(2011) 05 DEL CK 0410

Delhi High Court

Case No: Writ Petition (C) 3836 of 2011

Surya Narain Tiwari		APPELLANT
	Vs	
Samarth Shiksha Samiti Mata Leelawati Balika Vidhya Mandir		RESPONDENT

Date of Decision: May 31, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226
- Evidence Act, 1872 - Section 106
- Industrial Disputes Act, 1947 - Section 10

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Ashok Kumar, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Sahai Endlaw, J.

The Petitioner workman claims to have been employed as a School Bus Driver with the Respondent School. An industrial dispute was raised by him and on which the following reference u/s 10 of the I.D. Act was made:

Whether Sh. Surya Narain Tiwari S/o Sh. Ram Sunder Tiwari left his job after receiving his full and final dues from the management and if not, whether his services have been terminated illegally and /or unjustifiably by the management and if so, to what sum of money as monetary relief along with other consequential benefits in terms of existing Laws/Govt. notifications and to what other relief is he entitled and what directions are necessary in this respect?

2. The Industrial Adjudicator has vide award dated 1st July, 2010 held the Petitioner workman to have left the services of the Respondent employer on his own after taking full and final settlement and axiomatically disbelieved that the services of the Petitioner workman were illegally terminated. Aggrieved therefrom the present writ

petition has been filed.

3. It was inter alia the case of the Respondent School that there were repeated complaints against the Petitioner workman of rash and negligent driving while ferrying School children and the Petitioner workman was also found in a drowsy state while driving the bus; that upon the Petitioner workman being confronted with the same, he stated that he could not perform his job better than what he was performing and opted to leave the employment and in which regard a document was prepared and signed by the Petitioner workman.

4. The case of the Petitioner workman was that the Respondent employer had been obtaining his signatures on blank papers and had misused such blank papers for preparing the document aforesaid.

5. The Industrial Adjudicator on appreciation of evidence and other material before him has reached the conclusion aforesaid. The said conclusion is a finding of fact not ordinarily interferable in exercise of jurisdiction under Article 226 of the Constitution of India unless shown to be not based on any material on record or perverse or unreasonable considering the entire material on record. (see Kirloskar Brothers Ltd. v. The Presiding Officer, Labour Court ILR (1976) Del 565, DTC v. Delhi Administration ILR (1973) Del 838, Jawahar Singh and Others Vs. Financial Commissioner and Others, & Kishan Chand Bhatia (thr. LRs.) Vs. Union of India (UOI) and Others, . This Court cannot re-appreciate evidence as an Appellate Court. (see Union of India and Another Vs. M/s. Mustafa and Najibai Trading Co. and Others, Sh. Poorna Singh Kain Vs. Union of India (UOI) and Others Suresh Kumar Vs. The Management of Monsanto Enterprise Pvt. Ltd. Ram Narain Jha Vs. T.M. Apartments Pvt. Ltd., and Municipal Corporation of Delhi Vs. Satish Kumar, As such it has been enquired from the counsel for the Petitioner workman as to how the said finding of fact of the Industrial Adjudicator is impugned.

6. Though in the writ petition a number of grounds have been taken but the counsel for the Petitioner workman has only urged that the finding of the Petitioner workman of his own having left the employment on 16th December, 2005 is not believable since the Petitioner workman continued to perform his duties till 24th December, 2005. It is contended that notwithstanding the said assertion by the Petitioner workman in his evidence, the Petitioner workman was not cross-examined with respect thereto.

7. However, a perusal of the affidavit by way of examination-in-chief of the Petitioner workman and the cross-examination shows all that the Petitioner deposed was that his services were terminated in December, 2005 and he had not been paid emoluments of the last month of employment also. The authorized representative of the Respondent employer in cross-examination recorded on 16th January, 2009 (at page 56 of the paper book) put to the Petitioner workman as to whether the Petitioner workman had any evidence to show that he worked with the

management of the Respondent employer even after 16th December, 2005. The reply of the Petitioner workman was in the negative. It is thus not as if the Respondent employer did not challenge at all the statement in the examination-in-chief of the Petitioner workman of his services terminated in December, 2005.

8. The counsel for the Petitioner workman has also urged that the witnesses of the Respondent employer in his examination-in-chief nowhere stated that the Petitioner workman had not worked after 16th December, 2005. However, the said argument is also not borne out from the record. Mr. Dev Narain Tiwari office superintendent of the Respondent employer in para 13 of affidavit by way of examination-in-chief deposes that after 16th December, 2005, the Petitioner had never worked with the Respondent School.

9. It was enquired from the counsel for the Petitioner workman as to whether the Petitioner workman in the cross-examination of the witnesses of the Respondent employer had put to the said witnesses that the Petitioner workman had continued to work after 16th December, 2005 also. The counsel had contended that since the witnesses had not deposed anything in examination-in-chief, there was no need for the Petitioner to cross-examine on the same. However as aforesaid, the witnesses in examination-in-chief did so depose and the Petitioner workman did not challenge the said part of the testimony of the witnesses of the Respondent employer.

10. The counsel for the Petitioner workman has also contended that Section 106 of the Indian Evidence Act would be attracted and the proof/documents of the continuance in employment of the Petitioner workman with the Respondent employer even after 16th December, 2005 was in exclusive possession of the Respondent employer only. It is contended that the attendance register, salary register etc. of the Respondent employer would have shown that the Petitioner workman was in employment after 16th December, 2005 also but all of which have not been produced.

11. It has been enquired from the counsel for the Petitioner workman whether the Petitioner workman at any time called upon the Respondent employer to produce the said records. The answer is in the negative. Section 106 would not be attracted in the aforesaid state of evidence; while the Respondent employer had cross-examined the Petitioner workman on the said aspect, the Petitioner workman did not even choose to cross-examine the witnesses of the Respondent employer on the aforesaid aspect. Had the Respondent employer inspite of being called upon, not produced the records, an adverse inference could have been drawn. Reference in this regard may be made to the recent dicta in Krishna Bhagya Jala Nigam Ltd. Vs. Mohammed Rafi, reiterating that the initial onus is on the workman.

12. I may also notice that the Industrial Adjudicator has also referred to yet another document also showing the Petitioner to have left the employment of his own and

on which also the Petitioner workman had taken the same stand that his signatures have been taken in blank papers. Rather, the Industrial Adjudicator has observed that the Petitioner in his cross-examination was in denial mode even qua the admitted signatures.

13. No case for interference with finding of fact arrived at by the Industrial Adjudicator is made out.

The writ petition is dismissed. No order as to costs.