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(2013) 139 FLR 936 : (2013) LLR 912

Delhi High Court

Case No: Writ Petition (C) 8863 of 2008

Som Nath Bhatt	APPELLANT
Vs	
Khanijau Industries Engg. P. Ltd. and Another	RESPONDENT

Date of Decision: July 4, 2013

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 2(s), 36, 4

Citation: (2013) 139 FLR 936 : (2013) LLR 912

Hon'ble Judges: A.K. Pathak, J

Bench: Single Bench

Advocate: Raju Gupta, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Pathak, J.
By way of present petition under Article 226 of the Constitution of India, petitioner has challenged Award dated 1.7.2008 passed by the Presiding Officer, Labour Court No. XIX, Karkardooma Courts, Delhi whereby reference has been answered in negative thereby holding that petitioner was not entitled to any relief. The Secretary, (Labour), Govt. of NCT of Delhi referred the dispute raised by petitioner for adjudication to Labour Court in the following terms:

Whether the services of Sh. Som Nath Bhatt have been terminated illegally and/or unjustifiably by the management, and if so, to what relief is he entitled and what directions are necessary in this respect?

2. Petitioner filed statement of claim before the Industrial Adjudicator and sought reinstatement with back wages. Petitioner alleged that he was appointed by M/s. Luxor

Pen Company with effect from 4.5.1993 on a consolidated salary of Rs. 5000/- per month. Subsequently, his services were transferred to the respondent. Although he was designated as Personal Manager but in fact he was assigned duties of a Miscellaneous Clerk. He was not vested with any supervisory or managerial powers. When he protested about it his services were verbally terminated on 4.5.1998 without assigning any reason.

3. In the written statement respondent alleged that petitioner was performing the work of managerial nature and was not a workman within the meaning u/s 2(s) of the Industrial Disputes Act (for short hereinafter referred to as "the Act"). He was recommending names of workmen for increments etc., passing the conveyance bills for reimbursement as also signing the vouchers. He was head of the personnel department. Not only the designation but nature of work performed by him was of managerial nature. As per the respondent, petitioner was discharged from the service in terms of Clause 4 of his appointment letter.

4. In the rejoinder, petitioner denied averments made in the written statement and reaffirmed the contents of statement of claim.

5. Following issues were framed by the industrial adjudicator:

a. Whether the claimant is covered within the definition of workman as defined u/s 2(s) of the ID Act as per preliminary objection no. 2 taken in WS?

b. Whether services of Sh. Som Nath Bhatt have been terminated illegally and/or unjustifiably by the management?

c. Relief.

6. Petitioner examined himself as WW1. He did not examine any other witness. As against this, respondent-management examined its Assistant Manager Sh. Pradeep Dogra as MW-1. Petitioner as well as respondent also placed and proved certain documents.

7. After hearing the parties and perusing the written arguments submitted by them Industrial Adjudicator has returned findings on both the issues against the petitioner, consequently, answered the reference in negative. It was held that petitioner was not a workman within the meaning of Section 2(s) of the Act. After considering the various judicial pronouncements, Industrial Adjudicator has observed that mere designation of claimant is not sufficient but what has to be seen is the nature of duties discharged by him for deciding as to whether he is a workman or not. On the basis of oral as well as voluminous documentary evidence which had come on record Industrial Adjudicator has arrived at a definite finding that petitioner was discharging supervisory and managerial functions and was not a workman. It has been categorically held that the evidence on record established that claimant was not only posted as a Personal Manager but was also primarily discharging supervisory and managerial functions.

8. It is trite that interference with the award of Industrial Tribunal by the High Courts in exercise of power under Article 226 of the Constitution of India is limited. Reappraisal of evidence without sufficient reason of law is not permissible. Finding of fact recorded by the fact finding authority cannot be interfered with so long it is based upon some material relevant for the purpose. The High Court shall interfere only if award is based on no evidence or any error of law is pointed out, inasmuch as there had been violation of principles of natural justice.

9. A learned Single Judge of this court in Mahesh Chand Vs. Godrej Sara Lee Ltd. after placing reliance on Sadhu Ram Vs. Delhi Transport Corporation, ; Harbans Lal Vs. Jagmohan Saran, ; Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Others, and Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers'' Union and Another, has held as under:

6. From a conspectus of the above judgments the following legal position emerges. The High Courts should not interfere with the awards of Industrial Tribunal on mere technicalities. Interference is permissible only if the order of the Industrial Adjudicator suffers from an error of jurisdiction, breach of principles of natural justice or is vitiated by a manifest or apparent error of law. Reappraisal of evidence without sufficient reason in law to arrive at a finding contrary to that arrived at by the Industrial adjudicator is not the intent of exercising judicial review.

7. This Court under Article 226 of the Constitution of India cannot undertake the exercise of liberally reappreciating the evidence and drawing conclusions of its own on pure questions of fact. The findings of fact recorded by a fact-finding authority duly constituted for the purpose cannot be interfered with as long as they are based upon some material relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken.

