M/s Tirath Ram Ahuja Limited Vs The Presiding Officer

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 29, 2001

Acts Referred: Constitution of India, 1950 â€" Article 226, 227
Evidence Act, 1872 â€" Section 114
Industrial Disputes Act, 1947 â€" Section 2

Hon'ble Judges: S.S. Nijjar, J

Bench: Single Bench

Advocate: Mr. Pankaj Jain, for the Appellant; Mr. Amar Vivek, for the Respondent

Final Decision: Dismissed

Judgement

S.S. Nijjar, J.
This petition under Articles 226/227 of the Constitution of India, seeks issuance of a writ of certiorari quashing the

impugned Award dated 9.10.1998 passed by the Presiding Officer, Industrial Tribunal cum Labour Court, Gurgaon (hereinafter referred to as "the

Labour Court"), whereby, respondent No. 2 (hereinafter referred to as "the workman") has been directed to be reinstated into service with

continuity of service and full back wages from the date of demand notice dated 19.8.1991.

2. The petitioner M/s Tirath Ram Ahuja Limited is a company engaged in construction business. It is stated that the petitioner-company at times

gets contracts to construct buildings etc. all over India. At every construction site, labourers are hired directly as well as through labour contractors

to complete the projects in hand. Hence all the labourers hired are the project workers. The petitioner-company was engaged in construction of

two buildings namely Tata Energy Research Institute (TERI) and the Buildings known as Gwal Pahari Project and Garden Estate Housing

Complex (GEHC).

3. The respondent No. 2 was hired as Blacksmith/Welder for the construction work in TERI in November 1990. After the completion of TERI, he

was shifted to the site of GEHC. On the completion of this project, he was discharged on 1.8.1991. Construction work of GEHC was finally

completed in 1992. The workman on his discharge, filed a demand notice on 19.8.1991. The appropriate Government referred the matter to the

Labour Court for adjudication. The workman reiterated his claim in the statement of claim.

4. On completion of the pleadings, the following issues were framed :-

a. Whether respondent does not fall under the definition of Industry ? If so, what effect ?

b. Whether termination of petitioner''s services is legal and justified ? If not, to what relief is he entitled?

c. Relief.

After appreciating the evidence, the Labour Court has come to the conclusion that the workman had completed 240 days. Thereafter, it was held

that the termination of the petitioner is not justified. The Labour Court has also observed that the Management has failed to produce the

documentary evidence in the form of wages claim register and attendance register. It is held that no justification has been put forth by the

Management for with-holding the documentary evidence. Therefore, the Labour Court has drawn an adverse inference u/s 114 of Illustration (3) of

the Evidence Act, 1872 to hold that the evidence so with-held by the Management, if produced, would have gone against them and would have

supported the claim of the petitioner. The Labour Court has also relied on a document produced by WW4 Om Parkash UDC from the office of

the Provident Fund Department. He has placed on the record certain documents. Ex.WW4/2 is a copy of the Supplementary Annual Form 6-A

which shows that the provident fund contribution was deducted from the salary of the workman for the period from April 1990 to March 1991.

This document has been read by the Labour Court with the statement of WW4, where it is stated that provident fund contribution was deducted

after completion of 90 days. Considering the effect of the facts taken together, the Labour Court has come to a conclusion that the workman has

worked for a period of more than 240 days during the calender year preceding the termination of services. The aforesaid findings of fact having

been arrived at after appreciation of evidence, cannot be said to be based on no evidence. Therefore, on this ground, it cannot be said that the

award suffers from an error apparent on the face of record. The Management had also raised a preliminary objection to the effect that it was not

an Industry as defined u/s 2-J of the Industrial Disputes Act. In my opinion, the Labour Court has rightly rejected the aforesaid submission in view

of the law laid down by the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . It has been held by

the Labour Court that the test laid down in the aforesaid case is fully satisfied, as the petitioner is carrying on the construction work in a systematic

manner with the cooperation between the employer and the employees and this activity leads to fulfillment of human needs and wishes. The Labour

Court has further held that where human needs attempted to be fulfilled by an employer are neither spiritual nor religious but are material things and

goods, the employer definitely falls within the definition of an Industry.

5. In view of the above, it can also not be held that the finding recorded by the Labour Court on the issue as to whether or not the petitioner is an

Industry suffers from an error apparent on the face of record. In view of the above, I find no merit in the writ petition.

Dismissed. No costs.

6. Petition dismissed.