is opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence, it is usual to see if it is corroborated either by clear, direct evidence or by circumstantial evidence."

33. In view of the aforementioned judgments, it can be deduced that the report of the handwriting expert remains questionable and unreliable since the same is based on the examination carried upon xerox documents. *Ergo*, this court is hesitant to accept the expert opinion and to form an opinion solely and primarily on basis of the report. As discussed in detail in **Abhay Jain (supra)**, that level of certainty of an expert opinion is adversely affected when the examination is done on copies of the original. Reasons and factors like loss of detailing, patching, fraudulent manipulation, paper etc. cannot be properly assessed and examined by the expert when only xerox copy is available to

him/her. This Court holds the expert opinion/report as an unreliable source of comparison and hereby attaches no evidentiary value to the same in the present dispute.

34. Now, even when the authenticity of the settlement receipt remains questionable in the light of the expert opinion, the Petitioner has not persuaded this Court enough regarding his claims. It is the case of the Petitioner that he was an employee of the Respondent. This fact is disputed by the Respondent. Hence the burden of proof is on the Petitioner to prove that he was an employee of the Respondent. There is no documentary evidence produced by the Petitioner to prove that he was an employee of the Respondent Management. No appointment letter, salary slip or statement of any colleague has been brought on record that can substantiate the claim that the Petitioner was working with the Respondent and his services were discharged illegally. The Petitioner stepped into the witness box as WW-1 and stated that he worked with the Management for the period from 14.01.1985 to 04.07.1996. He further admitted that during the said period, he never signed the attendance register. WW-1 also admitted that there were 32 other employees, who were working with the Respondent Management. All these 32 employees were marking their attendance in the attendance register. The Petitioner was the only person whose name was not mentioned in the said attendance register. He further submits that all the other workers except the Petitioner used to contribute towards the ESI & GPF. Approximately for 11 years, the Petitioner never challenged the

said position. The evidence of the Petitioner itself shows that the Petitioner was not an employee of the Respondent Management. The Respondent examined Mr. Rajesh, one of the Partners of the Management as MW-1. MW-1 categorically stated that the Petitioner was his personal staff and he used to pay him from his own pocket. Hence from the evidence of WW-1 and MW-1, it is clear that the Petitioner was not an employee of the Respondent. The Petitioner must be attending the office of the Respondent Management as the personal staff of one of the Partners. Petitioner failed to lead any evidence to prove that he was an employee of the Respondent Management. After examining the Labour Court Record (LCR) and other documentary evidence, this Court is of the view that the petitioner has not brought on record sufficient evidence to establish his employment with the Respondent. In the absence of any substantive proof of employment, it cannot be said that the Petitioner worked for the Respondent for 11 years. Therefore, due to want of evidence, this Court rejects the claim of the Petitioner that he was under the employment of the Respondent and served for 11 years.

35. It is a well settled principle of law that the Writ Court does not sit in appeal over the decision of the learned Labour Court. It does not reappraise the evidence which formed the basis of the decision by the learned Labour Court. So long as there was evidence before the learned Labour Court to arrive at a particular conclusion, the Writ Court will not adjudge the sufficiency of such evidence. In the light of the abovesaid discussion, this Court

is of the opinion that the impugned Award does not suffer from any infirmity as the learned Labour Court committed no error in holding that the petitioner was not under the employment of the Respondent due to want of evidence.

36.*Albeit*, this Court is in concurrence with the learned Labour Court with respect to the employment of the Petitioner. As regards the liability to pay the balance amount of Rs. 17,500/-, this Court finds that the learned Labour Court took an equity based view and directed the Respondent to pay 10 months' salary as full and final settlement amount to the Petitioner. The Respondent never challenged this aspect. The perusal of the order sheets shows that on 06.08.2007, the Respondent made the said payment to the Petitioner. Hence in view of the same, this Court is not inclined to interfere with the impugned Award.

37.In view of the detailed discussion made hereinabove, this Court is of the considered view that there is no perversity or illegality in the impugned Award which requires the interference of this Court. Accordingly, the impugned award dated 16.07.2004 passed by the learned Labour Court, Karkardooma, Delhi is upheld.

38.The Present writ petition is dismissed. No order as to the cost.

GAURANG KANTH, J.

JANUARY 31, 2023