10. In the backdrop of above legal position I have considered the arguments advanced by the petitioner, learned counsel for the respondent and have perused the written submissions submitted by them. I do not find any force in the contention of petitioner that Industrial Adjudicator has acted in haste and did not accord proper opportunity to him to cross-examine MW-1. As per the petitioner, Industrial Adjudicator had given short dates inasmuch as conducted proceedings on a day-to-day basis at the fag end of the proceedings. Industrial dispute was referred to Court way back in the year 1999. Issues were framed on 30.10.2001. Keeping in mind that it was the oldest case in court, short dates were given and subsequently matter was heard on a day-to-day basis. Nothing wrong can be found in this approach of Industrial Adjudicator. It is not the case that ample opportunity was not given to the parties to put forth their respective versions and lead evidence. Both the parties were given sufficient opportunities to lead evidence and argue the matter before decision has been rendered. Petitioner was also accorded sufficient opportunity to cross-examine MW-1 which is evident from the fact that cross-examination of this witness runs into nine pages. The next contention of petitioner is that written

arguments have not been considered by the Industrial Adjudicator but I find this contention to be contrary to record. A perusal of impugned award itself shows that written arguments have been duly considered and a mention in this regard has been made in the award. Another contention of petitioner is that respondent was permitted to be represented by an Advocate in violation of Sub Section 4 of Section 36 of the Act which envisages that a party to a dispute may be represented by a legal professional with the consent of other parties to the proceedings with the leave of labour court and/or tribunal. It is submitted that neither consent of petitioner was taken nor any such permission was granted. In this case, at the initial stages one Mr. Raju Gupta, Advocate was appearing for the respondent but subsequently he was debarred from appearance after petitioner raised objections. Petitioner now contends that subsequently respondent was represented by Mr. Sanjeev Bajaj, who also happens to be a lawyer. This plea cannot be entertained at this stage since no application was filed by petitioner before the Industrial Adjudicator pointing out this fact nor his appearance was objected to.

11. Petitioner further contends that Industrial Adjudicator has misread the documents to arrive at a conclusion that petitioner was performing supervisory and/or managerial functions. As already mentioned hereinabove, this court has not to reappreciate the evidence and take a different view than what has been taken by the Industrial Adjudicator unless any perversity is pointed out in the award. Industrial Adjudicator has categorically held that Ex. WW1/M1, Ex. WW1/M2, Ex. WW1/16 and Ex. WW1/17 were Annual Performance Appraisal forms of workers/peons/drivers which contained signatures of petitioner with recommendations pertaining to the increments and promotions. In the appraisal reports, petitioner had described the performance of concerned workers and recommended increments and promotions. Ex. WW1/M3 to M15 were various bills cum vouchers which were passed by the petitioner under his signatures inasmuch as Ex. WW1/M4 was the conveyance bill of the petitioner himself which he had passed for reimbursement. Ex. WW1/M5 to M15 indicated the release of payment to different employees after such payments were authorised by the petitioner. Ex. WW1/M18 was the Employment Form whereby a person was engaged as an unskilled temporary worker with the management under the signatures of petitioner. Mark M1 to Mark M8, placed on record by the respondent, were initially denied by petitioner. He denied his signatures on the said documents. However, subsequently, he filed an affidavit admitting his signatures on the documents. These documents evidenced that petitioner had been corresponding with the Commissioner of Provident Fund as also ESI authorities inasmuch as he had issued notices to several workers calling upon them to render explanation for their unauthorised absence from work. Ex. WW1/3 was a circular issued by the President and General Manager of the management, copies whereof were marked to senior functionaries of the management including petitioner. Ex. WW1/8 was a letter written by the petitioner wherein he himself claimed that he was having professional experience of 21 years on important positions in different companies, inasmuch as suggested various measures to safeguard the interest of respondent company. As per the Industrial Adjudicator, cumulative effect of the functions discharged by the petitioner as indicated in

the documents were sufficient to hold that petitioner was performing supervisory and managerial functions. Contents of documents are not in dispute. In Jaiprakash Singh Vs. Presiding Officer Labour Court (I) and Others, petitioner used to post the workers on different jobs; verify the attendance of workers; call explanation for not completing the work; recommend action on finding explanation unsatisfactory and arrange payment of over-time, thus, he was held to be holding supervisory position.

12. For the foregoing reasons, I do not find any perversity in the view taken by Industrial Adjudicator that petitioner was not a workman.

13. Petitioner has placed reliance on Harjinder Singh Vs. Punjab State Warehousing Corporation, , Lloyds Bank Ltd., New Delhi Vs. Panna Lal Gupta and Others, and Ananda Bazar Patrika (P) Ltd. Vs. Its Workmen, , I have perused the above judgments and find them to be in the context of different facts. In Harjinder Singh''s case (supra) the policy of ''last come and first go'' was involved. Section 2(s) of the Act was not in issue in the said case. In Lloyds Bank Ltd. (supra) and Ananda Bazar Patrika (Private) Ltd. (supra), in the peculiar facts involved in the said case it was held that respondents were workmen. In the light of above discussions writ petition is dismissed.